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## SOCIAL SECURITY AMENDMENT BILL

### EXPLANATORY NOTE

#### 1. GENERAL POLICY STATEMENT

##### **Objectives of key measures**

The measures in this Bill will amend the law that relates to the period of notice that must be given to a person before an action is taken relating to failure to maintain registration as a job seeker with the Department of Labour or failure of the work test.

The Bill is intended to:

- ensure that benefit sanctions have an appropriate effect on behaviour:
- ensure that a beneficiary who is no longer registered with the Department of Labour as a job seeker or who has failed the work test has been given sufficient warning that a sanction will be applied to his or her benefit prior to the action being taken.

##### **Summary of the key measures:**

The main measures are as follows:

- (a) A work tested beneficiary is made aware of the work test requirements and the potential sanctions for failure to meet these requirements. The rationale behind work testing is the principle of reciprocal obligations. For the work test provisions to be effective, it is necessary that both the work test itself and the sanction process are transparent to beneficiaries. To achieve this, it is considered that any sanction should be imposed as soon as practicable following a work test failure, or that a benefit should be suspended as soon as practicable following the lapsing of job seeker registration with the Department of Labour.
- (b) The Department of Social Welfare is exempted from the requirement of section 103 of the Privacy Act 1993, which relates to the issuing of notices of adverse action and imposes an overall period of 9 days before an adverse action can be taken. The impact of section 103 on the policy intent contained in the Social Security Amendment Act 1996 (which introduced the work-testing regime) was not appreciated until recently. The amendment in this Bill will allow the adverse action to take place after 5 working days (4 working days in limited circumstances). This exemption is only to apply in relation to an information matching

- programme between the Department of Labour and the Department of Social Welfare that is undertaken in order to administer the work test.
- (c) The Department of Social Welfare cannot suspend, reduce, or cancel a benefit as a result of the information matching programme with the Department of Labour unless the beneficiary has been given written notice of the proposed action. The suspension, reduction, or cancellation must not take effect until after the 5 working days specified in the notice have elapsed (4 working days in limited circumstances).
  - (d) Notices of adverse action resulting from the information matching programme with the Department of Labour must be given in person, left at the person's last known address, or posted to the last known address. In the case of posting, notice is deemed to have been given on the day that it is posted.
  - (e) The Privacy Commissioner is given jurisdiction to oversee the Department of Social Welfare in its compliance with the new requirements for providing notice of adverse action to beneficiaries who have failed the work test and are to have their benefit affected as a result of the information match with the Department of Labour. The annual report of the Privacy Commissioner which relates to an assessment of the information matching programme between the Department of Labour and the Department of Social Welfare must include an assessment of the Department of Social Welfare's compliance with these new provisions.

## 2. CLAUSE BY CLAUSE COMMENTARY

*Clause 1* provides that the Bill is part of the Social Security Act 1964 ("the principal Act"), and comes into force on the day after the date of Royal assent.

*Clause 2* inserts a *new section 60HCA* into the principal Act. The new section imposes on the Director-General of Social Welfare an obligation to take reasonable and appropriate steps to ensure that a work-tested beneficiary is aware of his or her obligations under sections 60HC and 60J of the principal Act, and of the consequences of failure to comply with those obligations.

The following kinds of benefit are work-tested benefits: an unemployment benefit, a job search allowance, an independent youth benefit, a widow's benefit, and a domestic purposes benefit.

Sections 60HC and 60J set out the work-test requirements that a beneficiary must comply with in order to receive a work-tested benefit.

*Clause 3* inserts *new sections 131B to 131G* into the principal Act.

*New section 131B* is an interpretation provision.

*New section 131C* sets out the procedure that must be followed before the Director-General of Social Welfare may suspend, reduce, or cancel a work-tested benefit on the basis of non-compliance with a requirement in section 60HC or section 60J of the principal Act, where non-compliance is revealed by information disclosed by the Department of Labour under section 131A of the principal Act.

The procedure in *new section 131C* is in place of that prescribed by section 103 of the Privacy Act 1993. Section 103 would otherwise apply because section 131A of the principal Act is listed as an information matching provision in the Third Schedule of the Privacy Act 1993.

Section 103 provides that before adverse action may be taken against a person by an agency on the basis of a discrepancy produced by the information matching programme, the agency must give notice to the individual concerned. The notice must tell the person what the discrepancy is, and what adverse action the agency

proposes to take. It must also state that the person has 5 working days from the receipt of the notice in which to show cause why the adverse action should not be taken. The agency must not take the adverse action until those 5 working days have expired.

If the notice required by section 103 is sent by post, it is deemed to have been delivered on the fourth day after it was posted. This means that if the agency sends the notice by post, it is effectively prevented from taking the adverse action until at least 9 days after the notice is posted. The actual period may be longer if the period of 5 working days is interrupted by a weekend or a public holiday.

