

Social Security (Personal Development and Employment) Amendment Bill

(Formerly titled Social Security (Working Towards Employment)
Amendment Bill)

Government Bill

As reported from the committee of the whole House

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act,

Text struck out by a majority

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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Words struck out

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Words inserted

Hon Steve Maharey

Social Security *⟨(Working Towards Employment)⟩* *⟨(Personal Development and Employment)⟩* Amendment Bill

Government Bill

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**Social Security <(Working Towards
Employment)> <(Personal Development
and Employment)> Amendment**

cl 1

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|---|---|
| <p>25A Application of Health and Safety in Employment Act 1992 and Human Rights Act 1993</p> <p>25B New section 132AA inserted 132AA Regulations exempting items from treatment as income or cash assets may have retrospective effect</p> <p>26 New section 132G inserted 132G Regulations providing for remittance or suspension of debt</p> <p>27 New Schedules 3 and 16 substituted</p> <p style="text-align: center;">Part 3 Transitional provisions, amendments affecting principal Act, and consequential amendments to other enactments</p> <p style="text-align: center;"><i>Transitional provisions</i></p> <p>28 Transitional provisions, relating to review of decisions</p> <p>29 Transitional provisions for cessation of work testing for certain benefits</p> | <p>29A Transitional provision relating to mode of ascertaining annual income for benefit purposes</p> <p>29B Transitional provision relating to reviewing of payments made in excess of authorised rates</p> <p>30 Transitional provision relating to recovery of debt</p> <p style="text-align: center;"><i>Repeal of amendments to principal Act yet to come into force</i></p> <p>30A Amendment to Health and Disability Services (Safety) Act 2001</p> <p style="text-align: center;"><i>Consequential amendments to other enactments</i></p> <p>31 Exemption from work test: work-tested spouses, domestic purposes beneficiaries, and widows</p> <p style="text-align: center;">—————</p> <p style="text-align: center;">Schedule New Schedules 3 and 16 of principal Act substituted</p> |
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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Social Security <(Working Towards Employment)> <(Personal Development and Employment)> Amendment Act **2001**.
- (2) In this Act, the Social Security Act 1964¹ is called “the principal Act”.

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¹ 1964 No 136

Part 1
Preliminary provisions

2 Commencement

- (1) **Sections 4(2) to (6), 6 to 8, 11, 13, 14(1), 24, 27, 29, and 31 and the Schedule** come into force on **((26 August 2002)) 10 March 2003**.
- (2) Except as provided in **section 22(1)**, the rest of this Act comes into force on the day after the date on which this Act receives the Royal assent.

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3 Purpose

The purpose of this Act is—

- (a) to facilitate the movement of domestic purpose beneficiaries and widows beneficiaries from reliance on benefits to employment <as their parenting responsibilities and individual circumstances allow>; and 5
- (b) to introduce a requirement for those beneficiaries to prepare plans that will assist them to <work> <move> towards employment and to demonstrate commitment to the goals set out in those plans; and 10
- (c) to amend the provisions of the principal Act relating to the establishment and recovery of debts; and
- (d) to make miscellaneous amendments to the principal Act.

Part 2

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Amendments to principal Act

4 Interpretation

- (1) The definition of **income** in section 3(1) of the principal Act is amended by adding to paragraph (f) the following subparagraph: 20
 - “(xvii) any specified item or amount of income, or income from a specified source, that is declared not to be income for the purposes of this Act by regulations made under section 132.”
- (2) The definition of **part-time work-tested beneficiary** in section 3(1) of the principal Act is amended by repealing paragraph (b). 25

New (majority)

- (2A) Section 3(1) of the principal Act is amended by inserting, after the definition of **periodical**, the following definition: 30
 - “**personal development and employment plan** has the meaning specified in **section 600**.”

- (3) The definition of **work-tested beneficiary** in section 3(1) of the principal Act is amended by repealing paragraphs (c) and (d).

- (4) The definition of **work-tested benefit** in section 3(1) of the principal Act is amended by repealing paragraphs (b) and (c).
- (5) Section 3(1) of the principal Act is amended by repealing the definitions of **work-tested domestic purposes beneficiary** and **work-tested widow’s beneficiary**.

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Struck out (majority)

- (6) Section 3(1) of the principal Act is amended by adding the following definition:

“working towards employment plan has the meaning specified in **section 600.**”

5 Review of decisions

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- Section 10A(1) of the principal Act is amended—
- (a) by omitting from paragraph (a) the words “under this Act”; and
 - (b) by omitting from paragraph (b) the words “under that Act”.

