

Social Assistance (Debt Prevention and Minimisation) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill is intended to enable the Ministry of Social Development to prevent and recover debts, and to detect more readily misuse of the social security, student allowance, and student loan systems, by broadening data matching provisions.

Clause by clause analysis

Clause 1 is the Title clause. The amendments contained in this Bill are intended, at the committee of the whole House stage, to be divided into 3 separate but related amendment Bills.

Clause 2 relates to commencement. If enacted, the Bills divided out of this Bill will come into force on the day after Royal assent.

Part 1 Amendments to Corrections Act 2004

Clause 3 identifies the principal Act amended by *Part 1*.

Clause 4 states the purpose of *Part 1*, which is to amend the principal Act—

- so that it facilitates disclosure of prisoner information for the purposes of the operation of—
 - section 76(1) of the Social Security Act 1964 (which provides that a benefit is not payable during imprisonment or detention in prison); and

- sections 86 and 86A of the Social Security Act 1964 (which provide for the recovery of debts due to the Crown); and
- section 307B of the Education Act 1989 (which provides for the recovery of debts in respect of the payment of allowances, student loans, or other money to which people were not, or are no longer, entitled); and
- regulation 28 of the Student Allowances Regulations 1998 (which provides that students imprisoned or detained in prison are not entitled to receive any payment under those regulations):
- to enable benefits, allowances, and student loans, or any of them, payable to a person to be suspended, despite section 103(1) of the Privacy Act 1993, immediately a relevant discrepancy arises or is identified in prisoner information disclosed under the principal Act; and
- to re-enact other elements of section 180 of the principal Act (which authorises disclosure of prisoner information for social security purposes).

Clause 5 replaces section 180 of the principal Act and the heading above it with *new sections 180 to 180D* and a new heading. *New sections 180 to 180D* mainly re-enact section 180. However,—

- *new section 180(1) and (2)* ensure that the principal Act facilitates disclosure of prisoner information not only for the purposes of the operation of section 76(1) of the Social Security Act 1964 (which provides that a benefit is not payable in respect of any period during which a beneficiary is imprisoned or detained in, or is an escaper from, a prison, pursuant to a sentence of imprisonment, preventive detention, or corrective training), but also for the purposes of the operation of—
 - sections 86 and 86A of the Social Security Act 1964 (which provide for the recovery of debts due to the Crown within the meaning of section 85A of that Act):
 - section 307B of the Education Act 1989 (which provides for the recovery of debts in respect of the payment to a person of allowances, student loans, or other money to which he or she was not, or is no longer, entitled):
 - regulation 28 of the Student Allowances Regulations 1998 (which provides that a student imprisoned or

detained in a prison, pursuant to a sentence of imprisonment, preventive detention, or corrective training is not entitled to receive any payment under those regulations):

- *new section 180C*:
 - *new section 180C* enables benefits, allowances, and student loans payable to a person to be suspended immediately a relevant discrepancy arises or is identified in prisoner information disclosed under the principal Act, instead of after the 5-day period required by section 103(1) of the Privacy Act 1993.

Clause 6 inserts a new heading above section 181 of the principal Act.

Clause 7 amends consequentially the Privacy Act 1993.

Part 2

Amendments to other Acts

Subpart 1—Amendments to Customs and Excise Act 1996

Clause 8 identifies the principal Act amended by the subpart.

Clause 9 states the purpose of the subpart. That purpose is to amend the principal Act so that the purposes for which it facilitates the exchange of information between the Customs and the department for the time being responsible for the administration of the Social Security Act 1964 include enabling the recovery of any debt due to the Crown in respect of any benefit.

Clause 10 amends section 280 of the principal Act. Section 280 relates to supply of arrival and departure information for benefit purposes. The amendments, which are both for the purpose stated in *clause 9*,—

- insert in the heading to section 280 a reference to benefit debt recovery; and
- substitute *new subsections (2) and (2A)* (which refer, in *new subsection (2A)(c)*, to enabling the recovery of any debt due to the Crown in respect of any benefit).