*New section 131c*, which is in substitution for the requirements of section 103 of the Privacy Act 1993, reduces the period that the Department of Social Welfare must wait between notifying a beneficiary of non-compliance with a work-test requirement, and suspending, reducing, or cancelling the person's benefit. The period is reduced to 5 working days (4 working days where the *new section 131D* applies), and the period begins when the notice is given. In the case of a notice sent by post, the notice is given when it is posted, not when it is received.

The effect of the *new section 131c* is that where—

- (a) There is an exchange of information between the Department of Labour and the Department of Social Welfare under section 131A; and
- (b) That information reveals that a work-tested beneficiary has failed to comply with a requirement in section 60HC or section 60J of the principal Act; and
- (c) As a result the Director-General of Social Welfare proposes to suspend, reduce, or cancel the beneficiary's benefit,—

the Director-General may not do so without complying with certain requirements. Those requirements are as follows:

- (a) The Director-General must have given the beneficiary written notice—
  - (i) Stating that information disclosed to the Department of Social Welfare by the Department of Labour indicates that the beneficiary (or, where applicable, the beneficiary's spouse) has failed to comply with a requirement of section 60HC or section 60J; and
  - (ii) Stating that, on the basis of that non-compliance, the Director-General is suspending, cancelling, or reducing the work-related benefit payable to the beneficiary; and
  - (iii) Specifying the date on which the suspension, cancellation, or reduction is to take effect; and
  - (iv) If the benefit is to be reduced, specifying the amount of the benefit after the reduction; and
  - (v) Stating that the beneficiary has 5 working days (4 working days where the *new section 131D* applies) from the giving of the notice to dispute the suspension, cancellation, or reduction; and
  - (vi) Advising the beneficiary to contact the Department of Social Welfare or the Department of Labour if the beneficiary wants to dispute or discuss the decision to suspend, reduce, or cancel the benefit; and
  - (vii) Containing a clear statement of the beneficiary's right, under section 10A of the principal Act, to apply for a review of the decision of the Director-General, and of the procedure for applying for a review;
- (b) The suspension, reduction, or cancellation of the benefit must not take effect until after the 5 working days specified in the notice (4 working days where the *new section 131D* applies).

*New section 131D* sets out circumstances in which the 5 working day notice period specified in the *new section 131c* may be reduced to 4 working days. The problem occurs where a normal 5 working day notice period would be interrupted by Good Friday, Easter Monday, Anzac Day, Labour Day, Queen's

Birthday, or Waitangi Day. These statutory holidays are excluded from the definition of working day. The effect of this exclusion is that in some situations, the Director-General of Social Welfare would be prevented by *new section 131c (2) (b)* from suspending, cancelling, or reducing a benefit until the payday after the payday on which the suspension, cancellation, or reduction would normally take effect.

*New section 131D* therefore provides that in these circumstances, the normal 5 working day notice period required by the *new section 131c* is reduced to 4 working days.

*New section 131E* sets out how a notice under the *new section 131c* may be given. It may be given personally, or by leaving it at the person's residential or business address or at any other address previously given by the beneficiary, or by posting it. If it is left for the person at a particular address, the notice is given when it is left. If it is posted, it is given when it is posted, not when it is received.

*New section 131F* gives the Privacy Commissioner jurisdiction to investigate complaints of non-compliance with the requirements of the *new section 131c*. The reason for this is that the *new section 131c* is to apply instead of section 103 of the Privacy Act 1993, and the Commissioner already has jurisdiction over complaints of non-compliance with section 103.

*New section 131G* requires the Privacy Commissioner to include in his or her annual report an assessment of the extent of compliance with the requirements of the *new section 131c*, where the annual report includes a report on the operation of section 131A of the principal Act. Again, the reason for this is that the *new section 131c* is to apply instead of section 103 of the Privacy Act 1993, and the Commissioner is already required to report on compliance with section 103.

*Clause 4* amends the Twenty-ninth Schedule of the principal Act. That schedule lists the powers, functions, and discretions of the Director-General of Social Welfare that may be delegated under section 10 (1A) of the principal Act to the chief executive of the Department of Labour. The schedule is consequentially amended by inserting a reference to the function imposed on the Director-General by the *new section 60HCA* (as inserted by *clause 2*).

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*Hon Roger Sowry*

## SOCIAL SECURITY AMENDMENT

### ANALYSIS

Title	
1. Short Title and commencement	131D. Reduction of notice period
2. General duty of Director-General to ensure that work-tested beneficiaries aware of obligations	131E. Notices
3. New sections inserted	131F. Jurisdiction of Privacy Commissioner
131B. Definitions for purposes of sections 131C and 131D	131G. Privacy Commissioner to report on compliance with section 131C
131C. Notice of decision to suspend, reduce, or cancel work-tested benefit	4. Twenty-ninth Schedule amended

### A BILL INTITULED

#### **An Act to amend the Social Security Act 1964**

BE IT ENACTED by the Parliament of New Zealand as follows:

5     **1. Short Title and commencement**—(1) This Act may be cited as the Social Security Amendment Act 1997, and is part of the Social Security Act 1964\* (“the principal Act”).