15

6 Widows’ benefits

Section 21 of the principal Act is amended by repealing subsections (2A) to (2C), and substituting the following subsection:

- “(2A) A woman who receives a benefit under this section must—
- “(a) comply with a requirement under **section 60Q**; and
 - “(b) comply with any other obligation arising under any of **sections 60Q to 60S.**”

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7 Domestic purposes benefits for solo parents

Section 27B of the principal Act is amended by repealing subsections (2A) to (2C), and substituting the following subsection:

- “(2A) A person who receives a benefit under this section must—
- “(a) comply with a requirement under **section 60Q**;
 - “(b) comply with any other obligation arising under any of **sections 60Q to 60S.**”

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30

- 8 Domestic purposes benefits for women alone**
Section 27C of the principal Act is amended by repealing subsections (4) to (6), and substituting the following subsection:
- “(4) A woman who receives a benefit under this section must— 5
“(a) comply with a requirement under **section 60Q**:
“(b) comply with any other obligation arising under any of **sections 60Q to 60S**.”
- 9 New section 60GAA inserted**
The principal Act is amended by inserting, after section 60G, 10
the following section:
- “60GAA **Period for which independent youth benefit payable**
“(1) An independent youth benefit is paid in respect of a 5-day
working week.
“(2) The days of the week to be included in the working week of a 15
person granted an independent youth benefit are determined
by the chief executive after consultation with the beneficiary,
but must not include—
“(a) a Saturday except with the agreement of the bene-
ficiary; or 20
“(b) a Sunday.”
- 10 Voluntary unemployment or loss of employment through
misconduct, etc**
Section 60H(7) of the principal Act is amended by omitting
the expression “86(1A)”, and substituting the expression 25
“**86(1)**”.
- 11 New sections 60O to 60Z inserted**
The principal Act is amended by inserting, before the heading
“*Emergency benefits*” (which appears before section 61), the
following sections: 30
- “60O **Interpretation**
In **sections 60P to 60Z**, unless the context otherwise requires,—
“**chief executive** includes—
“(a) an officer of the department acting under a delegation
from the chief executive; and 35

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“(b) ~~(a person acting on behalf of the chief executive)~~ a person authorised by the chief executive to act on behalf of the chief executive (except in **sections 60U to 60Y**)

“<working towards employment plan> <personal development and employment plan> or plan means a plan that—

“(a) has goals—

“(i) to assist the beneficiary to <work> <move> towards employment; and

“(ii) designed to support the economic and social participation of the beneficiary who developed it:

Struck out

“(b) sets out a plan of action designed to meet the goals referred to in **paragraph (a)**, including the activities that will be taken to facilitate achievement of those goals by—

“(i) the beneficiary; and

“(ii) if agreed by the chief executive, the department:

“(c) includes a statement of the information and (if agreed by the chief executive) the assistance that the department will give to assist the beneficiary to do 1 or more of the following:

“(i) develop his or her capabilities; or

“(ii) improve his or her employment prospects; or

“(iii) obtain employment.

New

“(b) sets out a plan of action designed to meet the goals referred to in **paragraph (a)**, including the activities that will be undertaken by the beneficiary to facilitate the achievement of those goals:

“(c) includes a statement of the information the department will provide to assist the beneficiary to do 1 or more of the following:

“(i) achieve the goals referred to in **paragraph (a)**:

New

| | |
|--|----|
| “(ii) improve his or her capabilities (including employment capabilities): | |
| “(iii) obtain employment: | |
| “(d) includes, if agreed to by the chief executive, a statement of the assistance that the department will provide to assist the beneficiary to do 1 or more of the things described in paragraph (c)(i) to (iii) . | 5 |
| “60P Purpose of sections 60Q to 60Z | |
| The purpose of sections 60Q to 60Z is— | |
| “(a) to facilitate the movement of domestic purposes beneficiaries and widows’ beneficiaries into ongoing employment as their <family> <parenting> responsibilities and individual circumstances allow: | 10 |
| “(b) to provide opportunities for those beneficiaries to improve their capabilities for employment: | 15 |
| “(c) to improve social and economic outcomes for those beneficiaries and their dependent children. | |
| “60Q <Working towards employment plans><Personal development and employment plans> | |
| “(1) The chief executive may, from time to time, require a person to whom this section applies— | 20 |
| “(a) to attend and participate in 1 or more interviews with the chief executive for the purpose of identifying the matters referred to in subsection (2) , and for the purpose of carrying out any of the activities referred to in paragraph (b), paragraph (c), or paragraph (d) of this subsection: | 25 |
| “(b) to develop, in co-operation and with the assistance of the chief executive, a <working towards employment plan> <personal development and employment plan> for the person based on the matters referred to in subsection (2) : | 30 |
| “(c) to co-operate with the chief executive in the conduct of an annual review of the person’s <working towards employment plan> <personal development and employment plan>: | 35 |

- “(d) to develop, in co-operation and with the assistance of the chief executive, a new plan for the person, if(as a result of a review of the person’s) <working towards employment plan,> (personal development and employment plan,>)) (the chief executive considers the person requires a new) <working towards employment plan> (plan) the chief executive considers that, because of a substantial change to the person’s circumstances, the person’s existing plan is inappropriate and the person requires a new plan. 5 10
- “(2) The matters referred to in **subsection (1)** are—
- “(a) any features of the person’s individual <or family> circumstances <or parenting responsibilities> that may <be a barrier to the person obtaining employment> <affect the ability of the person to obtain employment>; 15 and
- “(b) any specific constraints arising from those circumstances <or responsibilities> that the person may have in obtaining and sustaining employment; and
- “(c) any practical assistance the person requires to enable the person to support himself or herself through employment; and 20
- “(d) the person’s skills and experience (including those developed through unpaid work) that are relevant to facilitating the most <cost-effective> <effective> path 25 to enable the person to obtain employment.
- “(3) For the purposes of this section and **sections 60R to 60Z**, unless the context otherwise requires,—
- “(a) a person who is required to develop a <working towards employment plan> <personal development and employment plan> does not complete his or her development of the plan unless the person signs it: 30
- “(b) a document developed by any person as his or her <working towards employment plan> <personal development and employment plan> is not a <working towards employment plan> <plan> unless he or she signs it: 35
- “(c) a <working towards employment plan> <personal development and employment plan> developed in accordance with **section 60W(3)** or **section 60Y(4)(b)** is, 40

unless the context otherwise requires, to be treated as a plan developed under **subsection (1)(d)**.

