

# **Social Security (Social Assistance) Amendment Bill**

Government Bill

As reported from the Social Services Committee

## **Commentary**

### **Recommendation**

The Social Services Committee has examined the Social Security (Social Assistance) Amendment Bill and recommends that it be passed with the amendments shown.

### **Introduction**

The Social Security (Social Assistance) Amendment Bill seeks to amend the Social Security Act 1964 by giving effect to the Budget 2004 decisions. The principal amendments we comment on propose financial penalties for sole parents who do not name the other parents of their children, and measures to ensure that the benefit regime does not disadvantage seasonal workers.

### **Clause 2—Commencement**

The majority of us recommend an amendment to clause 2 so that clause 7(2) and clause 7(4) come into force on the day after the bill receives the Royal assent, to make it clear that the Ministry of Social Development may notify beneficiaries currently subject to a section 70A reduction imposed before 1 July 2005 that a further reduction in their benefits will be incurred unless they meet certain requirements. This will give them reasonable time to reconsider

their decisions against meeting these requirements, before the additional reduction is imposed on or after 1 July 2005. It is not proposed to change the commencement date of the relevant exemptions.

The majority of us recommend also a new clause 7(5) is inserted into the bill to make it clear that a further benefit reduction cannot be imposed before 1 July 2005.

### **Clause 7—Rates of benefits for sole parents may be reduced**

Clause 7 amends section 70A of the Social Security Act 1964, under which all sole parents who receive a sole parent benefit have their benefit reduced by \$22 in respect of each dependent child where they fail or refuse to either identify in law the other parent, make an application for formula assessment of Child Support, or attend a hearing and give evidence at proceedings brought under the Child Support Act 1991. It reduces by \$6 per week the benefits of sole parent beneficiaries who do not name the other parents of their children and apply for Child Support after at least 13 weeks from the application of the standard section 70A reduction, by an *additional \$6 per week per beneficiary (not per child)*. Several submitters suggested this section should be repealed.

We were informed that the section 70A reduction was increased to \$22 per week per child from October 1993. Over the past two years, the ministry has initiated a number of measures to encourage more sole parent beneficiaries to establish paternity for their children and apply for Child Support. The number of beneficiaries incurring section 70A reductions is no longer increasing, and is starting to fall. Between July and 26 November 2004 there was a decrease of 11 per cent, from 19,614 to 17,543, in the number of clients with a section 70A reduction.

The ministry has undertaken two studies of sole parent beneficiaries receiving reduced benefits to determine why they do not name the liable parents. The results suggested that the reasons for not establishing paternity and applying for Child Support are multiple and complex. The most common reasons given were that the other parent cannot be found or denies paternity, or the beneficiary did not want the other parent to have guardianship rights over the child.

None of the submitters wholly supported clause 7, although several acknowledged the importance of collecting financial contributions from the liable parent.

The majority of us recommend no additional change to this clause other than the change recommended under clause 2. The majority of us consider it is important that parents meet their financial responsibilities to their children. Children can be disadvantaged in the long term if they do not receive financial support from both their parents. In addition, the Child Support revenue the State receives to help offset the costs of sole parents' benefits is reduced if liable parents do not pay. The financial reduction under section 70A signals the importance of establishing paternity and applying for Child Support. The additional reduction proposed in this bill will reinforce this message.

### **Clause 9—Interpretation and clause 10, calculation of stand down**

Clauses 9 and 10 seek to amend sections 80B and 80BA of the Social Security Act 1964, which relate to the calculation of the initial stand-down period before payment of a benefit commences. The amendments allow a person to elect to have his or her average income calculated on the basis of either a 52-week or 26-week period, for calculation of the stand-down period.

There are shortages of labour in some seasonal industries, and seasonal workers can be disadvantaged by the current 26-week assessment period. The option of a longer income assessment period may also encourage beneficiaries to undertake seasonal work without fear of a significant stand-down period should they subsequently require income support. This measure is also expected to reduce the need for recoverable emergency assistance for people in seasonal or intermittent employment, thus reducing benefit debt.

