

Social Security (Fraud Measures and Debt Recovery) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Social Security Act 1964 (the **Act**). Its main aim is to strengthen further the approach to relationship fraud by making spouses and partners, as well as beneficiaries, accountable for fraud. It will also ensure that the Ministry of Social Development (**MSD**) recovers debt more effectively, while also enabling it to exercise sensible discretion in managing recovery in individual cases.

Fraud measures

Relationship fraud makes up approximately one-third of all welfare fraud prosecutions. In most cases of relationship fraud, where only 1 person has claimed for welfare assistance, the person's spouse or partner is not currently liable to prosecution or for any of the debt established, regardless of the spouse's or partner's knowledge of, or gain from, the fraud.

The Bill seeks to overcome these inequities by ensuring that spouses and partners, as well as beneficiaries, are appropriately held to account.

This is to be achieved through—

- enabling payments, credits, or advances to which a beneficiary was not entitled, and that were obtained by fraud by the beneficiary, to be recovered from the beneficiary's spouse or partner who knowingly benefited, or ought to have known he or she was benefiting, from that fraud:
- widening the circumstances in which an amount of benefit in excess of the beneficiary's entitlement can be recovered from the beneficiary's spouse or partner if that spouse or partner makes any false statement to, or misleads, MSD:
- making it a criminal offence for a beneficiary's spouse or partner to benefit from an excess amount that the beneficiary obtained by fraud if the spouse or partner knows, or is reckless as to whether, the amount is an excess amount and obtained by the beneficiary's fraud.

The Bill also provides review and appeal rights to spouses and partners affected by the new debt recovery powers.

Debt recovery

MSD is owed a significant amount of money from fraud-related debt, other overpayments, and recoverable assistance. This money should be recovered effectively and consistently. The public is entitled to expect that MSD will recover welfare debts effectively. Recent High Court decisions have questioned how MSD applies discretion to recover welfare debts. Those decisions have created uncertainty about MSD's powers and duties when recovering welfare debt.

To ensure effective debt recovery, and address the effect of those High Court decisions, this Bill will amend the Act so that—

- it imposes a duty on MSD to take all reasonably practicable steps to recover debt:
- MSD has a discretion to determine, case-by-case, the method and rate of recovery:
- in exceptional circumstances, MSD may defer temporarily recovery of debt:
- the Minister responsible for the Act is required to issue directions identifying the exceptional circumstances in which recovery may be deferred temporarily, and identifying the con-

siderations to which MSD must have regard in setting the rate and methods of recovery of the debts.

Regulatory impact statement

The Ministry of Social Development produced a regulatory impact statement on 8 November 2012 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 relates to commencement. The amendments the Bill is to make come into force on **4 November 2013**.

Clause 3 identifies the principal Act amended: the Social Security Act 1964. A reference in this analysis to a provision is, unless the context otherwise requires, a reference to a provision of that Act.

Part 1

Substantive amendments

Review of decisions

Clause 4 amends section 10A, on reviews by benefits review committees of specified decisions of the chief executive made under delegations by other decision makers (and against which specified people have under section 12J rights of appeal to the Appeal Authority). *New section 10A(1)* re-enacts, using a table, existing rights of review under section 10A(1), but also—

- ensures that “beneficiary” and “affected” have, in row 1 of the table, the same meanings as in *new section 12J(1) to (3)* (inserted by *clause 5*):
- gives new rights of review of decisions under section 86(3), (4), or (5) or *new section 86AA* (inserted by *clause 10*); and

- refers to related rights of appeal under *new section 12J* (inserted by *clause 5*).

The heading to section 10A is amended to make it more precise, and section 10A(1C) is repealed as redundant.

Rights of appeal

Clause 5 replaces section 12J, which gives rights to appeal to the Appeal Authority against specified decisions. *New section 12J* re-enacts existing rights of appeal under section 12J, but also makes the following substantive changes.

New section 12J(3) ensures that an applicant or beneficiary is for the purposes of *new section 12J(1)* not affected by, and so cannot appeal under *new section 12J(1)* against, a decision or determination that relates only to all or any of the temporary deferral, rate, or method or methods, of debt recovery from another person. *New section 12J(3)* overrides case law (such as Reference No. SSA 005/12 Decision No. [2012] NZSSAA 118) to the effect that an applicant or beneficiary does or may have under section 12J(1) a right to appeal to the Appeal Authority against a decision or determination that relates only to another person's entitlement or liability in that other person's own right, so long as the applicant or beneficiary is affected by that decision or determination. The effect concerned may have to be economic in nature: *Wharerimu v Chief Executive of Department of Work and Income* [2000] NZAR 467 (HC). "Decision" and "determination" are both used because the principal Act apparently uses both terms interchangeably: *Arbuthnot v Chief Executive of the Department of Work and Income* [2008] 1 NZLR 13 (SC).

New section 12J(5) to (11) give new rights of appeal against decisions under section 86(3), (4), or (5) or *new section 86AA* (inserted by *clause 10*).

New section 12J(12) ensures a reference in *new section 12J* to a decision to recover an amount from a person or estate includes all related decisions on all or any of the temporary deferral, rate, or method or methods, of debt recovery from the person or estate.

New section 12J(13) re-enacts, as a general restriction, the repeated uniform restriction (in, for example, section 12J(1A)(b)) that a decision is not appealable under the section unless the decision—

- has been confirmed or varied by a benefits review committee under section 10A; or
- was made by the chief executive other than pursuant to a delegation.

Debts due to the Crown

Clause 6 inserts a *new section 83AA*, on a benefit granted at a couple rate, and apportioned under section 83 between spouses or partners so that each is paid a proportion. *New section 83AA* ensures that one (whether or not the person entitled to the benefit) is liable for any proportion that the other obtained by fraud if that one knew, or ought to have known, about the other's fraud.

New section 83AA applies to the following situation:

- a benefit is apportioned under section 83(1) or (2) between spouses or partners so that—
 - one proportion of the benefit (**proportion A**) is paid to one spouse or partner (**A**); and
 - the other proportion of the benefit (**proportion B**) is paid to the other spouse or partner (**B**); and
 - the person entitled to the benefit, for the purposes of section 83(1) and (2), is either A or B; and
- some or all of proportion A is—
 - an amount in excess of the amount to which A is by law entitled; and
 - an amount obtained by fraud by A (within the meaning of *new section 83AA(4)*); and
 - a debt referred to in section 85A due to the Crown, and subject to recovery under *new section 86(1)* (inserted by *clause 9(1)*), from A; and
- some or all of proportion B either is, or is not,—
 - an amount in excess of the amount to which B is by law entitled; and
 - an amount obtained by fraud by B (within the meaning of *new section 83AA(4)*); and

- a debt referred to in section 85A due to the Crown, and subject to recovery under *new section 86(1)* (as inserted by *clause 9(1)*), from B; and
- B either knew, or ought to have known (even if B did not know), of the fraud by A.

