

Formal Policy Statement for the Residential Care Loan Scheme (Effective From 1 July 2005)

Pursuant to section 153 of the Social Security Act 1964, that provides statutory recognition and specification of the residential care loan scheme, the Director-General of Health has approved the following formal policy statement for the Residential Care Loan Scheme (effective from 1 July 2005).

What is a residential care loan?

1. It is an agreement between the Crown and a borrower ("client") under which the Crown advances funds to a provider, on the client's behalf, for any contracted care services received by the client.
2. Generally, a residential care loan ("loan") is secured over the client's former home, with the Crown's interest being protected by a caveat lodged against the title to the former home.
3. The loan is generally due to be repaid when the client dies or the former home is sold or otherwise disposed of, whichever happens earlier.

Legal basis for the loan scheme

4. Section 153 of the Social Security Act 1964 ("the Act") provides statutory recognition and specification of the residential care loan scheme ("the loan scheme"):

"153 Residential care loan scheme

A person who has been means assessed as to assets may apply for a loan under the residential care loan scheme operated by the Ministry of Health if:

- (a) the person's assets are above the applicable asset threshold; and
- (b) the person meets the criteria for eligibility for the residential care loan scheme as notified by the Director-General of Health in the Gazette."

Roles and responsibilities

5. The Ministry of Health is responsible for the loan scheme policy, funding residential care under the loan scheme, and issuing loan statements to clients. The Ministry of Social Development administers the loan scheme as an agent of the Ministry of Health through a Power of Attorney, and provides certain legal and administrative services in relation to the loan scheme. All references to the Ministry of Social Development in this policy are as agent for the Ministry of Health.

Glossary

6. All terms used in this policy have the same meanings as in Part 4 and Schedule 27 of the Act. In addition, in this policy:
 - (a) "subsidy" means the funder's liability in respect of persons whose assets are equal to or below the applicable asset threshold;
 - (b) "former home" means a property that was the applicant's principal place of residence immediately prior to entering residential care; and
 - (c) "protected equity" means the amount of proceeds from the sale of the former home that the client is entitled to receive before all or any part of the loan is repaid, and it is calculated as set out in paragraphs 22 and 23.

Purpose of the loan scheme

7. The purpose of the loan scheme is to assist older people who, because they own their former home, have assets above the applicable asset threshold and are obliged to pay for the cost of contracted care services. The loan scheme recognises that for many older people their home is their principal asset, and that they may wish to retain it when they enter residential care.
8. Any private agreement between the client and the provider for any services that are not contracted care services is not varied by the loan agreement and remains a personal liability of the client.

Eligibility criteria

9. The Ministry of Social Development considers each application for a loan on a case-by-case basis. There is no obligation on the Ministry of Social Development or the Ministry of Health to offer a loan.
10. A loan may be offered if the Ministry of Social Development is satisfied that the loan offer fits within the purpose of the loan scheme and that the applicant meets all of the following key eligibility criteria:

- (a) **The applicant is a resident assessed as requiring care.**
- (b) **The applicant's assets are above the applicable asset threshold and the applicant is liable to pay for the cost of contracted care services.**
- (c) **The applicant has assets above the applicable asset threshold only because he or she owns the former home.**

There are three factors that need to be met here:

- (i) The applicant must have legal ownership of the former home; and
 - (ii) the applicant does not qualify for a subsidy because the value of his or her former home means that the applicant has assets above the applicable asset threshold; and
 - (iii) the applicant's assets other than the former home must amount to no more than \$15,000.00 for a single person and \$30,000.00 for a married couple or such other amounts as may be gazetted in accordance with paragraph 30.
- (d) **The Crown can obtain sufficient security.**
A loan will only be offered if the Ministry of Social Development is satisfied that the loan can be adequately secured over the applicant's former home.

- (e) **The loan can be recovered.**
The Ministry of Social Development must be satisfied that there are no significant risks that would affect its ability to enforce repayment of the loan.

Exceptional circumstances

11. If the applicant does not meet the key eligibility criteria, but has raised individual circumstances that the Ministry of Social Development considers to be exceptional, the Ministry of Social Development (sometimes in consultation with the Ministry of Health) may offer a loan based on those circumstances. Any loan offer will be on such terms and conditions as the Ministry of Social Development considers appropriate in those circumstances. There is no obligation on the Ministry of Social Development or the Ministry of Health to offer a loan.