### **Stand down periods**

Some submitters supported the proposed changes in clauses 9 and 10. Others argued that stand-down periods for Government income assistance contribute to poverty and are inconsistent with international obligations, the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990, as they may discriminate on the basis of employment status and family status.

The bill complies with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. The bill was vetted by the Ministry of Justice before it was introduced and none of the bill's provisions were brought to the attention

of the House in accordance with section 7 of the New Zealand Bill of Rights Act 1990.

Stand-down periods under the Social Security Act 1964 are considered not to discriminate on the basis of employment status as all main benefits are subject to the period except for some that relate to disability. Even if there were discrimination, it would be justified given that the purpose of the provision is to assist those who do not have employment.

To the extent that stand-down provisions may discriminate on the basis of family status the differentiation is justified and therefore consistent with the New Zealand Bill of Rights Act 1990. Rather than use wide powers or discretion to waive stand-down periods, it is preferable to apply criteria to ensure that people are treated consistently.

A requirement that the more beneficial assessment be applied is not considered necessary. The ministry will invite clients to provide earnings verification for both the previous 26 and the previous 52 weeks' income. The ministry's IT system now allows dual assessments, which will enable the client to elect the income period that is more beneficial. However, we recommend that the ministry, when administering this provision, fully informs applicants of the 26-week and 52-week options for the calculation of the stand-down periods, with simple explanations, especially when their first language is not English.

### **Clause 12—Tax on benefits**

Clause 12 inserts a new section 83A into the Social Security Act 1964 to legislate specifically for the practice of treating benefits as notionally being at a higher rate for tax purposes than those in the relevant schedule to the Act, and of paying tax direct to the Inland Revenue Department based on the "grossed up" rate.

Current and past practice, however, has been that there is no tax deducted from the amount of the benefit paid to beneficiaries. Instead, income-tested benefits are 'grossed up' to an amount inclusive of tax. The ministry pays a lump sum for tax on benefits to the department on a monthly basis. This is treated by the department as part of the person's taxable income for the income year concerned. Changing the current practice would be difficult and costly. Moreover, the current practice is an efficient way for the ministry to pay

and the department to collect, PAYE tax from income-tested benefits.

We recommend the correction of a technical error in clause 12 of the proposed new section 83A(4). The new subsection (4) should refer to gross income in relation to the Income Tax Act 1994 and income in relation to the Income Tax Act 2004.

### **Fathers establishing paternity**

Submitters suggest paternity testing should be State funded where there is a disagreement over paternity and that the bill should include measures, such as a public education campaign informing putative fathers of their legal rights, legal aid and counselling services. These suggestions are outside the scope of the bill. However, we consider that they merit investigation by the Government.

### **Minority views**

#### **New Zealand National Party**

The National Party will support this bill with deep reservations. The only real purpose of the bill is to attempt to indicate that fathers should be named.

In 1993, 5.6 percent of mothers receiving the Domestic Purposes Benefit refused to name the father of their child. By 2004, that percentage had increased to 16 percent. There are now 19,000 mothers receiving the Domestic Purposes Benefit who refuse to name the fathers of their 35,000 children.

This bill takes away \$6 per week from a mother who refuses to name the father of a child and who does not fall within one of several exemptions.

Paternity testing is not dealt with in this bill or in any other proposed Government legislation. With today's DNA testing, there seems little reason why there should be 35,000 children with no legally recorded father to contribute to them financially, emotionally and with their time.

The National Party will support the passing of the bill for the reason that it at least indicates that fathers are expected to be acknowledged. The National Party does not hold out any hope that the passing of the bill will result in any worthwhile change to the appalling statistics noted above.

**New Zealand First Party**

New Zealand First strongly believes that there is an onus on mothers to name the fathers of any children for whom taxpayers are asked to contribute through the benefit system. The only exceptions should be those cases where it is absolutely impossible to identify the father, but even then every scientific avenue should be explored including DNA sampling, and in those instances where the security of the mother/child is endangered by such identification.

It is unfair for taxpayers to contribute the total cost of individuals who conspire or contrive to defeat the obligations of their own responsibility. With this reservation New Zealand First will support the bill.