- “(4) A <working towards employment plan> <personal development and employment plan> does not create any rights or obligations that are enforceable in a court or tribunal. 5
- “(5) Nothing in **subsection (4)** affects section 10A or sections 12J to 12R.
- “(6) This section applies to a person who is the recipient of—
- “(a) a benefit under section 21 (the widows’ benefit);
 - “(b) a benefit under section 27B (the domestic purposes benefit for solo parents); 10
 - “(c) a benefit under 27C (the domestic purposes benefit for women alone).
- “60R **Developing and reviewing <working towards employment plans> <personal development and employment plans>** 15
- “(1) A <working towards employment plan> <personal development and employment plan> should be—
- “(a) developed by the beneficiary with the assistance of the chief executive;
 - “(b) a plan that is acceptable to the beneficiary and that the beneficiary is willing to sign. 20
- “(2) If, despite reasonable efforts by the chief executive, the beneficiary does not co-operate in the prompt development of a <working towards employment plan> <personal development and employment plan> or does not sign it, the chief executive may conclude that the beneficiary has failed to comply with a requirement under **section 60Q(1)**. 25
- “(3) At any time after a <working towards employment plan> <personal development and employment plan> is signed, a beneficiary or, if the beneficiary agrees, the chief executive, may ask for a review of the plan, but, until a review is completed, the beneficiary must demonstrate commitment to the plan in its current form. 30
- “(4) If a beneficiary asks for, or agrees to, a review of the beneficiary’s <working towards employment plan> <personal development and employment plan>,— 35

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- “(a) the beneficiary, in co-operation and with the assistance of the chief executive, must review the plan as soon as practicable; and

Struck out

- “(b) the beneficiary may confirm or amend the plan in writing, signed by the beneficiary.

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New

- “(b) the beneficiary—
 “(i) may confirm the plan by signing it; or
 “(ii) may amend the plan by signing a revised version of it that includes the amendments.

“60S **Beneficiary must demonstrate commitment to <personal development and employment> plan at annual review** 10

“(1) This section applies to a beneficiary who has signed a <working towards employment plan> <personal development and employment plan> developed in accordance with a request under **60Q(1)**. 15

“(2) The chief executive must review the <personal development and employment> plan annually with the beneficiary.

“(3) If the plan has been ~~((replaced by a new))~~ <working towards employment plan> ~~((<plan> developed under **section 60Q(1)(d)**, the chief executive must review that plan))~~ amended or replaced by a new plan, the chief executive must review that amended or new plan when the chief executive would have reviewed the original plan under **subsection (2)**. 20

“(4) At the annual review of the <personal development and employment> plan, the chief executive may require the beneficiary to demonstrate that, ~~((during the preceding year, the beneficiary has had a commitment to the goals set out in the plan and in any other plan in effect during that year))~~ during the period under review, the beneficiary has had a commitment to the goals set out in that plan and in any other plan in effect during that period. 25
30

Struck out (majority)

- “(5) The chief executive determines whether a beneficiary has demonstrated a commitment to achieving the goals set out in a plan during any period by considering the overall response of the beneficiary to those goals and to the action plan included in the plan, having regard to the extent to which the beneficiary has— 5
- “(a) undertaken the activities set out in that plan; or
 - “(b) undertaken any other activities relevant to the goals set out in that plan.

New (majority)

- “(5) The chief executive determines whether a beneficiary has demonstrated a commitment to achieving the goals set out in a personal development and employment plan during any period by considering the overall response of the beneficiary to those goals and to the action plan included in the plan having regard to,— 10 15
- “(a) the extent to which the beneficiary has—
 - “(i) undertaken the activities set out in that plan; or
 - “(ii) undertaken any other activities relevant to the goals set out in that plan; and
 - “(b) if the beneficiary has failed to undertake any or all of the activities set out in the plan, whether those activities were realistically achievable during the period under consideration. 20

New

- “(6) The annual review of each personal development and employment plan required by this section must be undertaken,— 25
- “(a) in the case of the first review, within a period beginning not less than 8 months and ending not more than 19 months after the date on which the plan, or, if the original plan has been amended or replaced, the original plan, was signed: 30

New

“(b) in the case of each subsequent review, within a period beginning 8 weeks before and ending 4 weeks after the anniversary of the first review.

