

SOCIAL SECURITY AMENDMENT BILL

AS REPORTED FROM THE SOCIAL SERVICES COMMITTEE

COMMENTARY

Recommendation

The Social Services Committee has examined the Social Security Amendment Bill and recommends that it be passed.

Conduct of the examination

The Social Security Amendment Bill was introduced on 20 March 1997 and referred to the Social Services Committee after the second reading on 24 April 1997. The closing date for submissions was 27 May 1997. We received and considered 40 submissions from interested organisations and individuals. Six submissions were heard orally. We received a number of requests to travel to Auckland to hear submissions, but an insufficient number of submissions were received from Auckland to justify travelling. We were also under time constraints due to an instruction to report to the House by 9 June 1997. Several submissioners brought to our attention that advertising for public submissions in community newspapers would assist in promoting public awareness of legislation such as this bill. We can see merit in this suggestion, and will consider using this method of advertising for future legislation of a similar nature.

All but one of the submissions that we received opposed the provisions contained in the bill, and most focused on the proposal to reduce the period of notice that must be given before adverse action can be taken in relation to work test failure.

Advice was received from the Department of Social Welfare and the New Zealand Employment Service.

All members of the committee expressed concern that the bill was before the committee for only six weeks, with the resulting timing difficulties that this involved. It did not allow sufficient time to consult widely and to spend an adequate amount of time considering the proposals. We recommend that consultation should take place between the Minister in charge of a bill and the select committee before reporting dates are set.

This commentary sets out the details of our consideration of the bill and the major issues that we addressed.

No. 5—2

Price Code: J

Provisions of the bill

The Social Security Amendment Bill proposes to enable the Department of Social Welfare to impose more quickly sanctions against work-tested beneficiaries for failure to comply with work test provisions, which took effect on 1 April 1997. These provisions are contained in the Social Security Amendment Act 1996, which had its origins in the Tax Reduction and Social Policy Bill that was introduced to implement policies announced in the 1996 Budget relating to the work testing of beneficiaries.

Clause 2 of the Social Security Amendment Bill proposes to impose 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 the work test requirements that must be complied with in order to receive a work-tested benefit.

Clause 3 proposes to waive the requirement in the Privacy Act 1993 that at least nine days' delay must occur after notice by post to a beneficiary of work test failure before any benefit reduction can be made. By inserting proposed section 131C into the Social Security Act 1964, the Department of Social Welfare would be exempted from section 103 of the Privacy Act 1993. The new section reduces the minimum notice period to five working days, or four working days in the case of intervening statutory holidays.

Clause 3 also sets out specific procedures 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 the work test requirements. Where there is an information exchange under section 131A of the principal Act, the notice of pending action must be given to the beneficiary in writing, setting out the reason for the pending action and the date that it will become effective. The notice must include: a statement that the information disclosed to the Department of Social Welfare by the Department of Labour indicated that the beneficiary (or, where applicable, the beneficiary's spouse) had failed to comply with a requirement of section 60HC or section 60J; that, on the basis of that non-compliance, the Director-General is suspending, cancelling, or reducing the work-related benefit; the date from which this would take effect; the amount of the benefit after the reduction; that the beneficiary has five working days (four working days where the new section 131D applies) from the giving of notice to dispute the suspension, cancellation, or reduction; a statement that the beneficiary should contact the Department of Social Welfare or the Department of Labour in the event of a dispute or if the beneficiary wishes to discuss the matter; and 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.

Clause 3 also proposes to reduce the five working days referred to previously to four working days in cases where a statutory holiday falls within the five working days, and it also sets out the delivery procedures for a notice of sanction.

Also contained in clause 3 is a proposal to provide the Privacy Commissioner with the 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 who are to have their benefit reduced, suspended, or cancelled as a result. The annual report of the Privacy Commissioner would include an assessment of the compliance of the Department of Social Welfare in the matter.

Privacy Commissioner

While the Privacy Commissioner acknowledged, in a report to the Minister of Justice, that the bill would affect the normal operation of Part X of the Privacy Act 1993 in relation to the authorised information-matching provision, he was involved in discussion about the formulation of the bill and stated in the report that he did not oppose the enactment of the bill. He further explained that for the department to adhere to the nine-day rule would cause the department difficulties with its existing computer programming as well as the Government's objectives in respect of the work-testing arrangements.

In the report, the Privacy Commissioner noted that the notice period proposed in the bill would be less favourable to beneficiaries than the normal Part X arrangements, and stated that he would be concerned if the period of notice were to be reduced to less than five working days. He also stated that, if the bill were passed, he "will keep the matter under review to see if there is a significant level of complaints or evidence that the brevity of the time period is causing problems."

We note that the New Zealand Employment Service told us that it had reached an agreement with the Privacy Commissioner to report six-monthly, and that Income Support will report to the Privacy Commissioner three months after the implementation of the manual system and then at regular intervals to be agreed with the Privacy Commissioner.

Committee's consideration

We heard submissions from the Southland Beneficiaries and Community Rights Centre, DPA New Zealand, the Downtown Community Ministry, Mr Gerald Harper, the Wellington Unemployed Workers' Union, and the People's Resource Centre. Most of our discussion focused on the proposed reduction in the period of notice.

The Labour and Alliance members of the committee are strongly opposed to the overriding of the Privacy Act 1993 to introduce a different regime for beneficiaries than for any other members of society.

We received information from New Zealand Post detailing delivery times. We are concerned that approximately 1 percent of mail deliveries are not received within three days of posting. We recommend a minor amendment to new section 131E to ensure that notices are left at, or sent to, the beneficiary's most recent address.

