

# **Social Security Amendment Bill (No 3)**

Government Bill

## **Explanatory note**

### **General policy statement**

This Bill is intended to ensure equitable treatment—

- for people receiving payments of weekly compensation:
- of students seeking assistance for their accommodation costs.

The Bill amends the Social Security Act 1964 so that the requirement for weekly compensation payments paid under the Accident Compensation Act 2001 to be deducted dollar-for-dollar from benefit payments applies equally to weekly compensation paid by the Accident Compensation Corporation (the **Corporation**), an accredited employer, or a person acting on behalf of the Corporation or accredited employer.

The Bill will provide for this amendment to apply retrospectively in order to validate the past and current practice of deducting weekly compensation payments (whether made by or on behalf of the Corporation or another person, such as an accredited employer) dollar-for-dollar from benefit payments.

The position of a person who challenged the practice of deducting weekly compensation from a benefit when that compensation was paid by an accredited employer, rather than the Corporation, is protected by the provision that the Bill does not apply to appeals or proceedings lodged or decided before 15 April 2009.

The Bill also amends the provision in the Social Security Act 1964 allowing backdating of an application for a benefit when payments have been made by the Corporation and the applicant's claim for weekly compensation subsequently fails. The amendment will allow this provision to apply when payments have been made on behalf of the Corporation or by or on behalf of an accredited employer.

The Bill also amends the Social Security Act 1964 to clarify the provisions that exclude students who are eligible for assistance under the Student Allowances Regulations 1998 from receiving the accommodation supplement. The amendment makes it clear that students are not eligible for the accommodation supplement if they could receive assistance under the Student Allowances Regulations 1998 but choose not to apply for it, or if they could receive this assistance but for their own income or the income of their parents, spouse, or partner.

### **Regulatory impact statement**

The Ministry of Social Development produced a regulatory impact statement on 19 August 2010 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/index.html>
- <http://www.treasury.govt.nz/publications/information-releases/ris>

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause and provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

*Clause 3* provides that the Bill amends the Social Security Act 1964 (the **Act**).

## Part 1

### Amendments to principal Act

*Clause 4* amends section 61EA, which relates to the accommodation supplement, by clarifying that students are ineligible for the supplement if they may receive grants under the Student Allowances Regulations 1998.

*Clause 5* amends section 71A, which relates to the reduction of the rate of income-tested benefit payable to a person receiving weekly compensation. The amendment substitutes a *new section 71A(3)* so that the definition of weekly compensation includes weekly compensation payable by or on behalf of either the Accident Compensation Corporation or an accredited employer under the Accident Compensation scheme. That amendment is made in response to a decision of the Social Security Appeal Authority that, before the amendment, the effect of the definition of weekly compensation in section 71A was that payments of weekly compensation by accredited employers were not within the meaning of weekly compensation as defined in that section. The amendment also updates references to the relevant Accident Compensation legislation.

*Clause 6* amends section 80D, which allows the chief executive to treat an application for a benefit as having been made on a date, determined under the section, that is earlier than the date the application is made, if the claimant received weekly compensation in respect of an unsuccessful claim under the Accident Compensation Act 2001. The amendments extend the discretion to the situation where weekly compensation was paid on behalf of the Accident Compensation Corporation or by or on behalf of an accredited employer, and update references to the relevant Accident Compensation legislation.

## Part 2

### Validation and savings

*Clause 7* validates calculations previously made under section 71A. It does this by replacing the definition of weekly compensation in section 71A(3) during the relevant period with new definitions of weekly compensation and specified payer.

*Clause 8* saves from the retrospective effect of *clause 7* certain appeals, decisions, etc, so that, for example, the decision of the Social Security Appeal Authority referred to in relation to *clause 5* is not

affected by the substitution of the definition of weekly compensation by that clause.

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*Hon Paula Bennett*

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Social Security Amendment Act **(No 3) 2010**.