Subpart 2—Amendments to Injury Prevention, Rehabilitation, and Compensation Act 2001

Clause 11 identifies the principal Act amended by the subpart.

Clause 12 states the purpose of the subpart. That purpose is to amend the principal Act so that the purposes for which it facilitates the disclosure of information by the Corporation to the department for the time being responsible for the administration of the Social Security Act 1964 include enabling the recovery of any debt due to the Crown in respect of any benefit.

Clause 13 amends section 281 of the principal Act. Section 281 relates to the disclosure of information by the Corporation for benefit purposes. The amendments, which are both for the purpose stated in *clause 12*,—

- insert in the heading to section 281 a reference to benefit debt recovery; and
- substitute *new subsections (2) and (2A)* (which refer, in *new subsection (2A)(c)*, to enabling the recovery of any debt due to the Crown in respect of any benefit).

Regulatory impact statement

Executive summary

The Social Assistance (Debt Prevention and Minimisation) Amendment Bill (the **Bill**) proposes amendments to the legislation governing the Ministry of Social Development's (**MSD's**) information matches with the Department of Corrections (**Corrections**), the New Zealand Customs Service (**Customs**), and the Accident Compensation Corporation (**ACC**), with the aim of improving the outcomes from these matches. The majority of proposed changes extend the use of the information already transferred as part of the matches, to enable it to be used for other purposes.

The most significant change proposed is an amendment to the Social Security Act 1964 to override section 103(1) of the Privacy Act 1993, which will allow MSD to suspend benefit payments immediately in circumstances where the match has detected that a recipient of a benefit is in prison, thereby significantly reducing overpayments. This proposal carries some risks, including the low risk of a beneficiary being incorrectly identified as being in prison, however strategies will be put in place to minimise and mitigate such impacts.

Adequacy statement

MSD, as the lead government agency affected by the proposed amendments, has reviewed this regulatory impact statement (RIS), and has determined it is adequate according to the criteria agreed by Cabinet. The Regulatory Impact Analysis Unit has not reviewed this RIS as the proposals will not have any significant potential impact on economic growth.

Status quo and problem

The amendments proposed by this Bill aim to provide solutions to various issues associated with MSD's information matches with Corrections and Customs; these issues are discussed in detail below.

*Changes to the notification requirements of
Corrections/MSD information match*

Section 103 of the Privacy Act 1993 requires MSD to notify a person in writing that an overpayment of benefit has been identified because of an information match. This provision requires a written notice be given to a person who has been positively matched, stating they have 5 working days from receipt of the notice to contact MSD in order to challenge the contents of the notice. Allowing for an appropriate length of time for the notice to be delivered by post, a 9-day period must elapse between a positive match and MSD taking any action. This delay results in an unacceptable level of benefit overpayments to prisoners, with over \$2.1 million in benefit overpayments being created in 2005/2006.

*Extension of Corrections/MSD information match to include
student allowance and student loans receipt*

MSD's information match with Corrections is designed to ensure that prisoners do not receive social support payments to which they are not entitled. As the relevant legislation currently stands, the match is limited to determining eligibility for payments made under the Social Security Act 1964, and therefore does not allow MSD to determine eligibility to other forms of assistance which it provides, notably student allowances and student loans.

*Extension of Corrections/MSD information match to include
all current prisoners*

MSD is currently unable to identify on an ongoing basis those prisoners who apply for social assistance while in prison, as it is not informed as part of the match with Corrections of the length of a prisoner's sentence or whether a prisoner has been released.

*Locating debtors (Corrections/MSD, Customs/MSD, and
ACC/MSD matches)*

When recipients cease receiving assistance from MSD, a significant number owe money to MSD due to, for example, overpayment of a benefit. While a number of former beneficiaries will continue to make repayments towards their debt, a significant proportion does not. Considering that in many cases MSD does not have current address information for these people, MSD is not in a position to recover a significant proportion of these debts.