New section 83AA(2) ensures that, in that situation,—

- B is jointly and severally liable for A's debt referred to in *new section 83AA(1)(b)*; and
- that amount is a debt referred to in section 85A due to the Crown, and subject to recovery under *new section 86(1)*, from B.

Clause 7 amends section 85A to make it clear that section 85A is a general provision on payments that are debts due to the Crown.

Clause 8 inserts *new section 85B*, which gives examples of payments that are debts due to the Crown.

Recovery of amounts in excess of entitlements and related penalties

Clause 9 amends section 86, which relates to recovery of payments made in excess of authorised rates.

Clause 9(1) inserts *new section 86(1) and (1A)* and a related subsection heading.

Duty to take all reasonably practicable steps to recover debt

New section 86(1) imposes a duty on the chief executive to take all reasonably practicable steps to recover a debt referred to in section 85A. Section 86(1) has been held to give the chief executive a discretion as to whether to recover a debt referred to in section 85A: *Harlen v Ministry of Social Development* [2012] NZAR 491 (HC). A later authority suggests, however, that the discretion under section 86(1) is, at least for certain overpayments, very limited: *Hennessy v Chief Executive of the Ministry of Social Development* [2012] NZHC 3104.

Exceptions to duty

New section 86(1A)(a), (b), (c), and (d) state 4 exceptions to the duty in *new section 86(1)*. Two of these 4 exceptions re-enact parts of the section 86(1A) exceptions to discretionary recovery under section 86(1).

The first exception, in *new section 86(1A)(a)* (which re-enacts part of section 86(1A)), is cases covered by section 86(9A) and (9B). Section 86(9A) and (9B) prohibit recovery if the debt was caused wholly or partly by an error to which the debtor did not intentionally contribute, the debtor received the sum in good faith and changed his or her position, and it would be inequitable in all the circumstances, including the debtor's financial circumstances, to permit recovery. This exception replaces section 94B of the Judicature Act 1908 and any other rules of law relating to payment by or under mistake: section 86(1B).

The second exception, in *new section 86(1A)(b)* (which re-enacts part of section 86(1A)), is cases in which debt is suspended or remitted under regulations made under section 132G, namely the Social Security (Debt Recovery Suspension) Regulations 2007.

The third exception, in *new section 86(1A)(c)*, is new. It has no equivalent in section 86(1A). It relates to cases in which recovery of the debt concerned is not required because it falls within any 1 or more classes, descriptions, or kinds of debts that are specified in a written determination made by the chief executive for the purposes of *new section 86(1A)(c)* as debts that it is uneconomic to recover.

The fourth exception, in *new section 86(1A)(d)*, is new. It has no equivalent in section 86(1A). It relates to cases in which recovery of the debt concerned is not required because it falls within any 1 or more classes, descriptions, or kinds of debts specified in a written authorisation given jointly by the Minister and by the Minister of Finance for public finance purposes generally as debts that are to be written off.

*Temporary deferrals, and determining rates and
methods, of recovery*

Clause 9(2) inserts *new section 86(1BA) to (1BD)*.

New section 86(1BA) ensures that, in performing the duty imposed by *new section 86(1)* to take all reasonably practicable steps to recover a debt referred to in section 85A, the chief executive—

- may, if satisfied of the existence in the particular case of exceptional circumstances of a kind identified by directions under *new section 86(1BC)*, defer temporarily recovery of the debt (*new section 86(1BA)(a)*); but
- must otherwise determine from time to time the rate of recovery and method or methods of recovery to be used and, in doing so, is not required to have regard to relevant considerations (for example, adequacy of living standards: *Harlen v Ministry of Social Development* [2012] NZAR 491 (HC)) unless they are identified in directions under *new section 86(1BC)* (*new section 86(1BA)(b)*).

New section 86(1BB) specifies the debt recovery method or methods that the chief executive may determine is or are to be used.

New section 86(1BC) requires the Minister to give to the chief executive, and ensure that there are in force at all times on and after **4 November 2013**, directions for *new section 86(1BA)(a)* and *(b)*. Directions of that kind may—

- identify for the purposes of *new section 86(1BA)(a)* different kinds of exceptional circumstances for different kinds of debts referred to in section 85A;
- identify for the purposes of *new section 86(1BA)(b)* different considerations, or considerations that contemplate different rates of recovery or different methods of recovery or both, for determinations in respect of different kinds of debts referred to in section 85A.

New section 86(1BD) ensures directions under *new section 86(1BC)*—

- must be published in the *Gazette*, and are not regulations for the purposes of the Acts and Regulations Publication Act 1989; but
- are disallowable under the Regulations (Disallowance) Act 1989, and must be presented to the House of Representatives under section 4 of that Act.

*Reorganising headings and other minor drafting
improvements*

Clause 9(3), (4), (7), (9), (11), and (12) take the opportunity to insert subsection headings in order to make clearer, without changing substantively, the matters dealt with, respectively, by section 86(2), (3), (4), (5), (6) to (9), and (9A) and (9B). *Clause 9(8) and (10)* amend section 86(4) and (5), respectively, to ensure, for consistency, that they refer to debts “due” (not “owing”) to the Crown.

*Recovery from spouse or partner who
misleads department of excess amount
beneficiary obtained*

Clause 9(5) amends substantively section 86(3). It applies if a beneficiary’s spouse or partner misleads an administering officer in relation to the spouse’s or partner’s income or other personal circumstances, as a result of which the benefit or an instalment of benefit is paid in excess of the amount to which the beneficiary is by law entitled. It enables the chief executive to recover the excess amount from the spouse or partner, either as a debt due to the Crown at the suit of the chief executive, or by way of deduction from a benefit or student allowance payable to the spouse or partner. It is amended so that it applies if the spouse or partner misleads in relation to any matter (not only in relation to his or her income or other personal circumstances). *Clause 9(6)* inserts *new section 86(3A)*, which ensures that section 86(3) does not limit or affect—

- recovery under section 85A(e) or (f) and *new section 86(1)* from the beneficiary of the excess amount recoverable under section 86(3) from the beneficiary’s spouse or partner; or
- any other civil or criminal liability of the beneficiary, under any other laws, in respect of that excess amount.