- “60T **Department must explain rights and obligations in relation to <working towards employment plans> <personal development and employment plans>** 5
- The chief executive must take reasonable and appropriate steps to make every beneficiary aware, before the beneficiary signs a <working towards employment plan> <personal development and employment plan>, of— 10
- “(a) the beneficiary’s obligations that arise from payment of a benefit and the beneficiary’s right to assistance to develop or review a <working towards employment plan> <plan>; and
- “(b) the effect and consequences of signing a <working towards employment plan> <plan>; and 15
- “(c) the consequences of failure to comply with a requirement under **section 60Q(1)** or to demonstrate commitment to the goals of the plan and, in particular, the sanctions that may be imposed under **section 60Y**; and 20
- “(d) the beneficiary’s right under **section 60R(3)** to ask for a review of his or her <working towards employment plan> <plan>; and
- “(e) the beneficiary’s right under sections 10A and 12J to review and appeal decisions relating to the <working towards employment plan> <plan>. 25
- “60U **Failure to comply with <working towards employment plan> <personal development and employment plan> obligations**
- “(1) The chief executive must impose the sanctions set out in **section 60Y** on a beneficiary if the chief executive considers that a beneficiary has, without a good and sufficient reason,— 30
- “(a) failed to comply with a requirement under **section 60Q(1)**;
or

- “(b) failed to demonstrate commitment to the goals in the beneficiary’s *<working towards employment plan>* *<personal development and employment plan>*.”
- “(2) Before determining that there is a failure by the beneficiary and that the failure is a failure without good and sufficient reason, the chief executive must—
- 5
- “(a) review the beneficiary’s *<personal development and employment>* plan (if the beneficiary has one) to determine whether it is appropriate; and
- “(b) apply the procedure in **section 60V**. 10
- “(3) For the purposes of this section and **sections 60V and 60W**, a beneficiary has a good and sufficient reason for failing to demonstrate commitment to achieving the goals set out in a *<personal development and employment>* plan if—
- “(a) the undertaking by the beneficiary of any activities set out in the plan was dependent on the department taking any action or providing any assistance specified in the plan; and 15
- “(b) the department did not take that action or supply that assistance, or did not do so to the extent or in the manner specified in the plan. 20
- “(4) **Subsection (3)** does not limit the circumstances in which a beneficiary has a good and sufficient reason for failing to demonstrate commitment to the goals set out in a *<personal development and employment>* plan. 25
- “60V **Procedure for determining whether failure is without good and sufficient reason**
- “(1) This section applies if the chief executive is considering whether sanctions must be imposed on a beneficiary under **section 60Y**. 30
- “(2) If this section applies, the chief executive must set a review period of 30 working days during which the chief executive must give the beneficiary (and any support person of the beneficiary’s choice) an opportunity to meet with the chief executive. 35
- “(3) The purposes of the meeting and review period under **subsection (2)** are—

- “(a) to ascertain whether there is a failure by the beneficiary and, if so, the reasons for the beneficiary’s failure, and whether those reasons are good and sufficient reasons:
- “(b) in the case of a failure to comply with a requirement under **section 60Q(1)**, to give the beneficiary a further opportunity to remedy the failure within that period: 5
- “(c) in the case of a failure to demonstrate commitment to the goals set out in the beneficiary’s <working towards employment plan> <personal development and employment plan>, to give the beneficiary the opportunity to co-operate in developing a new <working towards employment plan> <plan> within that period. 10
- “60W Failure without good and sufficient reasons**
- “(1) If, during the review period set under **section 60V(2)**, the beneficiary fails to take advantage of the opportunity given to him or her, and the chief executive considers that the reasons (if any) given by the beneficiary for the failure to remedy an initial failure are not good and sufficient reasons, the chief executive may,— 15
- “(a) in the case of a beneficiary who has failed to comply with a requirement under **section 60Q(1)**, require the beneficiary to remedy the failure to comply within a further period of 20 working days; or 20
- “(b) in the case of a beneficiary who has failed to demonstrate commitment to the goals in the beneficiary’s <working towards employment plan> <personal development and employment plan>, require the beneficiary to undertake to the satisfaction of the chief executive, within a further period of 20 working days, a specified activity that the chief executive considers suitable. 25 30
- “(2) If the beneficiary does not comply with a requirement under **subsection (1)(a)** within the required period, the chief executive may consider that the beneficiary has failed without a good and sufficient reason to comply with a requirement under **section 60Q(1)**. 35
- “(3) If the beneficiary does not comply with a requirement under **subsection (1)(b)** within the required period, the chief executive

may consider the beneficiary has failed to demonstrate commitment to the goals in the beneficiary's <working towards employment plan> <plan> unless, within the period, the beneficiary develops a new <working towards employment plan> <personal development and employment plan>. 5

“(4) In this section, **specified activity**—

“(a) means—

“(i) an activity in the beneficiary's current <working towards employment plan> <personal development and employment plan>; or 10

“(ii) a pre-employment activity (being an activity designed to prepare a person for employment); but

“(b) does not include any activity that requires the beneficiary to seek employment or undertake any work. 15

“60X **Procedure for imposing sanctions**

“(1) This section applies if a sanction is to be imposed on a beneficiary under **section 60Y**.

“(2) If this section applies, the chief executive must not reduce a benefit payable to a beneficiary unless the chief executive has first given the beneficiary written notice— 20

“(a) stating that the beneficiary has failed to comply with a specified obligation under this Act; and

“(b) specifying the nature of that failure; and

“(c) stating that, because of that failure, the chief executive is reducing the benefit payable to the beneficiary; and 25

“(d) specifying a date on which the reduction is to take effect, and the nature and duration of the reduction; and

“(e) stating that the beneficiary has 10 working days from the giving of the notice to dispute the reduction; and 30

“(f) advising the beneficiary to contact the department if the beneficiary wants to dispute or discuss the decision to reduce the benefit; and

“(g) containing a clear statement of the beneficiary's right, under section 10A, to apply for a review of the decision, and of the procedure for applying for a review. 35

“(3) Section 114 applies with all necessary modifications to notices under this section.