Objectives

Information matching plays a vital role in ensuring the integrity of the social support system, through the detection and deterrence of benefit abuse, ensures that people are receiving their correct entitlement, and minimises client debt. Information matches involving MSD have proved highly effective, with \$29.4 million in overpayments being established as a result of these matches in 2005/2006. The objective of the Bill is to further improve the efficacy of the Corrections/MSD, Customs/MSD, and ACC/MSD information matches, through making relatively minor amendments. Of most significance in relation to the Corrections/MSD match is an objective of minimising the level of overpayments created when beneficiaries enter prison.

Alternative options

Numerous options have been considered to further improve the efficacy of the Corrections/MSD, Customs/MSD, and ACC/MSD information matches. A number of these alternative options, which offer partial solutions, have already been implemented. There are also some matters which cannot be adequately solved without the legislative amendments proposed by this Bill. These issues are discussed below.

*Changes to the notification requirements of
Corrections/MSD information match*

A number of operational initiatives have been progressed by MSD in an effort to reduce the level of overpayments made to prisoners, such as a voluntary disclosure process that has been in place since July 2005, which encourage prisoners to inform Work and Income of their imprisonment. Due to their voluntary nature, these initiatives will inevitably have limited effect. From 14 May 2007 the frequency of the Corrections/MSD match will be increased to daily, which will improve the quality of the match.

*Extension of Corrections/MSD information match to include
student allowance and student loan receipt*

For MSD to be informed that a student allowance or student loan recipient is in prison primarily relies on the prisoner voluntarily disclosing this information to MSD. This self-reporting has not been particularly successful, as shown by the low numbers of beneficiaries informing Work and Income of their imprisonment.

*Extension of Corrections/MSD information match to include
all current prisoners*

For MSD to identify those prisoners who apply for assistance while in prison relies on prisoners voluntarily disclosing this information. This cannot be comprehensively relied on.

*Locating debtors (Corrections/MSD, Customs/MSD, and
ACC/MSD matches)*

To assist in locating non-current debtors, MSD makes use of the standard methods which include using publicly-available databases such as the electoral roll. However these methods are limited in their effectiveness, as the information from such sources may be missing or inaccurate. Under Section 11 of the Social Security Act individual notices are manually issued by MSD to ACC to obtain information on debtors. The manual nature of this process means information is often not able to be produced in an efficient and timely manner and reduces the likelihood of debt repayments.

Preferred options

Outlined below are the preferred options aimed at improving the efficacy of the Corrections/MSD, Customs/MSD, and ACC/MSD

information matches. None of the proposals in the Bill impact on the stock of regulation beyond the legislation immediately affected.

Changes to notification requirements of Corrections/MSD information match

A change to the Social Security Act 1964 to override section 103(1) of the Privacy Act 1993 will allow MSD to suspend benefit payments immediately in circumstances where information matching has detected that a recipient of a benefit is in prison. This is considered to be the only option that will significantly reduce overpayments as a result of people entering prison. The proposal will have additional benefits for the prisoners themselves, through reducing their levels of debt upon leaving prison.

The chance of an incorrect match is considered low, with 0.6% (or 23 out of 4 061) of those positively matched having their benefit incorrectly suspended in the 2005/2006 fiscal year. MSD is working on improving the accuracy of the match, which will further reduce the chance of incorrect benefit suspensions. MSD has also provided assurance that those who are incorrectly adversely affected will be treated sympathetically and appropriately, with MSD covering any costs incurred.

Extension of Corrections/MSD information match to include student allowance and student loan receipt

An amendment to the relevant legislation to ensure that the match covers student allowance and student loan receipt offers the most comprehensive method by which MSD can be made aware that a prisoner is in receipt of a student loan or student allowance.

Extension of Corrections/MSD information match to include all current prisoners

An amendment to the relevant legislation to ensure that the match between MSD and Corrections includes all current prisoners is the only method by which to ensure MSD can identify all those prisoners who apply for social assistance while in prison.