*Approved welfare programmes:
special assistance payments*

Clause 9(13) inserts *new section 86(9C)* (and a related heading) to explain the effect of section 124(2A). Section 124(2A) ensures that section 86 and *new section 86AA* (inserted by *clause 10*) both apply (as far as they are applicable and with any necessary modifications)

to a payment (of special assistance under an approved welfare programme) specified in section 124(2)—

- as if it were made by way of benefit under Part 1; and
- as if the person to whom the payment was made were a beneficiary entitled to a benefit of the amount determined under section 124(2A)(b).

*Fraud measures: recovery of excess amount
obtained by fraud*

Clause 10 inserts *new section 86AA*, which relates to recovery of an amount in excess of entitlement obtained by a person (the **beneficiary**) by fraud. Section 86(2) applies to the beneficiary, and enables the chief executive in his or her discretion to recover from the beneficiary, by way of penalty, an amount not exceeding 3 times the amount in excess. *New section 86AA(3)* does not apply to, and allow the chief executive to recover the excess amount from, the beneficiary's spouse or partner, unless (*new section 86AA(2)*) the spouse or partner—

- knowingly benefited directly or indirectly from the beneficiary's fraud referred to in section 86(2); or
- ought to have known (even if the spouse or partner did not know) that the spouse or partner was benefiting directly or indirectly from the beneficiary's fraud referred to in section 86(2).

New section 86AA(4) ensures that *new section 86AA(3)* does not limit or affect—

- recovery under section 85A(e) or (f) and *new section 86(1)* from the beneficiary of the excess amount recoverable under *new section 86AA(3)* from the beneficiary's spouse or partner; or
- any other civil or criminal liability of the beneficiary, under any other laws, in respect of that excess amount.

New section 86AA(5) explains the effect of section 124(2A). Section 124(2A) ensures that section 86 and *new section 86AA* both apply (as far as they are applicable and with any necessary modifications) to a payment (of special assistance under an approved welfare programme) specified in section 124(2)—

- as if it were made by way of benefit under Part 1; and

- as if the person to whom the payment was made were a beneficiary entitled to a benefit of the amount determined under section 124(2A)(b).

*Recovery of amounts in excess of entitlements
and related penalties*

Clause 11 amends section 124(2A). Section 124(2A) ensures that, and specifies how, sections 81 (review of benefits) and 86 (recovery of payments made in excess of authorised rates) apply (as far as they are applicable and with any necessary modifications) to specified payments of special assistance under an approved welfare programme. The amendment ensures that *new section 86AA* (recovery from spouse or partner of excess amount beneficiary obtained by fraud) inserted by *clause 10* applies in the same way to those specified payments.

Fraud measures: offences

Clause 12 inserts *new section 127A*, which makes it an offence for a spouse or partner to knowingly or recklessly benefit from a beneficiary's fraud. A person (the **spouse or partner**) who is the spouse or partner of another person (the **beneficiary**) commits an offence under *new section 127A(1)* if—

- the beneficiary obtains any payment, or receives any credit or advance, referred to in section 85A in excess of the amount to which the beneficiary is by law entitled; and
- that payment or credit or advance in excess (the **excess amount**) is obtained by fraud; and
- the spouse or partner benefits directly or indirectly from the excess amount the beneficiary obtained by fraud; and
- in benefiting in that way, the spouse or partner knows that, or is reckless as to whether, the excess amount is an amount—
 - to which the beneficiary is by law entitled; and
 - that the beneficiary obtained by fraud.

The excess amount is obtained by the beneficiary by fraud for the purposes of *new section 127A(1)* if—

- the beneficiary obtained that amount by fraud (within the meaning of section 86(2) and (2C)); or

- the beneficiary is convicted of a specified offence in respect of obtaining that amount.

But *new section 127A(2) and (3)* do not limit the generality of *new section 127A(1)*, or the operation of section 49 (conviction as evidence in criminal proceedings) of the Evidence Act 2006: *new section 127A(4)*.

The maximum available penalty for an offence against *new section 127A(1)* is imprisonment for a term not exceeding 12 months, a fine not exceeding \$5000, or both: *new section 127A(5)*.

Part 2

Consequential amendments, and application, savings, and transitional provisions

Consequential amendments

Clauses 13 to 31 make to enactments in, or made under, the principal Act, and to the Social Welfare (Transitional Provisions) Act 1990, amendments consequential on the amendments in *Part 1*.

Application of amendments

Clause 32 ensures that specified new review and appeal amendments (because they re-enact existing provisions) apply not only to decisions or determinations made on and after, but also to decisions or determinations made before, **4 November 2013**.

Clause 33 ensures that the amendments made by the Bill generally apply to, or in respect of, excess amounts obtained or received before, on, or after **4 November 2013**, but also that new, or substantively amended, debt recovery or offence provisions apply only in respect of excess amounts obtained or received on or after **4 November 2013**.

Transitional provisions

Clause 34 ensures that debt recovery decisions or determinations in force at the close of **3 November 2013** are not required by *new section 86(1BA)* (as inserted by *clause 9(2)*) to be amended, reviewed, or replaced until the chief executive determines as soon as is reason-

ably practicable after **3 November 2013** to amend, review, or replace them under that section (as so inserted).

Hon Chester Borrows

**Social Security (Fraud Measures
and Debt Recovery)
Amendment Bill**

Government Bill

Contents

		Page
1	Title	3
2	Commencement	3
3	Principal Act	4
Part 1		
Substantive amendments		
<i>Review of decisions</i>		
4	Section 10A amended (Review of decisions)	4
<i>Rights of appeal</i>		
5	Section 12J replaced (Rights of appeal)	5
	12J Rights of appeal	6
<i>Debts due to the Crown</i>		
6	New section 83AA inserted (Apportionment of benefit between spouses or partners: one is liable for proportion other obtained by fraud if that one knew, or ought to have known, about other's fraud)	9
	83AA Apportionment of benefit between spouses or partners: one is liable for proportion other obtained by fraud if that one knew, or ought to have known, about other's fraud	9
7	Section 85A amended (Payments that are debts due to the Crown)	10