**Green Party**

While the Green Party members support some aspects of this bill, we continue to oppose it overall because one of its fundamental goals (clause 7) is to further reduce the rate of benefits for some sole parents who cannot or will not identify the other parent of their child in law.

Like the majority of submitters on this bill, we oppose clause 7 because it economically penalises the children of some of the poorest families in the country for the perceived 'sins' of their parents, because further cutting benefits does nothing to address root causes of the problem, and because we believe the job of bringing up children on one's own should be valued in its own right rather than subject to varying degrees of benefit reduction and harassment by Government.

The Green Party believes the problems around not naming the other parent in law would be better dealt with through measures such as reform of the Child Support Act 1991, more in depth education at an earlier age for schoolchildren about the realities of becoming a parent, and the introduction of a Universal Child Benefit (similar to the old Family Benefit) which would assist all families, but particularly those living in comparative poverty, rather than selectively penalising some of them.

### **ACT New Zealand Party**

The ACT party believes that every child has a right to know the identity of their father, but since the Social Security (Social Assistance) Amendment Bill will not require women on the Domestic Purposes Benefit to name the father of their children, except in exceptional circumstances, ACT opposes the bill.

The bill was supposed to provide a solution to the problem of the increasing numbers of women on the Domestic Purposes Benefit who are refusing to name the fathers of their children. The numbers have escalated over the last few years to the point where one woman in six on the Domestic Purposes Benefit is now refusing to name the father of her child.

As a result, those fathers are not only able to avoid paying their child support obligations at a cost of hundreds of millions of dollars to taxpayers, but they also fail to fulfil their parental responsibilities.

While the bill increases the penalty for not naming the father, that increase is offset by the additional assistance that Domestic Purposes Benefit beneficiaries will receive as a result of the increase in the family assistance package. That means that by the time the bill comes into force, a mother who refuses to name the father of her child, will receive a benefit increase rather than a decrease.

A further concern is the introduction in the bill of two exemptions for not naming the father, which have the potential to produce detrimental outcomes for mothers and their children, in particular, new clauses (3) (ba) and (3) (bb) in Section 70A of the bill will introduce exemptions from the penalty for mothers who claim that the father is either too violent to approach, or is unlikely to be willing to pay his due. With the knowledge that in public policy "you get what you pay for" ACT has grave concerns that these exemptions could have the effect of not only putting more women and children at risk of violence, but also of encouraging greater levels of irresponsible behaviour by fathers.

Further, it is very disappointing that the need to improve the ease of paternity testing was not addressed in this bill, since DNA testing should be able to play a key role in establishing the identity of the father in those situations where there is doubt.

## **Appendix**

### **Committee process**

The Social Security (Social Assistance) Amendment Bill was referred to the committee on 5 October 2004. The closing date for submissions was 31 January 2005. We received and considered 14 submissions from interested groups and individuals. Hearings of evidence took 2 hours and 25 minutes. Consideration took one hour and 25 minutes.

We received advice from the Ministry of Social Development, the Inland Revenue Department, and Parliamentary Counsel.

### **Committee membership**

Georgina Beyer (Chairperson)

Dr Muriel Newman (Deputy Chairperson)

Paul Adams

Sue Bradford

Judith Collins

Hon Taito Phillip Field

Bill Gudgeon

Moana Mackey

Dr Lynda Scott

Hon Judith Tizard

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Social Security  
(Social Assistance) Amendment

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

**New (majority)**

Subject to this Act,

Text inserted by a majority

<*Subject to this Act,*>

Words struck out by a majority

<Subject to this Act,>

Words inserted by a majority

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Hon Steve Maharey

# Social Security (Social Assistance) Amendment Bill

Government Bill

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## The Parliament of New Zealand enacts as follows:

### 1 Title

(1) This Act is the Social Security (Social Assistance) Amendment Act **2004**.

(2) In this Act, the Social Security Act 1964<sup>1</sup> is called “the principal Act”.

<sup>1</sup> 1964 No 136

### 2 Commencement

(1) ~~<Sections 4(3) and 7(2) to (4) come>~~ ~~<Sections 4(3) and 7(3) come>~~ into force on 1 July 2005.