We were assured that Income Support and the New Zealand Employment Service would keep the same address on record for clients. This should be written into the protocols so that, as a matter of course, both departments would check that they are using the same address.

We also noted that several submissions stated that the time reduction is disadvantageous to people who wish to appeal a decision.

The bill is part of the Government's response to the Employment Taskforce and is seen as a way of getting people back to work. The Labour and Alliance members of the committee are concerned that this bill is an isolated measure that, in itself, provides nothing that will return beneficiaries to the workforce.

Another issue of concern relates to people with disabilities. We heard that some people with disabilities choose to go on work-tested benefits, and we noted that they would need to apply for an exemption from work testing.

Conclusion

Majority decisions were taken on the clauses and on the recommendation that the bill be passed. The decision taken on the amendment to new section 131E was unanimous. The bill is leaving the committee on the understanding that a possible amendment be pursued relating to the period in which work testing will be undertaken in the 10 working days immediately prior to Christmas and the 5 working days immediately prior to Easter.

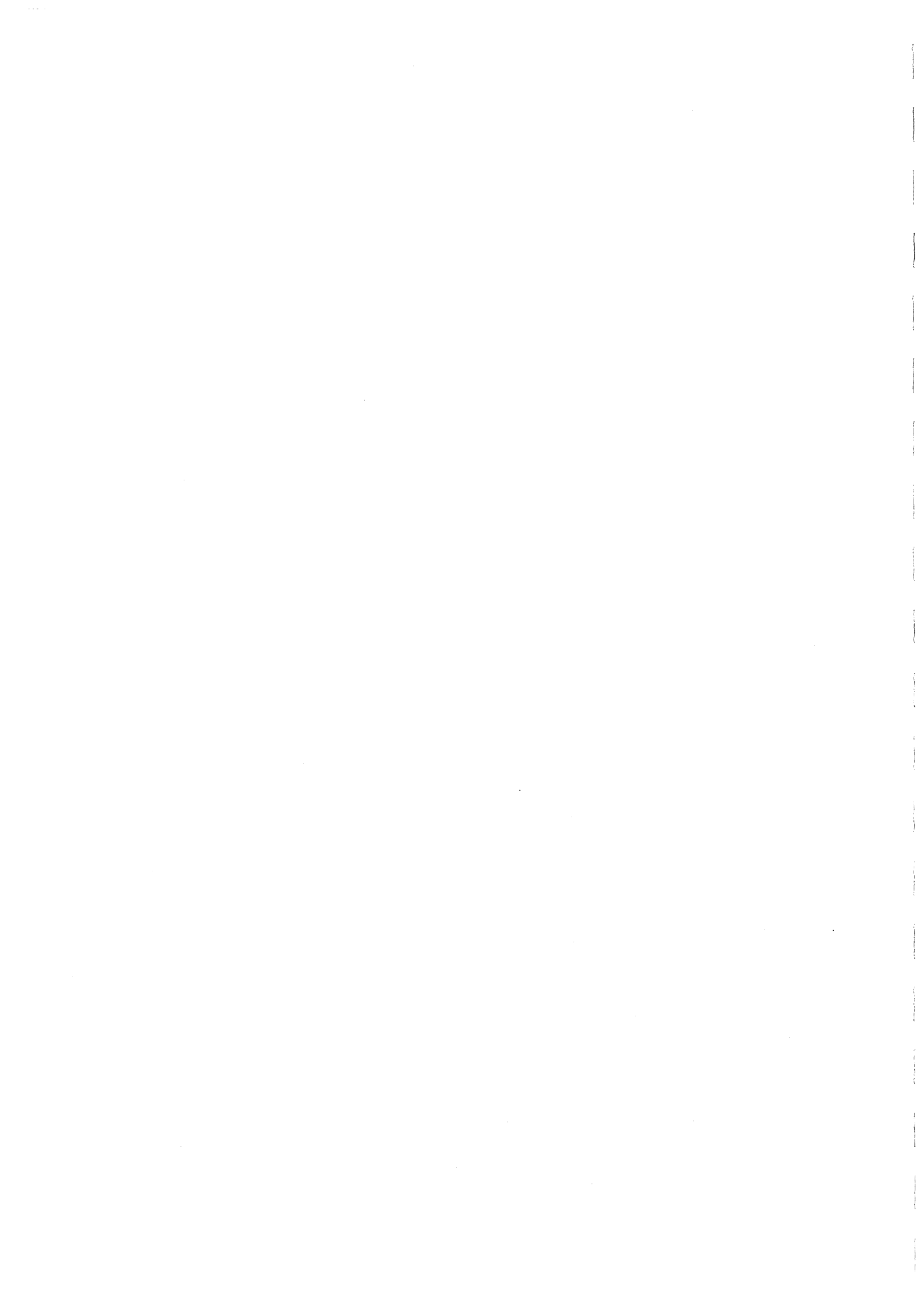
KEY TO SYMBOLS USED IN REPRINTED BILL
AS REPORTED FROM A SELECT COMMITTEE

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously



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
131A. 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 131b, unless the context otherwise requires, ‘payday’, ‘working day’, ‘work-tested beneficiary’, and ‘work-tested benefit’ have the same meaning as in section 3 (1).”

“**131C. Notice of decision to suspend, reduce, or cancel work-tested benefit**—(1) When information is exchanged under section 131A,— 10

“(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 131b 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—

“(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 25 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

“(iii) Specifying the date on which the suspension, cancellation, or reduction is to take effect; and 35

“(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—

“(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

20 “(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.

25 “(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)* the most recent 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.”