**Social Security (Fraud Measures and
Debt Recovery) Amendment Bill**

8	New section 85B inserted (Payments that are debts due to the Crown: examples)	10
	85B Payments that are debts due to the Crown: examples	10
	<i>Recovery of amounts in excess of entitlements and related penalties</i>	
9	Section 86 amended (Recovery of payments made in excess of authorised rates)	12
	<i>Fraud measures: recovery of excess amount obtained by fraud</i>	
10	New section 86AA inserted (Recovery from spouse or partner of excess amount beneficiary obtained by fraud)	15
	86AA Recovery from spouse or partner of excess amount beneficiary obtained by fraud	15
	<i>Recovery of amounts in excess of entitlements and related penalties</i>	
11	Section 124 amended (Money payable out of Crown Bank Account)	16
	<i>Fraud measures: offences</i>	
12	New section 127A inserted (Offences: spouse or partner knowingly or recklessly benefiting from beneficiary's fraud)	16
	127A Offences: spouse or partner knowingly or recklessly benefiting from beneficiary's fraud	16
Part 2		
Consequential amendments, and application, savings, and transitional provisions		
	<i>Consequential amendments</i>	
13	Section 12K amended (Procedure on appeal)	17
14	Section 60H amended (Voluntary unemployment or loss of employment through misconduct, etc)	18
15	Section 68A amended (Special provisions applying to insurance payments)	18
16	Section 71 amended (Special provisions where compensation or damages recoverable by applicant)	18
17	Section 80BB amended (Delayed redundancy and retirement payments)	18
18	Section 80BC amended (Seasonal workers made redundant after benefit commences)	19

**Social Security (Fraud Measures and
Debt Recovery) Amendment Bill**

cl 2

19	Section 82 amended (Payment of benefits)	19
20	Section 83A amended (Tax on benefits)	19
21	Section 86A amended (Deduction notices for debt)	19
22	Section 86C amended (Discharge of debt)	19
23	Section 86E amended (Deductions held in trust)	20
24	Section 86I amended (Penalty for late deductions)	20
25	Section 123B amended (Effect of participation in certain activities on non-entitlement period)	20
26	Section 124 amended (Money payable out of Crown Bank Account)	20
27	Section 127 amended (Offences)	21
28	Section 132G amended (Regulations providing for remittance or suspension of debt)	21
29	Social Security (Childcare Assistance) Regulations 2004 amended	21
30	Social Security (Debt Recovery Suspension) Regulations 2007 amended	21
31	Social Welfare (Transitional Provisions) Act 1990 amended	21
	<i>Application of amendments</i>	
32	Certain review and appeal amendments apply to decisions made before 4 November 2013	22
33	Amendments generally apply in respect of excess amounts obtained or received before, on, or after 4 November 2013	22
	<i>Transitional provisions</i>	
34	Amendment, review, or replacement of existing debt-recovery decisions or determinations	23

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Social Security (Fraud Measures and Debt Recovery) Amendment Act **2012**.

2 Commencement

This Act comes into force on **4 November 2013**.

5

3 Principal Act

This Act amends the Social Security Act 1964 (the **principal Act**).

Part 1
Substantive amendments

5

Review of decisions

4 Section 10A amended (Review of decisions)

(1) In the heading to section 10A, after “**decisions**”, insert “**of chief executive made under delegation by other decision makers**”.

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(2) Replace section 10A(1) with:

“(1) This section applies to a person and a decision both of which are specified in any 1 of the rows of the following table, but only if the decision is made by a decision maker in the exercise of any power, function, or discretion conferred on the decision maker by delegation:

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Row	Person	Decision
1	An applicant or beneficiary affected by the decision (with ‘beneficiary’ and ‘affected’ having, in this row, the same meanings as in section 12J(1) read in the light of section 12J(2) and (3))	A decision of the chief executive made under any enactment referred to in any of the paragraphs of section 12J(1)
2	An applicant or beneficiary or other person	A decision of the chief executive made— <ul style="list-style-type: none"> (a) in relation to the applicant or beneficiary or other person; and (b) using a power under section 19D(1)(a) of the Social Welfare (Transitional Provisions) Act 1990 (referred to in section 12J(4))

Row	Person	Decision
3	A beneficiary's spouse or partner	A decision of the chief executive made— (a) in relation to the beneficiary's spouse or partner; and (b) under section 86(3) (referred to in section 12J(5) , and including the component decisions specified in section 12J(6))
4	The personal representative of a deceased beneficiary	A decision of the chief executive made— (a) in relation to the estate of the deceased beneficiary; and (b) under section 86(4) (referred to in section 12J(7))
5	The personal representative of a beneficiary's deceased spouse or partner	A decision of the chief executive made— (a) in relation to the estate of the beneficiary's deceased spouse or partner; and (b) under section 86(5) (referred to in section 12J(8) , and including the decision specified in section 12J(9))
6	A beneficiary's spouse or partner	A decision of the chief executive made— (a) in relation to the beneficiary's spouse or partner; and (b) under section 86AA (referred to in section 12J(10) , and including the decision specified in section 12J(11))

(3) Repeal section 10A(1C).

Rights of appeal

5 Section 12J replaced (Rights of appeal)
Replace section 12J with:

“12J Rights of appeal

“Decisions or determinations under specified social assistance enactments

“(1) Any applicant or beneficiary affected may appeal to the Appeal Authority against any decision or determination of the chief executive under— 5

“(a) any of the provisions of Part 1, Part 2, Part 4, or Part 5; or

“(b) a welfare programme approved by the Minister under section 124(1)(d); or 10

“(c) Part 6 of the War Pensions Act 1954; or

“(d) Part 1 of the New Zealand Superannuation and Retirement Income Act 2001; or

“(e) the Family Benefits (Home Ownership) Act 1964; or

“(f) any regulations in force under section 132A or 155 of this Act. 15

“(2) **Subsection (1)** applies to a person in respect of whom a decision or determination is made under Part 4 or under regulations made under section 155 as if the person were a beneficiary.