Locating debtors (Corrections/MSD, Customs/MSD, and ACC/MSD matches)

Some information matches between MSD and other government agencies (eg, Housing New Zealand Corporation) acknowledge the

problem of locating debtors through allowing the information gathered in the match to be used for debt recovery purposes. The proposals in the accompanying Cabinet paper extend this same ability to MSD's matches with Corrections, Customs, and ACC.

Implementation and review

The Social Assistance (Debt Prevention and Minimisation) Amendment Bill carries a priority ranking of 3 in the 2007 Legislation Programme (to be passed if possible in 2007). Should the Bill be passed, MSD will proceed to implement the legislative changes made by the Bill to their information matches with Corrections, Customs, and ACC. MSD will prepare an Information Matching Privacy Impact Assessment, which will outline in detail the methods by which the changes to the match will occur, including the strategies that will be put in place to minimise the occurrence of incorrect matches and to mitigate the effects of any incorrect matches that do occur in a fair and expedient manner.

Of the proposed changes, the amendment to the Social Security Act 1964 to enable a prisoner's benefit to be suspended immediately upon a positive match is the most significant. As part of implementing this change, MSD will ensure it has in place all reasonable steps to notify people who will be affected by this change, as required by the information matching rules under Schedule 4 of the Privacy Act 1993.

The Privacy Commissioner, in fulfilling his or her role of reporting annually on all authorised information matches, will be able to monitor any impacts that may result from the changes introduced by the Bill.

Consultation

The Department of Corrections, Ministry of Justice (**Justice**), New Zealand Customs Service, Accident Compensation Corporation, Department of Labour, State Services Commission, and the Office of the Privacy Commissioner (**OPC**) have been consulted in the preparation of this paper. Regarding the proposal to override section 103 of the Privacy Act 1993, Justice will work with MSD to resolve any human rights concerns associated with this policy. The OPC does have some concerns over this same proposal, but does not propose to oppose it. If this proposal is approved, OPC intends to

give particular attention to the monitoring and reporting of the Corrections/MSD information match.

Hon David Benson-Pope

Social Assistance (Debt Prevention and Minimisation) Amendment Bill

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The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Social Assistance (Debt Prevention and Minimisation) Amendment Act **2007**.

2 Commencement
This Act comes into force on the day after the date on which it receives the Royal assent. 5

**Part 1
Amendments to Corrections Act 2004**

3 Principal Act amended
This **Part** amends the Corrections Act 2004. 10

4 Purpose of this Part
The purpose of this **Part** is to amend the principal Act—

(a) so that it facilitates disclosure of prisoner information for the purposes of the operation of—

- (i) section 76(1) of the Social Security Act 1964 (which provides that a benefit is not payable during imprisonment or detention in prison); and 15
- (ii) sections 86 and 86A of the Social Security Act 1964 (which provide for the recovery of debts due to the Crown within the meaning of section 85A of that Act); and 20
- (iii) section 307B of the Education Act 1989 (which provides for the recovery of debts in respect of the payment to a person of allowances, student loans, or other money to which he or she was not, or is no longer, entitled); and 25
- (iv) regulation 28 of the Student Allowances Regulations 1998 (which provides that a student imprisoned or detained in a prison is not entitled to receive any payment under those regulations); and 30

and

- (b) to enable benefits, allowances, and student loans, or any of them, payable to a person to be suspended, despite section 103(1) of the Privacy Act 1993, immediately a relevant discrepancy arises or is identified in prisoner information disclosed under the principal Act; and 5
- (c) to re-enact other elements of section 180 of the principal Act (which authorises disclosure of prisoner information for social security purposes).