(2) **Sections 9(1) and (3) and <10>** ~~<10(1)>~~ come into force on 1 May 2005.

(3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

## Part 1

### Amendments to Social Security Act 1964

#### 3 Interpretation

- (1) The definition of **benefit** in section 3(1) of the principal Act is amended by repealing subparagraph (ia) of paragraph (b). 5
- (2) The definition of **income-tested benefit** in section (3)(1) of the principal Act is amended by repealing paragraph (h).
- (3) The definition of **transitional retirement benefit** in section 3(1) of the principal Act is repealed.

#### 4 Interpretation 10

- (1) The definition of **beneficiary** in section 61E(1) of the principal Act is amended by omitting, from paragraph (b), the words “, a transitional retirement benefit,”.
- (2) The definition of **cash assets** in section 61E(1) of the principal Act is amended by repealing paragraph (a)(i), and substituting the following subparagraph: 15
- “(i) money saved with a bank or other institution, money invested with a bank or other institution, or money banked with a bank or other institution:”. 20
- (3) The definition of **owner** in section 61E(1) of the principal Act is amended by inserting, after paragraph (b), the following paragraph: 25
- “(ba) a licence to occupy, where the premises are a residential unit in a retirement village (as those terms are defined in the Retirement Villages Act 2003); or”.

#### 5 Accommodation supplement

Section 61EA(3) of the principal Act is amended by inserting, after the word “superannuation”, the words “or a veteran’s pension”. 30

#### 6 Disability allowance

- (1) Section 69C(1)(a) of the principal Act is amended by omitting the words “on the ground specified in section 60F(6), or a transitional retirement benefit”.
- (2) Section 69C(5)(a) of the principal Act is amended by omitting the words “or a transitional retirement benefit”. 35

- 7 Rates of benefits for sole parents may be reduced**
- (1) Section 70A(1)(b) of the principal Act is amended by repealing subparagraph (iia).
- (2) Section 70A(1) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph: 5
- “(c) who, in respect of any dependent child in the care of the beneficiary, fails or refuses—
- “(i) to identify who is in law the other parent of that child; or
- “(ii) to make an application for formula assessment of child support, when required to do so by section 9 of the Child Support Act 1991; or 10
- “(iii) to attend and give in evidence all information that is required of the beneficiary during a hearing of a proceeding under the Child Support Act 1991, as required under section 122 of that Act.” 15
- (3) Section 70A(3) of the principal Act is amended by inserting, after paragraph (b), the following paragraphs:
- “(ba) the beneficiary or any of the beneficiary’s children would be at risk of violence if the beneficiary carried out or took steps to carry out any of the actions referred to in **subparagraphs (i) to (iii) of subsection (1)(c)**; or 20
- “(bb) there is a compelling circumstance, other than a circumstance mentioned elsewhere in this subsection, for the beneficiary’s failure or refusal to carry out any of the actions set out in **subparagraphs (i) to (iii) of subsection (1)(c)**, and, even if the beneficiary carried out the action, there is no real likelihood of child support being collected in the foreseeable future from the other parent, or, as the case may be, the other parent’s estate; or”. 25 30
- (4) Section 70A of the principal Act is amended by repealing subsection (4), and substituting the following subsections:
- “(4) A reduction of the rate of benefit under subsection (2) in respect of a dependent child in the care of the beneficiary ceases to apply to a beneficiary who subsequently carries out the action referred to in **subparagraph (i), (ii), or (iii) of subsection (1)(c)** that the beneficiary failed or refused to carry out in respect of that child. 35

- “(5) If a beneficiary’s rate of benefit has been reduced under subsection (2), it must be reduced by a further \$6 if the circumstances in **subsection (6)** exist.
- “(6) The circumstances are that—
- “(a) a period of not less than 13 weeks has elapsed after the date on which the beneficiary’s rate of benefit was reduced under subsection (2); and
- “(b) during the period referred to in **paragraph (a)**, the chief executive has given the beneficiary a reasonable opportunity to reconsider his or her decision not to carry out the action referred to in **subparagraphs (i) to (iii) of subsection (1)(c)** that led to that reduction.
- “(7) A further reduction made under **subsection (5)** to a beneficiary’s rate of benefit must not exceed \$6, regardless of the number of the beneficiary’s dependent children to whom **subsection (1)(c)** applies.
- “(8) A reduction of the rate of benefit under **subsection (5)** ceases to apply where the rate of benefit has ceased to be reduced under subsection (2).
- “(9) For the purposes of this section—
- “**violence** has the same meaning as in section 3 of the Domestic Violence Act 1995.”