“(3) For the purposes of **subsection (1)**, an applicant or beneficiary is not affected by a decision or determination that relates only to all or any of the temporary deferral, rate, or method or methods, of debt recovery from another person. 20

“Decisions under mutual assistance provisions in reciprocity agreements 25

“(4) An applicant or beneficiary or other person may appeal to the Appeal Authority against a decision that was made in relation to that person by the chief executive under the power conferred by section 19D(1)(a) of the Social Welfare (Transitional Provisions) Act 1990. 30

“Decisions under section 86(3) to recover excess amount from spouse or partner

“(5) A beneficiary’s spouse or partner may appeal to the Appeal Authority against a decision that was made by the chief executive under section 86(3) to recover from that spouse or partner (under sections 85A and **86(1)**) an amount in excess of the amount to which the beneficiary was by law entitled. 35

- “(6) A decision referred to in **subsection (5)**, and made by the chief executive under section 86(3), includes, without limitation, the following component decisions:
- “(a) the decision that, in the chief executive’s opinion, the beneficiary’s spouse or partner has made a false statement to or otherwise misled any officer engaged in the administration of this Act, in relation to any matter: 5
 - “(b) the decision that, as a result of the beneficiary’s spouse or partner making a false statement to or otherwise misleading any officer engaged in the administration of this Act, the benefit or an instalment of benefit was paid in excess of the amount to which the beneficiary was by law entitled. 10
- “Decisions under section 86(4) to recover excess amount from deceased beneficiary’s estate 15*
- “(7) The personal representative of a deceased beneficiary may appeal to the Appeal Authority against a decision that was made by the chief executive under section 86(4) to recover from the beneficiary’s estate (under sections 85A and **86(1)**) an amount in excess of the amount to which the beneficiary was by law entitled. 20
- “Decisions under section 86(5) to recover excess amount from deceased spouse’s or partner’s estate*
- “(8) The personal representative of a beneficiary’s deceased spouse or partner may appeal to the Appeal Authority against a decision that was made by the chief executive under section 86(5) to recover from that spouse’s or partner’s estate (under sections 85A and **86(1)**) an amount in excess of the amount to which the beneficiary was by law entitled. 25
- “(9) **Subsection (8)** gives the personal representative of a beneficiary’s deceased spouse or partner, without limitation, a right to appeal against the decision that the beneficiary was paid an amount in excess of the amount to which he or she was by law entitled. 30
- “Decisions under section 86AA to recover excess amount from spouse or partner 35*
- “(10) A beneficiary’s spouse or partner may appeal to the Appeal Authority against a decision that was made by the chief ex-

ecutive under **section 86AA** to recover from that spouse or partner (under sections 85A and **86(1)**) an amount in excess of the amount to which the beneficiary was by law entitled.

“(11) **Subsection (10)** gives the beneficiary’s spouse or partner, without limitation, a right to appeal against the decision that the beneficiary obtained by fraud an amount in excess of the amount to which the beneficiary was by law entitled. 5

“Debt recovery decisions include related decisions on deferral, rate, and methods

“(12) A reference in this section to a decision to recover an amount from a person or estate includes, without limitation, all related decisions on all or any of the temporary deferral, rate, or method or methods, of debt recovery from the person or estate. 10

“General restriction on appeals under this section 15

“(13) A decision cannot be appealed against under any other provision of this section unless the decision—

“(a) has been confirmed or varied by a benefits review committee under section 10A; or

“(b) was made by the chief executive other than pursuant to a delegation. 20

“Authority is not authorised to hear and determine certain appeals on medical or capacity grounds

“(14) The Appeal Authority does not have the authority to hear and determine any appeal on medical grounds, grounds relating to incapacity, or grounds relating to capacity for work, against any decision or determination of the chief executive in respect of— 25

“(a) an invalid’s benefit; or

“(b) a child disability allowance under section 39A; or 30

“(c) a veteran’s pension under section 70 of the War Pensions Act 1954; or

“(d) a sickness benefit.”

Debts due to the Crown

- 6 **New section 83AA inserted (Apportionment of benefit
between spouses or partners: one is liable for proportion
other obtained by fraud if that one knew, or ought to have
known, about other’s fraud)** 5
- After section 83, insert:
- “83AA Apportionment of benefit between spouses or partners:
one is liable for proportion other obtained by fraud if that
one knew, or ought to have known, about other’s fraud**
- “(1) This section applies to the following situation: 10
- “(a) a benefit is apportioned under section 83(1) or (2) be-
tween spouses or partners so that—
- “(i) one proportion of the benefit (**proportion A**) is
paid to one spouse or partner (**A**); and
- “(ii) another proportion of the benefit (**proportion B**) 15
is paid to the other spouse or partner (**B**); and
- “(iii) the person entitled to the benefit, for the purposes
of section 83(1) and (2), is either A or B; and
- “(b) some or all of proportion A is—
- “(i) an amount in excess of the amount to which A is 20
by law entitled; and
- “(ii) an amount obtained by fraud by A; and
- “(iii) a debt referred to in section 85A due to the
Crown, and subject to recovery under **section**
86(1), from A; and 25
- “(c) some or all of proportion B either is, or is not,—
- “(i) an amount in excess of the amount to which B is
by law entitled; and
- “(ii) an amount obtained by fraud by B; and
- “(iii) a debt referred to in section 85A due to the 30
Crown, and subject to recovery under **sec-
tion 86(1)**, from B; and
- “(d) B either knew, or ought to have known (even if B did
not know), of the fraud by A.
- “(2) In the situation to which this section applies, B is jointly and 35
severally liable for A’s debt referred to in **subsection (1)(b)**,
and that amount is a debt referred to in section 85A due to the
Crown, and subject to recovery under **section 86(1)**, from B.

- “(3) This section does not limit or affect any civil or criminal liability under any other law—
- “(a) of A for, or in respect of, the debt referred to in **subsection (1)(b)**; or
 - “(b) of B for, or in respect of, the debt referred to in **subsection (1)(c)**. 5
- “(4) An amount is obtained by fraud by a person (whether A or B) for the purposes of this section if the person—
- “(a) obtained that amount by fraud (within the meaning of section 86(2) and (2C)); or 10
 - “(b) is convicted of a specified offence (as defined in **section 127A(3)**) in respect of obtaining that amount.”