- 2 Commencement**  
This Act comes into force on the day after the date on which it receives the Royal assent.

- 3 Principal Act amended**  
This Act amends the Social Security Act 1964. 5

### **Part 1** **Amendments to principal Act**

- 4 Accommodation supplement**  
(1) Section 61EA(4) is amended by inserting the following paragraph after paragraph (a): 10

“(ab) would be eligible to receive a basic grant or an independent circumstances grant under the Student Allowances Regulations 1998, if he or she were to apply for the grant; or”.

- (2) Section 61EA(4)(b) is amended by inserting “or spouse or partner, were the person to apply for the grant” after “parents”. 15

- 5 Deduction of weekly compensation from income-tested benefits**

Section 71A is amended by repealing subsection (3) and substituting the following subsection: 20

- “(3) In this section, **weekly compensation** means weekly compensation for loss of earnings or loss of potential earning capacity payable to the person under the Accident Compensation Act 2001 (whether payable by or on behalf of the Accident Compensation Corporation or by or on behalf of an accredited employer within the meaning of section 181 of that Act).” 25

- 6 Benefit applications by claimants under Injury Prevention, Rehabilitation, and Compensation Insurance Act 2001**

- (1) The heading to section 80D is amended by omitting “**Injury Prevention, Rehabilitation, and Compensation Insurance Act 2001**” and substituting “**Accident Compensation Act 2001**”. 30

- (2) Section 80D is amended by repealing paragraph (a) and substituting the following paragraph:
- “(a) weekly compensation is paid by or on behalf of the Accident Compensation Corporation, or by or on behalf of an accredited employer within the meaning of section 181 of the Accident Compensation Act 2001, in respect of a claim made under that Act; and”.

## Part 2 Validation and savings

- 7 Validation** 10
- For the purpose of calculating the rate of reduction of a benefit payable to a person in accordance with section 71A, the principal Act must be read as if, during the period beginning on 1 July 1999 and ending on the commencement of **section 5** of this Act, (the **relevant period**), the definition in section 71A(3) were replaced by the following definitions: 15
- weekly compensation** means weekly compensation for loss of earnings or loss of potential earning capacity payable to the person in respect of any time or times within the relevant period by or on behalf of any person (including, without limitation, a specified payer) in accordance with any 1 or more of the following Acts as in force at that time or times during the relevant period: 20
- (a) the Accident Insurance Act 1998 (the **1998 Act**):
- (b) the Injury Prevention, Rehabilitation, and Compensation Act 2001, renamed the Accident Compensation Act 2001 (the **2001 Act**) on 3 March 2010 25
- specified payer** means a person who or that is—
- (a) an insurer as defined in section 13(1) of the 1998 Act or section 341(1) of the 2001 Act; or 30
- (b) the Accident Compensation Corporation established by section 328 of the 1998 Act and continued by section 259(1) of the 2001 Act; or
- (c) an accredited employer as defined in section 326A of the 1998 Act or section 181 of the 2001 Act. 35

**8 Savings**

- (1) **Section 7** of this Act—
- (a) does not apply in respect of any application, appeal, or proceedings of a kind specified in **subsection (2)** that alleged an invalidity in a rate of benefit reduced or purported to be reduced under section 71A(2) of the principal Act and was made or filed, as the case may be, before 15 April 2009; and 5
  - (b) does not affect the rights of any person who made an application to which **paragraph (a)** applies, or was a party to an appeal or other proceedings to which **paragraph (a)** applies, under— 10
    - (i) any decision, or any judgment of a court, in relation to that application or appeal or those proceedings, as the case may be; or 15
    - (ii) any decision or judgment given on appeal from that decision or judgment.
- (2) **Subsection (1)(a)** applies in respect of each of the following:
- (a) an application for review under section 10A of the principal Act: 20
  - (b) an appeal under section 12J, 12Q, or 12R of the principal Act:
  - (c) any other proceedings.
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