

# **Social Security (Stopping Benefit Payments for Offenders who Repeatedly Fail to Comply with Community Sentences) Amendment Bill**

Member's Bill

## **Explanatory note**

### **General policy statement**

This Bill seeks to provide the Department of Corrections (the **Department**) with an additional tool to assist in the management of persons who have not complied with their community-based sentence and who have not responded to existing measures, short of prosecution, designed to encourage compliance.

By giving the Department the power to issue warnings with the consequence of withholding benefit payments, this Bill will enable the Department to manage offenders without burdening the court system. By offering an alternative management tool to the Department this Bill also serves the purpose of not subjecting offenders to the stigma that would arise from further criminal prosecution.

This Bill will operate alongside a new measure implemented by the Social Security (Benefit Categories and Work Focus) Amendment Act 2013 to withhold benefit payments to persons who have outstanding warrants for their arrest to enable the effective management of non-compliant offenders.

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. The Bill will come into force on the day after the date on which it receives the Royal assent.

*Clause 3* states that the Bill amends the Social Security Act 1964, (the **principal Act**).

*Clause 4* sets out the purpose, which is to enable the Department of Corrections to request the Ministry of Social Development to withhold all or part of a person's bene-

fit where that person has repeatedly failed to comply with a community-based sentence.

*Clause 5* amends the Social Security Act 1964 by inserting *new Part 6*, comprising *new sections 182 to 186*.

*Mark Mitchell*

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### **Part 6**

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

#### **1 Title**

This Act is the Social Security (Stopping Benefit Payments for Offenders who Repeatedly Fail to Comply with Community Sentences) Amendment Act **2015**.

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**2 Commencement**

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

**3 Principal Act**

This Act amends the Social Security Act 1964 (the **principal Act**). 5

**4 Purpose**

The purpose of this Act is enable the Department of Corrections to instruct the Ministry of Social Development to withhold all or part of a person’s benefit where that person has repeatedly failed to comply with a community-based sentence. 10

**5 New Part 6 and sections 182 to 186 inserted**

After section 181 insert:

**Part 6**

**Sanctions for persons serving community-based sentences**

**182 Application of this Part** 15

(1) This Part applies to any person currently serving a community-based sentence, as defined by section 44 of the Sentencing Act 2002, who receives a benefit under this Act.

(2) For the purposes of this Part, **benefit** does not include New Zealand superannuation or a living alone benefit payable under the New Zealand Superannuation and Retirement Income Act 2001, or a living alone benefit payable under the War Pensions Act 1954. 20

(3) A person may only be subject to this Part if—

(a) they have been notified, verbally or in writing, by the Department of Corrections of the potential consequences of this Part; and 25

(b) that notification is given within 30 days of their sentence being allocated to a case officer within the Department.

**183 Department of Corrections may instruct Ministry of Social Development to withhold benefit**

(1) Where a person subject to this Part— 30

(a) receives two warnings under **section 184**; and

(b) fails within 14 days from the date of receiving their second warning under **section 184** to comply with the instruction contained within that warning—

- the Department of Corrections may instruct the Ministry of Social Development to withhold payment of all or part of any benefit paid (the amount of the deduction to be determined by the Department of Corrections) to that person under this Act and the Ministry of Social Development must act accordingly.
- (2) Where payment of a person's benefit is withheld under this Part, the Department of Corrections may instruct the Ministry of Social Development to restore that benefit if the Department of Corrections is satisfied that the person is now complying with their community-based sentence or the instruction contained within the written warning and the Ministry of Social Development must act accordingly.
- (3) Where the Ministry of Social Development receives an instruction from the Department of Corrections under this Part the Department of Corrections may not instruct the Ministry of Social Development to reduce a person's benefit by any more than 50% of the gross benefit where that person is responsible for the care of any dependent child.
- 184 Department of Corrections to issue warnings**
- (1) The Department of Corrections may give a written warning notice to a person subject to this Part if—
- (a) the Department of Corrections reasonably believes that it has exhausted all options other than prosecution in attempting to get that person to comply with that community-based sentence or instruction; and
- (b) that person—
- (i) breaches or fails to comply with any term of a community-based sentence; or
- (ii) fails to comply with an instruction from the Department of Corrections that relates to their community-based sentence.
- (2) A written warning notice must instruct the person subject to this Part to comply with an instruction and warn that person that non-compliance with the instruction may result in the withholding of any benefit received by that person.
- (3) If 14 days have passed since the Department's service of a first written warning under **subsection (1)**, and that person continues to fail to comply with the instruction contained within the first written warning, a second written warning may be issued in accordance with **subsection (1)**.
- 185 Process can be applied for repeated non-compliance**
- Where payment of a benefit has been withheld and subsequently reinstated under this Part, the Department of Corrections may recommence the procedure under this Part, if necessary, as if the preceding warnings had not been issued.

**186 Notification to person already serving community-based sentence**

Where a person who has commenced a community-based sentence at the time the Social Security (Stopping Benefit Payments for Offenders who Repeatedly Fail to Comply with Community Sentences) Amendment Act **2015** came into force has been notified of the consequences of this Part by the Department of Corrections, that notification is deemed to have been delivered within 30 days of that person's community-based sentence being allocated to a case officer for the purposes of **section 182(3)**.

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