#### New (majority)

- (5) Despite anything in **section 70A(5)** (as inserted by **subsection (4)** of this section), no further reduction under **section 70A(5)** may be made with effect earlier than 1 July 2005.

### 8 Commencement of benefits

- (1) Section 80(2)(b) of the principal Act is amended by omitting the words “a transitional retirement benefit,”.
- (2) Section 80(14)(b) of the principal Act is amended by omitting the words “A transitional retirement benefit or”.

### 9 Interpretation

- (1) Section 80B of the principal Act is amended by repealing the definitions of **average income** and **average income calculation period**, and substituting the following definitions:

“**average income**, in relation to a person, means the person’s specified income divided by the number of weeks in the average income calculation period

“**average income calculation period**, in relation to a person, means—

“(a) if the person has made an election under **section 80BA(1A)**, the period of 52 weeks immediately before the later of—

“(i) the date the person became entitled to receive the benefit; or

“(ii) if the person’s employment terminated or the person is given notice of termination of employment before he or she applied for the benefit, the date the person’s employment ceased; or

“(b) in any other case, the period of 26 weeks immediately before the later of the dates referred to in **subparagraphs (i) and (ii) of paragraph (a)**”.

(2) The definition of **income** in section 80B of the principal Act is amended by repealing subparagraph (x) of paragraph (a).

(3) Section 80B of the principal Act is amended by adding the following definition:

“**specified income**, in relation to a person, means—

“(a) the person’s income in the average income calculation period; and

“(b) the amount of any redundancy payment or retirement payment, before the deduction of income tax, not included in the person’s income under **paragraph (a)** and made to the person—

“(i) before the person’s employment ceased; or

“(ii) in the 52 weeks after the date on which the employment ceased.”

## 10 Calculation of stand down

(1) Section 80BA of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) A person who is entitled to a benefit to which this section applies may elect to have his or her average income calculated by reference to a period of 52 weeks instead of 26 weeks.”

- (2) Section 80BA(4)(b)(i) of the principal Act is amended by omitting the words “a sickness benefit, or a transitional retirement benefit”, and substituting “or a sickness benefit”.
- 11 Ending of benefits**  
Section 80BD(3) of the principal Act is amended by omitting the words “a transitional retirement benefit,”. 5
- 12 New section 83A inserted**  
The principal Act is amended by inserting, after section 83, the following section:
- “83A Tax on benefits** 10
- “(1) This section applies where any instalment or a payment of an income-tested benefit is a source deduction payment.
- “(2) Where this section applies, the chief executive may, instead of making a tax deduction from the source deduction payment, pay to the Commissioner of Inland Revenue, at such time as the Commissioner determines in consultation with the chief executive, an amount for income tax payable on that payment, calculated in accordance with **subsection (3)**. 15
- “(3) The amount for income tax payable on a source deduction payment is the amount of the tax deduction that would be made, at the rate determined under the appropriate specified provision, if the payment were increased by an amount that, after the tax deduction were made, would result in an amount equal to the source deduction payment. 20
- “(4) An amount for income tax paid to the Commissioner under **subsection (2)** must,— 25
- “(a) for the purposes of this Act, be considered to be a payment of a benefit, within the meaning of that term in section 3(1), made on account of, and received by, the person; and 30
- “(b) for the purposes of—
- “(i) the Income Tax Act 1976, be considered to be assessable income of the person; or
- “(ii) the Income Tax Act 1994, *<or as the case requires, the Income Tax Act 2004,>* be considered to be gross income of the person; or 35

New (majority)

“(iii) the Income Tax Act 2004, be considered to be income of the person.