7 Section 85A amended (Payments that are debts due to the Crown)
In the heading to section 85A, after “**Crown**”, insert “: **general**”. 15

8 New section 85B inserted (Payments that are debts due to the Crown: examples)
After section 85A, insert:

- “85B Payments that are debts due to the Crown: examples 20**
- “(1) Debts referred to in section 85A(a) (penalty) and (e) (debt due to the Crown) include a penalty under section 86(2) (recovery of penalty from beneficiary who obtains by fraud amount in excess of entitlement).
- “(2) Debts referred to in section 85A(b) (conditional or provisional benefit that person is liable to repay) include the following: 25
- “(a) an amount directed to be repayable under section 60H(6)(b) (voluntary unemployment or loss of employment through misconduct, etc):
 - “(b) an amount the person granted a benefit is liable to repay under section 61CC(2)(a) (granting of emergency benefits during epidemic in New Zealand), and to which section 85A(b) applies in accordance with section 61CC(2)(b): 30
 - “(c) an amount recoverable under **section 80BB(5)** (delayed redundancy and retirement payments): 35

- “(d) an amount recoverable under **section 80BC(3)** (seasonal workers made redundant after benefit commences):
- “(e) an amount the person participating in approved activities is liable to repay under section 123B (effect of participation in certain activities on non-entitlement period). 5
- “(3) Debts referred to in section 85A(b) (conditional or provisional benefit that person is liable to repay) and (e) (debt due to the Crown) include the following: 10
- “(a) an amount recoverable under section 68A(5) (special provisions applying to insurance payments):
- “(b) an amount recoverable under section 71(1)(b) (special provisions where compensation or damages recoverable by applicant). 15
- “(4) Debts referred to in section 85A(e) (debt due to the Crown) include the following:
- “(a) an excess amount recoverable under section 86(3) (recovery from spouse or partner who misleads department of excess amount beneficiary obtained): 20
- “(b) an excess amount recoverable under section 86(4) (recovery from estate of deceased beneficiary of excess amount beneficiary obtained):
- “(c) an excess amount recoverable under section 86(5) (recovery from estate of beneficiary’s deceased spouse or partner of excess amount beneficiary obtained): 25
- “(d) an excess amount recoverable under **section 86AA(3)** (recovery from spouse or partner of excess amount beneficiary obtained by fraud).
- “(5) Debts referred to in section 85A(f) (overpayments under this Act) include the following: 30
- “(a) an amount recoverable under section 86 or **86AA** read (in the case of either section) together with section 124(2) and (2A):
- “(b) amounts recoverable under **section 86E(2)** (deductions held in trust): 35
- “(c) an amount recoverable under section 86I(3) (penalty for late deductions):

- “(d) an amount that regulations made under section 132AC(1)(i) provide is a debt due to the Crown under section 85A(f).”
- “(6) This section does not limit the generality of section 85A.”
- Recovery of amounts in excess of entitlements
and related penalties* 5
- 9 Section 86 amended (Recovery of payments made in excess of authorised rates)**
- (1) Replace section 86(1) and (1A) with:
- “*Chief executive’s duty to recover debt in section 85A* 10
- “(1) The chief executive is under a duty imposed by this subsection to take all reasonably practicable steps to recover a debt referred to in section 85A.
- “(1A) **Subsection (1)** is subject to the following:
- “(a) subsections (9A) and (9B) (debts caused wholly or partly by errors to which debtors did not intentionally contribute) 15
- “(b) any regulations (providing for remittance or suspension of debt) made under section 132G:
- “(c) the debt falling within any 1 or more classes, descriptions, or kinds of debts specified in a written determination made by the chief executive for the purposes of this paragraph as debts that it is uneconomic to recover: 20
- “(d) the debt falling within any 1 or more classes, descriptions, or kinds of debts specified in a written authorisation given jointly by the Minister and by the Minister of Finance for public finance purposes generally as debts that are to be written off.” 25
- (2) After section 86(1B), insert:
- “(1BA) In performing the duty imposed by **subsection (1)**, the chief executive— 30
- “(a) may, if satisfied of the existence in the particular case of exceptional circumstances of a kind identified by directions under **subsection (1BC)**, defer temporarily recovery of the debt; but 35
- “(b) must otherwise determine from time to time the rate of recovery and method or methods of recovery to be

used and, in doing so, is not required to have regard to relevant considerations unless they are identified in directions under **subsection (1BC)**.

- “(1BB) The method or methods of recovery that the chief executive may determine is or are to be used are as follows: 5
- “(a) bring proceedings in the name of the chief executive:
 - “(b) deduct all or part of that debt from any amount payable to that person by the department as a benefit or a student allowance:
 - “(c) for a debt referred to in section 85A(d) (recoverable special assistance money under an approved welfare programme), deduct all or part of that debt from any payment of a grant of special assistance under a welfare programme approved under section 124(1)(d). 10
- “(1BC) The Minister must give to the chief executive, and ensure that there are in force (as from time to time amended or replaced) at all times on and after **4 November 2013**, directions for the purposes of **subsection (1BA)(a) and (b)**, which, without limitation, may— 15
- “(a) identify for **subsection (1BA)(a)** different kinds of exceptional circumstances for different kinds of debts referred to in section 85A: 20
 - “(b) identify for **subsection (1BA)(b)** considerations that differ, or that contemplate different rates of recovery, or methods of recovery, or both, for determinations in respect of different kinds of debts referred to in section 85A. 25
- “(1BD) Directions under **subsection (1BC)**—
- “(a) must as soon as practicable after they are given be published by the Minister in the *Gazette*, and are not regulations for the purposes of the Acts and Regulations Publication Act 1989; but 30
 - “(b) are regulations for the purposes of the Regulations (Disallowance) Act 1989, and must be laid before the House of Representatives under section 4 of that Act.” 35
- (3) Before section 86(2), insert:

- “Recovery of penalty from beneficiary who obtains by fraud amount in excess of entitlement”.*
- (4) Before section 86(3), insert:
“Recovery from spouse or partner who misleads department of excess amount beneficiary obtained”. 5
- (5) In section 86(3), replace “, in relation to his or her income or other personal circumstances,” with “, in relation to any matter.”.
- (6) After section 86(3), insert:
“(3A) Subsection (3) does not limit or affect— 10
“(a) recovery under section 85A(e) or (f) and **subsection (1)** of this section from the beneficiary of the excess amount recoverable under subsection (3) from the beneficiary’s spouse or partner; or
“(b) any other civil or criminal liability of the beneficiary, under any other laws, in respect of that excess amount.” 15
- (7) Before section 86(4), insert:
“Recovery from estate of deceased beneficiary of excess amount beneficiary obtained”.
- (8) In section 86(4), replace “owing” with “due”. 20
- (9) Before section 86(5), insert:
“Recovery from estate of beneficiary’s deceased spouse or partner of excess amount beneficiary obtained”.
- (10) In section 86(5), replace “owing” with “due”.
- (11) Before section 86(6), insert: 25
“Making, notice, and review of assessment of amount under subsection (4) or (5)”.
- (12) Before section 86(9A), insert:
“Debts caused wholly or partly by errors to which debtors did not intentionally contribute”. 30
- (13) After section 86(9B), insert:
“Approved welfare programmes: special assistance payments
“(9C) This section and **section 86AA** apply, in accordance with section 124(2A), to a payment to which section 124(2) applies— 35
“(a) as if it were made by way of benefit under Part 1; and

“(b) as if the person to whom the payment was made were a beneficiary entitled to a benefit of the amount determined under section 124(2A)(b).”