“60Y Sanctions for failure to comply with obligations in relation to <working towards employment plan> <personal development and employment plan>

- “(1) The sanctions that the chief executive must apply in respect of a failure under **section 60U** are:
 - “(a) the person’s benefit must be reduced by 20% until the person complies; and
 - “(b) if, after 4 weeks from the <date on which the reduction under **paragraph (a)** takes effect,> ((<applicable date,>)) date on which the reduction under **paragraph (a)** takes effect, the person has not complied, the benefit must be reduced by a further 30% (so that the total reduction is 50%) until the person complies.
- “(2) A reduction under **subsection (1)** applies to the rate of benefit payable to the beneficiary after any abatement on account of income.
- “(3) The reduction of the benefit must not take effect before the close of the 10 working days specified in the notice under **section 60X(2)(e)**.

Struck out

New (majority)

- “(3A) For the purposes of **subsection (1)(b)**, the **applicable date** is—
 - “(a) the date on which the reduction under **subsection (1)(a)** takes effect; or
 - “(b) in the case of a person to whom **section 60Z(4)** applies, the date on which that person was entitled to receive the benefit without reduction after agreeing to comply under **section 60Z(2)**.
- “(4) For the purposes of this section and **section 60Z**, a person **complies** if the person—
 - “(a) remedies the relevant failure; or
 - “(b) if the person has been required to undertake an activity specified by the chief executive, undertakes that activity to the satisfaction of the chief executive, or develops a

new <working towards employment plan> <personal
development and employment plan>.

New

“(5) This section is subject to **section 60Z**.”

“60Z **Effect of compliance <or agreement to comply>**

“(1) If a person complies, the reduction applied to the person’s benefit ceases and the person is entitled to be paid the benefit at the rate otherwise payable on and after the date that the person’s benefit was first reduced under **section 60Y**.”

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New (majority)

“(2) Subject to **subsection (4)**, if a person other than a person to whom sanctions are being applied under **subsection (4)(a)** agrees to comply within a period set by the chief executive, the reduction applied to the person’s benefit ceases and the person is entitled to be paid the benefit at the rate otherwise payable on and after the date that the person’s benefit was first reduced under **section 60Y**.”

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“(3) The chief executive must give to every person to whom **subsection (2)** applies a notice that—

“(a) confirms the agreement under **subsection (2)**; and

“(b) states the period for compliance set under **subsection (2)** (which must be a period of not less than 10 working days from the date the notice is given in accordance with section 114, which applies with all necessary modifications).”

20

“(4) If a person who has agreed to comply fails to do so within the period set under **subsection (2)** and the chief executive considers that the person does not have a good and sufficient reason for the failure,—

25

New (majority)

Struck out

“(a) the chief executive must apply the sanctions set out in **section 60Y(1)**:

New

“(a) the chief executive must apply the sanctions set out in **section 60Y(1)**, which applies with the following modifications: 5

“(i) if the person’s benefit was subject to a reduction of 20% under **section 60Y(1)(a)** immediately before the reduction ceased under **subsection (2)**, that benefit must again be reduced by 20% under **section 60Y(1)(a)** and, if the person has not complied after 4 weeks from the date on which that subsequent reduction takes effect, the amount of that reduction must be increased under **section 60Y(1)(b)**: 10

“(ii) if the person’s benefit was subject to a reduction of 50% under **section 60Y(1)(b)** immediately before the reduction ceased under **subsection (2)**, that benefit must again be reduced by 50% under **section 60Y(1)(b)**: 15

“(b) the chief executive is not required to comply with **sections 60V to 60X** before applying those sanctions, and **section 60Y(3)** does not apply.” 20

Struck out

“(c) the appropriate rate of reduction under **section 60Y(1)** is the rate of reduction that applied immediately before that reduction ceased under **subsection (2)**, unless a higher rate of reduction is required under **section 60Y(1)(b)**.” 25

12 Interpretation

Section 61E(1) of the principal Act is amended by repealing the definition of **cash assets**, and substituting the following definition:

- “**cash assets**— 5
- “(a) means—
- “(i) money saved, invested, or banked with a bank or other institution:
- “(ii) money invested in securities, bonds, or debentures, or advanced on mortgage: 10
- “(iii) money invested in shares in a partnership or limited liability company or other incorporated or unincorporated body; but
- “(b) does not include any specified item or amount of cash assets, or cash assets of a specified kind, that is declared not to be cash assets for the purposes of this Act by regulations made under section 132”. 15

New

12A Mode of ascertaining annual income for benefit purposes

- (1) The heading to section 64 of the principal Act is amended by omitting the word “**annual**”. 20
- (2) Section 64(2A) of the principal Act is amended—
 - (a) by omitting the words “the beneficiary”, and substituting the words “a person”:
 - (b) by omitting the word “beneficiary’s”, and substituting the word “person’s”. 25
- (3) Section 64 of the principal Act is amended by inserting, after subsection (2A), the following subsection:
 - “(2B) For the purposes of determining a person’s weekly income under **subsection (2A)**, the chief executive may determine the period or periods to which any income relates, having regard to— 30
 - “(a) the extent to which it was earned in that period or those periods; or
 - “(b) the extent to which any other entitlement to it arose in, or in respect of, that period or those periods; or 35

New

“(c) the period or periods for which it was otherwise received, acquired, paid, provided, or supplied.”