- “(5) If, as a result of the review, suspension, cancellation, or termination of an income-tested benefit, the chief executive determines that an amount for tax on the benefit has been paid in accordance with this section to the Commissioner in excess of the amount that is properly payable under this section, the chief executive may not recover the excess amount as a debt due to the Crown within the meaning of section 85A, but may recover that amount by—
- “(a) making an adjustment to any amount subsequently payable to the Commissioner under **subsection (2)** in respect of the source deduction payments for that or any other benefit payable to that beneficiary; or
  - “(b) making such other arrangements for its refund as are agreed with the Commissioner.
- “(6) In this section,—
- “**income-tested benefit** has the meaning given to that term by section 2 of the Income Tax Act 1976 or section OB 1 of the Income Tax Act 1994 or section OB 1 of the Income Tax Act 2004 (whichever is applicable) and not the meaning in section 3(1) of this Act
  - “**source deduction payment** has the meaning given to that term by section 2 of the Income Tax Act 1976 or section OB 1 of the Income Tax Act 1994 or section OB 1 of the Income Tax Act 2004 (whichever is applicable)
  - “**specified provision**, in relation to a source deduction payment, means (as the case requires)—
    - “(a) the fourth proviso to section 343(1) of the Income Tax Act 1976; or
    - “(b) the fourth proviso to section NC 6(1) of the Income Tax Act 1994; or
    - “(c) section NC 6(1D) of the Income Tax Act 1994; or
    - “(d) section NC 6(1D) of the Income Tax Act 2004.”



**13 Unemployment benefit rates**

Section 99(4) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

“(ab) the application of section 117 (which relates to sanctions that may be imposed for failures to comply with work test and work preparation interviews and exercises); or”.

**14 Money payable out of Crown Bank Account**

Section 124(1) of the principal Act is amended by repealing paragraph (da).

**15 Cost of repair and replacement of artificial limbs**

Section 126 of the principal Act is amended by omitting the words “Rehabilitation League N.Z. (Incorporated)”, and substituting the words “New Zealand Artificial Limb Board”.

**Part 2****Consequential amendments and savings provision****16 Consequential amendments to Income Tax Acts**

- (1) The definition of **income-tested benefit** in section OB 1 of the Income Tax Act 1994 is amended by omitting the words “and includes a transitional retirement benefit payable under Part 1 of the Social Welfare (Transitional Provisions) Act 1990;”.
- (2) The definition of **New Zealand superannuation** in section OB 1 of the Income Tax Act 1994 is amended by repealing paragraph (c)(ii).
- (3) The definition of **New Zealand superannuation** in section OB 1 of the Income Tax Act 2004 is amended by repealing paragraph (c)(ii).

**New (majority)****16A Consequential amendments to regulations**

- (1) The Health Entitlement Cards Regulations 1993 (SR 1993/169) are amended by omitting from regulation 8(1)(a) the words “a transitional retirement benefit granted under section 7A of the Social Welfare (Transitional Provisions) Act 1990, or”.

**New (majority)**

- (2) The Social Security (Period of Income Assessment) Regulations 1996 (SR 1996/128) are amended by omitting from item 1 in the Schedule the words “Transitional retirement benefit”.
- (3) The Taxation (Abated Interim Payments of Part KD Credit) Regulations 2002 (SR 2002/52) are amended by revoking regulation 3(1)(b) and (c), and substituting the following paragraph: 5
- “(b) an emergency benefit payable under the Social Security Act 1964 if that benefit is payable at a rate that is equal to or more than the rate of an invalid’s benefit that the person would be entitled to if he or she were qualified to receive that benefit.” 10

**17 Savings in respect of tax on benefits**

- (1) For the purpose of determining the validity of any payment for tax on an income-tested benefit, the principal Act must be read as if at all material times it contained **section 83A**, as inserted by **section 12** of this Act. 15
- (2) In this section, **income-tested benefit** has the meaning given to it in **section 83A(6)** of the principal Act, as inserted by **section 12** of this Act. 20

**Legislative history**

8 September 2004	Introduction (Bill 193-1)
5 October 2004	First reading and referral to Social Services Committee