*Fraud measures: recovery of excess amount
obtained by fraud* 5

10 New section 86AA inserted (Recovery from spouse or partner of excess amount beneficiary obtained by fraud)

After section 86, insert:

“86AA Recovery from spouse or partner of excess amount beneficiary obtained by fraud 10

“(1) **Beneficiary**, in this section, means a person from whom the chief executive may, in his or her discretion, recover a penalty under section 86(2) because—

“(a) the person has obtained any payment, or received any credit or advance, referred to in section 85A in excess of the amount to which he or she was entitled; and 15

“(b) in the chief executive’s opinion, that payment or credit or advance in excess was obtained by fraud (within the meaning of section 86(2) and (2C)).

“(2) **Subsection (3)** does not apply to the beneficiary’s spouse or partner unless, in the chief executive’s opinion, the spouse or partner— 20

“(a) knowingly benefited directly or indirectly from the beneficiary’s fraud referred to in section 86(2); or

“(b) ought to have known (even if the spouse or partner did not know) that the spouse or partner was benefiting directly or indirectly from the beneficiary’s fraud referred to in section 86(2). 25

“(3) The amount in excess that the beneficiary obtained by the beneficiary’s fraud referred to in section 86(2) is a debt due to the Crown under section 85A(e) or (f), and subject to recovery under **section 86(1)**, from the spouse or partner. 30

“(4) **Subsection (3)** does not limit or affect—

“(a) recovery under sections 85A(e) or (f) and **86(1)** from the beneficiary of the excess amount recoverable under **subsection (3)** from the beneficiary’s spouse or partner; or 35

- “(b) any other civil or criminal liability of the beneficiary, under any other laws, in respect of that excess amount.
- “(5) Section 86(2) and this section apply, in accordance with section 124(2A), to a payment to which section 124(2) applies—
- “(a) as if it were made by way of benefit under Part 1; and 5
- “(b) as if the person to whom the payment was made were a beneficiary entitled to a benefit of the amount determined under section 124(2A)(b).”
- Recovery of amounts in excess of entitlements
and related penalties* 10
- 11 Section 124 amended (Money payable out of Crown Bank Account)**
- In section 124(2A), replace “and 86,” with “, 86, and **86AA**”.
- Fraud measures: offences*
- 12 New section 127A inserted (Offences: spouse or partner knowingly or recklessly benefiting from beneficiary’s fraud)** 15
- After section 127, insert:
- “127A Offences: spouse or partner knowingly or recklessly benefiting from beneficiary’s fraud** 20
- “(1) A person (the **spouse or partner**) who is the spouse or partner of another person (the **beneficiary**) commits an offence if—
- “(a) the beneficiary obtains any payment, or receives any credit or advance, referred to in section 85A in excess of the amount to which the beneficiary is by law entitled; 25
and
- “(b) that payment or credit or advance in excess (the **excess amount**) is obtained by fraud; and
- “(c) the spouse or partner benefits directly or indirectly from the excess amount the beneficiary obtained by fraud; 30
and
- “(d) in benefiting in that way, the spouse or partner knows that, or is reckless as to whether, the excess amount is an amount—
- “(i) in excess of the amount to which the beneficiary 35
is by law entitled; and

- “(ii) that the beneficiary obtained by fraud.
- “(2) The excess amount is obtained by the beneficiary by fraud for the purposes of **subsection (1)** if—
- “(a) the beneficiary obtained that amount by fraud (within the meaning of section 86(2) and (2C)); or 5
- “(b) the beneficiary is convicted of a specified offence in respect of obtaining that amount.
- “(3) **Specified offence, in subsection (2)(b)**, means an offence against section 127 (offences: false statements, misleading, or attempting to mislead, to receive or continue to receive benefits) of this Act, or an offence against all or any of the following provisions of the Crimes Act 1961: 10
- “(a) section 228 (dishonestly taking or using document):
- “(b) sections 240 and 241 (obtaining by deception or causing loss by deception): 15
- “(c) section 256(1) and (2) (forgery):
- “(d) section 257 (using forged documents):
- “(e) section 258 (altering, concealing, destroying, or reproducing documents with intent to deceive):
- “(f) section 259 (using altered or reproduced document with intent to deceive). 20
- “(4) **Subsections (2) and (3)** do not limit—
- “(a) the generality of **subsection (1)**; or
- “(b) the operation of section 49 (conviction as evidence in criminal proceedings) of the Evidence Act 2006. 25
- “(5) A person who commits an offence under **subsection (1)** is liable on conviction to a penalty that is either or both:
- “(a) imprisonment for a term not exceeding 12 months:
- “(b) a fine not exceeding \$5,000.”

Part 2 30

Consequential amendments, and application, savings, and transitional provisions

Consequential amendments

- 13 **Section 12K amended (Procedure on appeal)** 35
Replace section 12K(1C)(a) with:

“(a) the person to whom section 12J gives the right to appeal against the decision or determination; and”.

14 Section 60H amended (Voluntary unemployment or loss of employment through misconduct, etc)

In section 60H(7), replace “may be recovered from the person under section 86(1)” with “is a debt due to the Crown under section 85A(b), and subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A), from the person” 5

15 Section 68A amended (Special provisions applying to insurance payments) 10

In section 68A(5), replace “may be recovered as a debt due to the Crown from the applicant or person or the person liable to make the payment” with “is a debt due to the Crown under section 85A(b) and (e), and subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A), from the applicant or person or the person liable to make the payment” 15

16 Section 71 amended (Special provisions where compensation or damages recoverable by applicant) 20

In section 71(1)(b), replace “may be recovered as a debt due to the Crown” with “is a debt due to the Crown under section 85A(b) and (e), and subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A),” 25

17 Section 80BB amended (Delayed redundancy and retirement payments)

(1) In section 80BB(4), replace “The chief executive may recover from the person, under section 86(1),” with “This subsection applies to” 30

(2) After section 80BB(4), insert:

“(5) A payment to which subsection (4) applies is a debt due to the Crown under section 85A(b), and subject to recovery under

section 86(1) (chief executive’s duty to recover debt referred to in section 85A), from the person.”