- 13 Effect of absence of beneficiary from New Zealand**
Section 77 of the principal Act is amended by omitting from subsections (2) and (3) the words “or a widow’s benefit or domestic purposes benefit”. 5
- 14 Commencement of benefits**
- (1) Section 80(2)(b) of the principal Act is amended by omitting the words “a domestic purposes benefit under section 27G of this Act”, and substituting the words “a widow’s benefit, a 10 domestic purposes benefit”.
- (2) Section 80 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:
- “(4) If the applicant is subject to a non-entitlement period,— 15
- “(a) a work-tested benefit granted conditionally under section 123B is subject to a stand down and commences on a date calculated in accordance with section 80BA if— 15
- “(i) the applicant is subject to the non-entitlement period because of the application of section 60H; 20 and
- “(ii) that section applies to the applicant because he or she is a person described in section 60H(2)(a):
- “(b) any other work-tested benefit commences on the later of— 25
- “(i) the date the applicant became entitled to receive it; or
- “(ii) the date the application for it was received.”
- 15 Delayed redundancy and retirement payments**
Section 80BB(4) of the principal Act is amended by omitting the expression “86(1A)”, and substituting the expression “86(1)”. 30

- 16 Seasonal workers made redundant after benefit commences**
Section 80BC(2) of the principal Act is amended by omitting the expression “86(1A)”, and substituting the expression “**86(1)**”. 5
- 17 Ending of benefits**
Section 80BD(5) of the principal Act is amended by—
(a) repealing paragraph (a); and
(b) omitting from paragraph (b) the word “other”.
- 18 Payment of benefits** 10
Section 82(6) of the principal Act is amended by omitting the expression “86(1D)”, and substituting the expression “**86(1)**”.
- 19 Apportionment of benefit between spouses**
Section 83(2) of the principal Act is amended by omitting the words “section 15(2) of this Act”, and substituting the words “section 12(2) of the New Zealand Superannuation Act 2001”. 15
- 20 New section 85A inserted**
The principal Act is amended by inserting, before section 86, the following section: 20
- “**85A Payments that are debts due to the Crown**
The following payments or other sums are debts due to the Crown:
“(a) any penalty payable under this Act:
“(b) any benefit paid conditionally or provisionally under this Act that a person has become liable to repay (by direction of the chief executive or otherwise): 25
“(c) any advance payment of a benefit made to a person under section 82(6):
“(d) any money paid to or for the credit of a person as a grant of special assistance under a welfare programme approved under section 124(1)(d) that is— 30
“(i) paid as a recoverable grant of assistance; or
“(ii) otherwise recoverable from that person under the terms and conditions of the programme: 35

- “(e) any amount described by this Act as a debt due to the Crown from the person:
- “(f) a sum (an **overpayment**), paid or advanced under this Act or the Social Welfare (Transitional Provisions) Act 1990 or Part 1 of the New Zealand Superannuation Act 2001 to or for the credit of a person— 5
- “(i) that is in excess of the amount to which the person is entitled; or
- “(ii) to which the person has no entitlement.”
- 21 Recovery of payments made in excess of authorised rates** 10
- (1) Section 86 of the principal Act is amended by repealing subsections (1) to (1D), and substituting the following subsections:
- “(1) The chief executive, in order to recover a debt referred to in **section 85A**, may— 15
- “(a) ~~(recover a debt referred to in **section 85A** by way of proceedings taken)~~ bring proceedings in the name of the chief executive; or
- “(b) deduct all or part of that debt from any amount payable to that person by the department as a benefit or a student allowance; or 20
- “(c) in the case of a debt referred to in **section 85A(d)**, deduct all or part of that debt from any payment of a grant of special assistance under a welfare programme approved under section 124(1)(d). 25
- “(1A) **Subsection (1)** is subject to **subsections (9A) and (9B)**, and to any regulations made under **section 132G**.
- “(1B) Nothing in section 94B of the Judicature Act 1908 or any rule of law relating to payment by or under mistake prevents recovery of a debt under **subsection (1)**.” 30
- (2) Section 86(1E) of the principal Act is amended by omitting the words “any of subsections (1) to (1D)”, and substituting the expression “**subsection (1)**”.
- (3) Section 86(2) of the principal Act is amended by omitting the words “any of subsections (1) to (1C) of this section”, and substituting the expression “**section 85A**”. 35
- (4) Section 86 of the principal Act is amended by repealing subsection (9A), and substituting the following subsections:

- “(9A) The chief executive may not recover ~~(any part)~~ any sum comprising that part of a debt that was caused ~~<or contributed to by an error for which the debtor is not responsible if>~~ <wholly or partly by an error to which the debtor did not intentionally contribute if>— 5
- “(a) the debtor—
- “(i) received ~~(the sum comprising the debt)~~ that sum in good faith; and
 - “(ii) changed his or her position in the belief that he or she was entitled to ~~(the sum comprising the debt)~~ that sum and would not have to pay or repay that sum to the chief executive; and 10
- “(b) it would be inequitable in all the circumstances, including the debtor’s financial circumstances, to permit recovery. 15
- “(9B) In **subsection (9A), error**—
- “(a) means—
- “(i) the provision of incorrect information ~~<in writing>~~ by an officer of the department;
 - “(ii) any erroneous act or omission of an officer of the department that occurs during an investigation under section 12: 20
 - “(iii) any other erroneous act or omission of an officer of the department; but