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

10     **2. General duty of Director-General to ensure that work-tested beneficiaries aware of obligations**—The principal Act is amended by inserting, after section 60HC (as inserted by section 18 of the Social Security Amendment Act 1996), the following section:

15     “60HCA. The Director-General has a duty to take reasonable and appropriate steps to ensure that, while a person is a work-tested beneficiary, the beneficiary is aware of—

“(a) The beneficiary’s obligations under sections 60HC and 60J; and

\*R.S. Vol. 32, p. 625

Amendments: 1994, Nos. 86, 142; 1996, Nos. 20, 42, 49, 145, 155, 157

“(b) The consequences of failure to comply with the requirements of those sections.”

**3. New sections inserted**—The principal Act is amended by inserting, after section 131A (as inserted by section 37 of the Social Security Amendment Act 1996), the following sections: 5

“**131B. Definitions for purposes of sections 131C and 131D**—In sections 131C and 131D, unless the context otherwise requires, ‘payday’, ‘working day’, ‘work-tested beneficiary’, and ‘work-tested benefit’ have the same meaning as in section 3 (1). 10

“**131C. Notice of decision to suspend, reduce, or cancel work-tested benefit**—(1) When information is exchanged under section 131A,—

“(a) Section 103 of the Privacy Act 1993 (which requires notice to be given of any adverse action based on the result of an information matching programme) does not apply; and 15

“(b) This section and sections 131D and 131E apply instead.

“(2) When this section applies, the Director-General must not, as a result of an exchange of information under section 131A, suspend, reduce, or cancel a work-tested benefit payable to a work-tested beneficiary unless the following requirements have been complied with: 20

“(a) The Director-General must have given the beneficiary written notice— 25

“(i) Stating that information disclosed to the Department of Social Welfare by the Department of Labour indicates that the beneficiary (or, where applicable, the beneficiary’s spouse) has failed to comply with a requirement of section 60HC or section 60J; and 30

“(ii) Stating that, on the basis of that non-compliance, the Director-General is suspending, cancelling, or reducing the work-related benefit payable to the beneficiary; and 35

“(iii) Specifying the date on which the suspension, cancellation, or reduction is to take effect; and

“(iv) If the benefit is to be reduced, specifying the amount of the benefit after the reduction; and

“(v) Stating that the beneficiary has 5 working days from the giving of the notice to dispute the suspension, cancellation, or reduction; and 40

5 “(vi) Advising the beneficiary to contact the Department of Social Welfare or the Department of Labour if the beneficiary wants to dispute or discuss the decision to suspend, reduce, or cancel the benefit; and

“ (vii) Containing a clear statement of the beneficiary’s right, under section 10A, to apply for a review of the decision of the Director-General, and of the procedure for applying for a review:

10 “(b) The suspension, cancellation, or reduction of the benefit must not take effect until after the 5 working days specified in the notice.

“(3) Section 131D may affect the operation of this section.

15 “131D. **Reduction of notice period**—(1) This section applies if—

20 “(a) A day that would normally count as a working day for the purposes of a notice given under section 131c (2) (a) would not count because that particular day falls on Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, or Waitangi Day; and

25 “(b) The fact that the particular day would not count as a working day means that section 131c (2) (b) would prevent the Director-General from suspending, cancelling, or reducing a beneficiary’s work-related benefit until the payday following the payday on which the suspension, cancellation, or reduction would take effect if that day did count as a working day.

30 “(2) Where this section applies, the references in subsections (2) (a) (v) and (2) (b) of section 131c to 5 working days are to be read as references to 4 working days.

“131E. **Notices**—A notice may be given under section 131c to a person by—

35 “(a) Delivering it to that person personally; or

“ (b) By leaving it—

“ (i) At that person’s usual or last known place of residence or business; or

40 “ (ii) At the address given by that person in any application or other document received from that person;—

and in that case the notice is given when it is left; or  
“(c) By posting it in a letter addressed to that person at that place of residence or business or at that address; and in that case the notice is given when it is posted.

**“131F. Jurisdiction of Privacy Commissioner—**If the Director-General fails to comply, in relation to any individual, with **section 131c**, then for the purposes of Part VIII of the Privacy Act 1993, that failure constitutes a failure to comply with the provisions of Part X of that Act.

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**“131G. Privacy Commissioner to report on compliance with section 131c—**When, pursuant to section 105 (1) (b) of the Privacy Act 1993, the Privacy Commissioner includes in any annual report of the Commissioner an assessment relating to exchanges of information authorised by section 131A of this Act, that assessment must also include an assessment of the extent of compliance, during the relevant year, with **section 131c** of this Act.”

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**4. Twenty-ninth Schedule amended—**The Twenty-ninth Schedule of the principal Act (as added by section 43 of the Social Security Amendment Act 1996) is amended by inserting, after the item relating to section 12K (8), the following item:

15

“Section 60HCA

The Director-General’s function under that section.”