5 New heading and sections 180 to 180D substituted

Section 180 and the heading above it are repealed and the following heading and sections are substituted: 10

“Disclosure of prisoner information

“180 Purpose of section 180A

“(1) The purpose of **section 180A** is to facilitate the disclosure of information, by the chief executive to the requesting department, for the purposes of the operation of all or any of the following provisions: 15

“(a) section 76(1) of the Social Security Act 1964 (which provides that a benefit is not payable in respect of any period during which a beneficiary is imprisoned or detained in, or is an escaper from, a prison, pursuant to a sentence of imprisonment, preventive detention, or corrective training): 20

“(b) sections 86 and 86A of the Social Security Act 1964 (which provide for the recovery of debts due to the Crown within the meaning of section 85A of that Act): 25

“(c) section 307B of the Education Act 1989 (which provides for the recovery of debts in respect of the payment to a person of allowances, student loans, or other money to which he or she was not, or is no longer, entitled): 30

“(d) regulation 28 of the Student Allowances Regulations 1998 (which provides that a student imprisoned or detained in a prison, pursuant to a sentence of imprisonment, preventive detention, or corrective training is not entitled to receive any payment under those regulations): 35

“(e) **section 180C.**

“(2) **Requesting department**, in **subsection (1)** and **sections 180A, 180C, and 180D**, means—

“(a) the department for the time being responsible for the administration of the Social Security Act 1964, in relation to information requested for the purposes of the operation of a provision of that Act:

“(b) the department for the time being responsible for the administration of Part 25 of the Education Act 1989, in relation to information requested for the purposes of the operation of section 307B of that Act, or regulation 28 of the Student Allowances Regulations 1998.

Compare: 1954 No 51 s 36F

“180A Prisoner information may be disclosed for social assistance purposes

“(1) For the purpose stated in **section 180**, the chief executive of the requesting department may from time to time request the chief executive to supply all or any information specified in **section 180B** in respect of prisoners detained in a prison during the period specified in the request.

“(2) A request under **subsection (1)** must be made in writing and in accordance with arrangements made from time to time between—

“(a) the chief executive; and

“(b) the chief executive of the requesting department.

“(3) On receipt of a request made under **subsection (1)** the chief executive may supply the information requested to any person who is—

“(a) an officer or employee of the requesting department; and

“(b) authorised for the purpose by the chief executive of the requesting department.

Compare: 1954 No 51 s 36F

“180B Information that may be requested and disclosed

The information referred to in **section 180A(1)** is, for each prisoner detained in a prison during the period specified in the request,—

“(a) a sufficient amount of biographical information to identify the prisoner; and

“(b) the name of the prison in which the prisoner is or was detained during that period; and

“(c) details of each period of detention of the prisoner in the prison during the period specified in the request.

Compare: 1954 No 51 s 36F

- “**180C Social assistance may be suspended immediately if discrepancy discovered** 5
- “(1) The chief executive of the requesting department may suspend immediately the payment to a person of the benefits, allowances, and student loans, or any of them, payable to the person if—
- “(a) information has been disclosed to the requesting department under **section 180A**; and 10
- “(b) a discrepancy relating or apparently relating to the person arises, or is identified in that information; and
- “(c) that chief executive wishes, on the basis of that discrepancy, to effect the suspension; and 15
- “(d) immediately after the suspension is effected, the requesting department gives the person notice of the kind specified in **section 180D**.
- “(2) In this section and **section 180D**,—
- “**adverse action** has the same meaning as in section 97 of the Privacy Act 1993 20
- “**allowance** means an allowance established (whether established for the first time or continued) by regulations made under section 303 of the Education Act 1989
- “**benefit** has the same meaning as in section 3(1) of the Social Security Act 1964 25
- “**discrepancy** has the same meaning as in section 97 of the Privacy Act 1993
- “**student loan** has the meaning given to it by section 2 of the Student Loan Scheme Act 1992 30
- “**working day** has the same meaning as in section 2(1) of the Privacy Act 1993.
- “(3) A notice under **subsection (1)** may also be used to give the person concerned notice under section 103(1) of the Privacy Act 1993 in relation to some proposed adverse action other than the suspension or suspensions concerned; but in that case that section applies to the taking of that action. 35
- “(4) **Subsection (1)** overrides section 103 of the Privacy Act 1993.