Struck out (majority)

- “(b) does not include— 25
- “(i) the simple act of making a payment to which the recipient is not entitled if that act is not caused, or contributed to, by any erroneous act or omission of an officer of the department;
 - “(ii) the provision of incorrect or incomplete information by an officer of the department, if the information is conveyed verbally and is not of a kind required to be conveyed in writing.” 30

New (majority)

“(b) does not include the simple act of making a payment to which the recipient is not entitled if that act is not caused, wholly or partly, by any erroneous act or omission of an officer of the department.”

- 22** <*Section 86(1E) and (1F) repealed*><**Recovery of payments made in excess of authorised rates**> 5
- (1) **Subsection (2)** comes into force on a date to be appointed by the Governor-General by Order in Council.

Struck out (majority)

- (2) Section 86(1E) and (1F) of the principal Act (as amended by **section 21(2)** of this Act) are repealed. 10

New (majority)

- (2) Section 86 of the principal Act (as amended by **section 21(2)** of this Act) is amended by repealing subsections (1E) and (1F).
- 23 Application and obligations of work test** 15
- Section 102(6) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:
- “(aa) in the case of a person granted an independent youth benefit (other than a person who is enrolled in a course of secondary instruction), on the same days as are included in the person’s working week under **section 60GAA**; and”. 20
- 24 Section 104 repealed**
- Section 104 of the principal Act is repealed.

25 Effect of participation in certain activities on non-entitlement period

Section 123B(7) of the principal Act is amended by omitting the expression “86(1A)”, and substituting the expression “**86(1)**”.

5

New (majority)

25A Application of Health and Safety in Employment Act 1992 and Human Rights Act 1993

Section 123C of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

- “(1) In this section, **person A** is a person— 10
- “(a) who, in accordance with his or her job seeker agreement or under section 122 or 123B, is doing work as part of a job seeker activity or an activity in the community; or
 - “(b) who is a beneficiary and, in accordance with a personal development and employment plan or otherwise, is doing work as part of an employment related activity arranged by the department.” 15

25B New section 132AA inserted

The principal Act is amended by inserting, after section 132, the following section: 20

“132AA Regulations exempting items from treatment as income or cash assets may have retrospective effect

- “(1) This section applies to regulations made under **section 132** that— 25
- “(a) declare items or amounts of income or income from a specified source not to be income; or
 - “(b) declare items of cash assets or cash assets of a specified kind not to be cash assets.
- “(2) Any regulations to which this section applies have effect in respect of any income or cash assets specified in the regulations on and after any date specified in the regulations (which may be a date before, on, or after the date on which the regulations are made).” 30

26 New section 132G inserted

The principal Act is amended by inserting, after section 132F, the following section:

- “132G **Regulations providing for remittance or suspension of debt** 5
- “(1) The Governor-General may, from time to time, by Order in Council, make regulations requiring or permitting—
- “(a) the recovery of amounts recoverable under **section 86(1) to (1B)** and (3) to (5) to be suspended; or
- “(b) those amounts to be remitted. 10
- “(2) Regulations under **subsection (1)** may require or permit the suspension of recovery of amounts, or the remission of amounts,—
- “(a) of a particular kind or from persons of a particular kind:
- “(b) of a particular value (which may differ between persons of a particular kind): 15
- “(c) in the case of suspension, for periods that may differ for amounts of a particular kind or value, or between persons of a particular kind.
- “(3) Regulations may not be made under **subsection (1)** unless the Minister advises that he or she is satisfied that the regulations are likely to— 20
- “(a) prevent accumulation of debt by any category of beneficiary and assist those beneficiaries to reduce their levels of debt while on a benefit; or 25
- “(b) assist any category of beneficiary to move from dependence on a benefit to self-support through employment by ensuring that those beneficiaries do not face increasing benefit debt repayments when they enter the workforce; or 30
- “(c) provide a positive incentive for beneficiaries to enter employment or stay in employment; or
- “(d) achieve more than 1 of the objectives set out in **paragraphs (a) to (c)**.
- “(4) This section does not limit the power to make regulations conferred by section 132.” 35

27 New Schedules 3 and 16 substituted

The principal Act is amended by repealing Schedules 3 and 16, and substituting the Schedules 3 and 16 set out in the Schedule.

Part 3

5

Transitional provisions, amendments affecting principal Act, and consequential amendments to other enactments

Transitional provisions

28 Transitional provisions relating to review of decisions

10

No application for a review made under section 10A of the principal Act before the commencement of **section 5** of this Act is invalid by reason that the decision to which the application relates was made under a delegation pursuant to an enactment or authority (other than an enactment referred to in section 10A(1) of the principal Act as it read before the commencement of **section 5** of this Act).

15

29 Transitional provisions for cessation of work testing for certain benefits

(1) **Subsection (2)** applies to a person who, immediately before this section comes into force, is in receipt of a widow's benefit or a domestic purposes benefit (other than a domestic purposes benefit granted under section 27G of the principal Act).