Loan terms and conditions

12. The loan will be issued on the terms and conditions deemed appropriate by the Ministry of Social Development. If the key eligibility criteria are met, these will generally be as set out below.
13. The client will be required to enter into a loan agreement recording the terms and conditions of the loan. If the former home is co-owned with another party or parties, each of the other co-owners will also be required to enter into the loan agreement for the purpose of obtaining adequate security for the loan. Generally, a caveat will be lodged against the title to the former home as notice of the loan agreement.
14. The client is required to maintain the former home and pay all rates (which may be by way of a deferred rates scheme), insurance and other outgoings until the loan is repaid. The cash assets referred to in paragraph 10. (c) (iii) (\$15,000.00 for a single person and \$30,000.00 for a married couple) are intended to be for living expenses and for these purposes.
15. The client is required to contribute directly to the provider the New Zealand Superannuation, or any other benefit, that he or she receives, less the personal allowance. The amount to be advanced to the provider on the client's behalf under the loan agreement will be reduced accordingly.
16. The Ministry of Health will send a statement of the loan balance to the client on a quarterly basis.
17. The loan will continue until the earliest of the following events:
- (a) the client dies; or
 - (b) the former home is sold or otherwise disposed of; or
 - (c) a new means assessment determines that the client's assets are equal to or below the applicable asset threshold.
18. If a new means assessment has determined that the client's assets are equal to or below the applicable asset threshold, the client will transfer from the loan scheme to a subsidy. Payments drawn against the loan will cease from the date of means assessment, the client will be informed of the loan balance, and the repayment provisions under the loan agreement will apply.
19. However, if a client does not apply to the Ministry of Social Development for a new means assessment, or does not provide sufficient information to enable the Ministry of Social Development to determine the means assessment, the client will not be able to have a subsidy (to which he or she might otherwise have been entitled) paid on his or her behalf. In such a situation, loan advances will continue to be paid to the provider on behalf of the client.

Repayment of a loan

20. The loan must be repaid six months after the client dies or when the former home is sold or otherwise disposed of, whichever date is earlier. If repayment is more than three months' late, penalty interest may be charged.
21. The loan must be repaid before the security or obligation under the loan agreement will be released.
22. The client is entitled to receive his or her protected equity after all of the amounts set out in paragraph 25 (that are owing at the date of loan repayment) have been paid. The client's protected equity is calculated by deducting the following amounts from the relevant asset threshold:
- (a) any rates that have been postponed during the term of the loan; and
 - (b) the total amount of assets (other than the former home) that the client was assessed as having in:
 - (i) the means assessment at the time of the loan application, if the client has never transferred to a subsidy; or
 - (ii) the means assessment that determined that the client was eligible for a subsidy.
23. The relevant asset threshold for the purposes of paragraph 22 is the asset threshold that was applicable on:
- (a) the day before the client became (or would have become) eligible for a subsidy; or
 - (b) the day before payments drawn against the loan ceased, if the client has not yet become eligible for a subsidy.

Write-off of a loan

24. The Ministry of Social Development may remit all or any part of the loan if the loan balance exceeds the value of the client's estate or interest in the former home less the client's protected equity or if, in the opinion of the Director-General of Health, the circumstances raised by the client or any person resident in the former home are exceptional.
25. The Ministry of Social Development may allow any of the following amounts to be deducted from the sale proceeds before the loan is repaid:
- (a) Reasonable and necessary legal fees and disbursements on the sale of the former home (other than the cost of registration of the withdrawal of caveat).
 - (b) Real estate agent fees payable on the sale of the former home, up to a maximum of 5% of the value of the sale proceeds.
 - (c) Funeral expenses up to a maximum of \$10,000.00 or such other amount as may be gazetted in accordance with paragraph 30 (provided the client had not previously purchased a pre-paid funeral).
 - (d) If the client has not died and has not previously purchased a pre-paid funeral, funds for this purpose up to a value of \$10,000.00 (or such other amount as may be prescribed by Regulations made under section 155 of the Act).
 - (e) Gifts in recognition of high-level care provided to the client (up to the maximum value prescribed by Regulations made under section 155 of the Act), and any other prior mortgages or charges accepted in the means assessment at the time of the loan application as having priority over the loan.
 - (f) Any rates that have been postponed during the term of the loan.

26. After any allowable amounts have been deducted from the sale proceeds, the Ministry of Social Development may accept the remainder of the sale proceeds in full and final settlement of the loan.

Deferment of loan repayment

27. Repayment of a loan may be deferred if any person living in the client's former home meets all of the following criteria:

- (a) He or she lived in the former home immediately before the client entered residential care, on a continuous full-time basis for at least 5 years.
- (b) He or she lived in the former home while the client was in residential care and continues to live there at the time of the death of the client.
- (c) He or she has been left the former home, or a joint share of or a life interest in the former home, by the client in his or her will and has a legal right to live there.

28. Deferment of the loan repayment is only available to the first person who meets the above criteria, and it only applies to the client's former home. If the former home is sold or the person moves out, the loan becomes repayable.

29. There is no obligation on the Ministry of Social Development or the Ministry of Health to agree to deferment of the loan repayment.

Changes to scheme policy

30. This policy will be reviewed and updated periodically. Any changes to the policy will be gazetted.

Copies of policy statement

31. Copies of this policy statement can be found on the Ministry of Health web site at <http://www.moh.govt.nz/assettesting>

Dated at Wellington this 24th day of May 2005.

KAREN O. POUTASI (DR), Director-General of Health.

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