“180D Notice required by section 180C(1)(d)

- “(1) A notice required by **section 180C(1)(d)**—
- “(a) must specify particulars of—
 - “(i) the discrepancy or discrepancies concerned; and
 - “(ii) the suspension or suspensions concerned; and
 - “(b) must state that the person concerned has 5 working days from the receipt of the notice to show cause why payments of any benefit, allowance, or student loan should not have been suspended.
- “(2) A notice required by **section 180C(1)(d)** must be delivered to the person concerned—
- “(a) personally; or
 - “(b) by leaving it at the person’s usual or last known place of residence or business or at the address specified by the person in any application or other document received from the person; or
 - “(c) by posting it in a letter addressed to the person at that place of residence or business or at that address.
- “(3) If a notice required to be given under **section 180C(1)(d)** is sent to a person by post,—
- “(a) the notice must, in the absence of proof to the contrary, be taken to have been delivered to that person on the fourth day after the day on which it was posted; and
 - “(b) in proving the delivery it is sufficient to prove that the letter was properly addressed and posted.”

6 New heading inserted

The following heading is inserted above section 181: “*Disclosure of offender information*”.

7 Consequential amendment to Privacy Act 1993

- (1) This section amends the Privacy Act 1993.
- (2) The item in Schedule 3 relating to the Corrections Act 2004 is amended by inserting “to **180D**” after “180”.

Part 2 Amendments to other Acts

Subpart 1—Amendments to Customs and Excise Act 1996

- 8 Principal Act amended** 5
This **subpart** amends the Customs and Excise Act 1996.
- 9 Purpose of this subpart**
The purpose of this **subpart** is to amend the principal Act so that the purposes for which it facilitates the exchange of information between the Customs and the department for the time being responsible for the administration of the Social Security Act 1964 include enabling the recovery of any debt due to the Crown in respect of any benefit. 10
- 10 Supply of arrival and departure information for benefit purposes** 15
- (1) The heading to section 280 is amended by inserting “**and benefit debt recovery**” after “**benefit**”.
- (2) Section 280(2) is repealed and the following subsections are substituted:
- “(2) The purpose of this section is to facilitate the exchange of information— 20
- “(a) between the Customs and the department for the time being responsible for the administration of the Social Security Act 1964; and
- “(b) for all or any of the purposes in **subsection (2A)**. 25
- “(2A) The purposes referred to in **subsection (2)(b)** are—
- “(a) to verify the entitlement or eligibility of any person to or for any benefit:
- “(b) to verify the amount of any benefit to which a person is or was entitled or for which a person is or was eligible: 30
- “(c) to enable the recovery of any debt due to the Crown in respect of any benefit.”

Subpart 2—Amendments to Injury Prevention, Rehabilitation, and Compensation Act 2001

11 Principal Act amended

This **subpart** amends the Injury Prevention, Rehabilitation, and Compensation Act 2001.

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12 Purpose of this subpart

The purpose of this **subpart** is to amend the principal Act so that the purposes for which it facilitates the disclosure of information by the Corporation to the department for the time being responsible for the administration of the Social Security Act 1964 include enabling the recovery of any debt due to the Crown in respect of any benefit.

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13 Disclosure of information by Corporation for benefit purposes

(1) The heading to section 281 is amended by inserting “**and benefit debt recovery**” after “**benefit**”.

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(2) Section 281(2) is repealed and the following subsections are substituted:

“(2) The purpose of this section is to facilitate the disclosure of information—

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“(a) by the Corporation to the department for the time being responsible for the administration of the Social Security Act 1964; and

“(b) for all or any of the purposes in **subsection (2A)**.

“(2A) The purposes referred to in **subsection (2)(b)** are—

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“(a) to verify the entitlement or eligibility of any person to or for any benefit:

“(b) to verify the amount of any benefit to which a person is or was entitled or for which a person is or was eligible:

“(c) to enable the recovery of any debt due to the Crown in respect of any benefit.”

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