18 Section 80BC amended (Seasonal workers made redundant after benefit commences)

(1) In section 80BC(2), replace “The chief executive may, under section 86(1), recover from a person referred to in subsection (1)” with “This subsection applies to”. 5

(2) After section 80BC(2), insert:

“(3) A payment to which subsection (2) applies is a debt due to the Crown under section 85A(b), and subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A), from the person.” 10

19 Section 82 amended (Payment of benefits)

In section 82(6), replace “may be recovered under section 86(1)” with “is a debt due to the Crown under section 85A(c), and subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A), from the beneficiary”. 15

20 Section 83A amended (Tax on benefits)

In section 83A(5), replace “as a debt due to the Crown within the meaning of section 85A” with “under sections 85A and 86”. 20

21 Section 86A amended (Deduction notices for debt)

(1) In section 86A(1), replace “Where any amount of money may be recovered from any person as a debt due to the Crown under this Act” with “If an amount of money that is a debt due to the Crown referred to in section 85A and that is subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A)”. 25

(2) In section 86A(2), replace “all reasonable steps” with “some other reasonably practicable steps”. 30

22 Section 86C amended (Discharge of debt)

In section 86C, replace “section 86” with “**section 86(1)**”.

23 Section 86E amended (Deductions held in trust)

(1) In section 86E(b), delete “; and, without prejudice to any other remedies against the debtor or any other person, any amounts deducted shall be held in trust for the Crown and shall be recoverable under section 86 as if it were money payable under a benefit to which the person who made the deduction was not entitled”.

(2) After section 86E(b), insert as subsections (2) and (3):

“(2) Any amounts deducted must be held in trust for the Crown, and are debts due to the Crown under section 85A(f), and subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A), from the person who makes the deductions, as if the amounts were money payable under a benefit to which the person who made the deduction was not entitled.

“(3) Any holding and recovery in accordance with **subsection (2)** is without prejudice to any other remedies against the debtor or any other person.”

24 Section 86I amended (Penalty for late deductions)

In section 86I(3), replace “may be recovered under section 86” with “is a debt due to the Crown under section 85A(f), and subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A), from the person”.

25 Section 123B amended (Effect of participation in certain activities on non-entitlement period)

In section 123B(7), replace “may be recovered by the chief executive under section 86(1)” with “is a debt due to the Crown under section 85A(b), and subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A), from the person”.

26 Section 124 amended (Money payable out of Crown Bank Account)

In section 124(2A), replace “and 86” with “, 86, and **86AA**”.

- 27 Section 127 amended (Offences)**
In the heading to section 127, after “**Offences**”, insert “: **false statements, misleading, or attempting to mislead, to receive or continue to receive benefits**”.
- 28 Section 132G amended (Regulations providing for remittance or suspension of debt)** 5
In section 132G(1)(a), replace “section 86(1) to (1B) and (3) to (5)” with “sections 86(1) to (1B) and (3) to (5) and **86AA**”.
- 29 Social Security (Childcare Assistance) Regulations 2004 amended** 10
- (1) This section amends the Social Security (Childcare Assistance) Regulations 2004.
- (2) Replace regulation 28(1) with:
- “(1) A payment of childcare assistance that is an overpayment (within the meaning of section 85A(f) of the principal Act) is— 15
- “(a) a debt due to the Crown under section 85A(f) of the principal Act from the applicant; and
- “(b) subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A) of the principal Act from the applicant.” 20
- 30 Social Security (Debt Recovery Suspension) Regulations 2007 amended**
- (1) This section amends the Social Security (Debt Recovery Suspension) Regulations 2007. 25
- (2) In regulation 3, replace the definition of **benefit debt** with:
- “**benefit debt** means is a debt due to the Crown under section 85A, and subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A), of the Act”. 30
- 31 Social Welfare (Transitional Provisions) Act 1990 amended**
- (1) This section amends the Social Welfare (Transitional Provisions) Act 1990.

- (2) In section 2(1), definition of **social security debt**, paragraph (a), replace “may be recovered from any person under section 86 of the Social Security Act 1964” with “is subject to recovery from any person under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A) of the Social Security Act 1964”. 5

Application of amendments

32 Certain review and appeal amendments apply to decisions made before 4 November 2013

- (1) The following provisions of the principal Act apply to decisions made before **4 November 2013**: 10
- (a) **rows 1 and 2** of the table in **section 10A(1)** (as inserted by **section 4(2)** of this Act):
- (b) **section 12J(1) to (4) and (12) to (14)** (as inserted by **section 5** of this Act). 15
- (2) **Subsection (1)** does not limit or affect the application of **sections 10A(1) and 12J** of the principal Act (as so inserted) to decisions made on or after **4 November 2013**.

33 Amendments generally apply in respect of excess amounts obtained or received before, on, or after 4 November 2013 20

- (1) Every enactment that is amended or inserted by this Act, and that is not specified in **subsection (3)**, applies to, or in respect of, an amount that a person has obtained or received—
- (a) in excess of the amount to which the person is by law entitled; and 25
- (b) before, on, or after **4 November 2013**.
- (2) Every enactment specified in **subsection (3)** applies only to, or in respect of, an amount that a person has obtained or received—
- (a) in excess of the amount to which the person is by law entitled; and 30
- (b) on or after **4 November 2013**.
- (3) The following enactments apply only to, or in respect of, an amount of the kind specified in **subsection (2)**:
- (a) **section 83AA** as inserted by **section 6** of this Act: 35

- (b) section 86(3) and **(3A)** as amended or inserted by **section 9(5) and (6)** of this Act:
- (c) **section 86AA** as inserted by **section 10** of this Act:
- (d) **section 127A** as inserted by **section 12** of this Act.

Transitional provisions

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**34 Amendment, review, or replacement of existing
debt-recovery decisions or determinations**

- (1) This section applies to a decision or determination that is in force at the close of **3 November 2012** and that relates to either or both of the rate and method of recovery of an amount that a person has obtained or received—
 - (a) in excess of the amount to which the person is by law entitled; and
 - (b) before **4 November 2013**.
- (2) The decision or determination is not required by **section 86(1BA)** (as inserted by **section 9(2)** of this Act) to be amended, reviewed, or replaced until the chief executive determines as soon as is reasonably practicable after **3 November 2013** to amend, review, or replace it under that section (as so inserted).

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