20

(2) On the date that this section comes into force,—

(a) a person to whom this subsection applies—

25

(i) ceases to be subject to the work test or, as the case requires, the obligation to comply with section 60HA of the principal Act; and

(ii) ceases to be subject to any sanctions to which the person was subject under section 117 of the principal Act; and

30

(b) a benefit granted to a person to whom this subsection applies,—

(i) if granted to the person under section 60H(6)(b) of the principal Act, ceases to be subject to the condition referred to in that paragraph; and

35

- (ii) if granted to the person under section 123B of the principal Act, ceases to be subject to the condition referred to in subsection (4) of that section.
- (3) **Subsection (4)** applies to a person who, immediately before this section came into force, was a person who had applied for a widow's benefit or a domestic purposes benefit and was subject to a non-entitlement period under section 60H(4) of the principal Act. 5
- (4) On the date that this section comes into force, a person to whom this subsection applies— 10
 - (a) ceases to be subject to the non-entitlement period, and that period lapses; and
 - (b) is entitled to be granted the benefit applied for if he or she otherwise qualifies for it.
- (5) Nothing in **subsection (4)** limits the application of section 80BA of the principal Act. 15

New

29A Transitional provision relating to mode of ascertaining annual income for benefit purposes

- (1) For the purpose of determining the validity of any determination or purported determination made under section 64(2A) of the principal Act on or after 31 July 1996 but before the date on which **section 12A** of this Act comes into force, section 64 of the principal Act must be read as if it had incorporated the amendments made by **section 12A** of this Act on and after 1 July 1996. 20
- (2) **Subsection (1)**— 25
 - (a) does not apply in respect of any application, appeal, or proceedings of a kind specified in **subsection (3)** that alleged an invalidity in a determination or purported determination under section 64(2A) of the principal Act and was made or filed, as the case may be, before **11 September 2002**; and 30
 - (b) does not affect the rights of any person who made an application to which **paragraph (a)** applies, or was a party to an appeal or other proceedings to which **paragraph (a)** applies, under— 35

New

-
- (i) any decision, or any judgment of a court, in relation to that application or appeal or those proceedings, as the case may be; or
- (ii) any decision or judgment given on appeal from that decision or judgment. 5
- (3) **Subsection (2)(a)** applies in respect of—
- (a) an application for review under section 10A of the principal Act;
- (b) an appeal under section 12J, section 12Q, or section 12R of the principal Act. 10
- (c) any other proceedings.
- 29B Transitional provision relating to reviewing of payments made in excess of authorised rates**
- (1) **Subsection (2)** applies to any sum that the chief executive has, before the commencement of this section, determined is recoverable under any of section 86(1) to (1D) of the principal Act. 15
- (2) Section 86(9A) of the principal Act, as it read before the commencement of **section 21** of this Act, continues to apply to any sum to which this subsection applies as if **section 21** of this Act had not been enacted. 20
- (3) This section overrides **section 30**.
-
- 30 Transitional provision relating to recovery of debt**
- If, immediately before the commencement of this section, any amount is recoverable from any person under any of section 86(1) to (1D) of the principal Act (as those subsections read immediately before the commencement of **section 21** of this Act), after the commencement of this section— 25
- (a) that amount continues to be recoverable under **section 86(1)** of the principal Act (as substituted by **section 21(1)**); and 30
- (b) any proceedings taken in respect of its recovery before the commencement of this section continue as if

brought under **section 86(1)(a)** of the principal Act (as so substituted).

New

Repeal of amendments to principal Act yet to come into force

- | | | |
|------------|--|----------|
| 30A | Amendment to Health and Disability Services (Safety) Act 2001 | 5 |
| | Schedule 2 of the Health and Disability Services (Safety) Act 2001 is amended by omitting the items relating to section 69F of the Social Security Act 1964. | |

Consequential amendments to other enactments 10

- | | | |
|-----------|--|----|
| 31 | Exemption from work test: work-tested spouses, domestic purposes beneficiaries, and widows | |
| (1) | The heading to regulation 5 of the Social Security (Exemptions Under Section 105) Regulations 1998 (SR 1998/270) is amended by omitting the words “, and domestic purposes beneficiaries, and widows ”. | 15 |
| (2) | Regulation 5(1) of the Social Security (Exemption Under Section 105) Regulations 1998 is amended by omitting the words “, a work-tested domestic purposes beneficiary, or a work-tested widow’s beneficiary”. | 20 |

Schedule s 27
New Schedules 3 and 16 of principal Act substituted

Schedule 3 ss 21, 24
Rates of widows' benefits

| | | | | |
|---|-----|--|---|----|
| 1 | (a) | To a beneficiary with 1 dependent child | <\$221.37> <\$225.40> a week, subject to Income Test 1 | 5 |
| | (b) | To a beneficiary with 2 or more dependent children | <\$241.51> <\$245.91> a week, subject to Income Test 1 | 10 |
| 2 | | To a beneficiary without any dependent children | <\$160.99> <\$163.92> a week, subject to Income Test 1 | 15 |
| 3 | | For the purposes of clause 1 , the chief executive may, in his or her discretion, disregard up to \$20 a week of the beneficiary's personal earnings used to meet the cost of child care for any of the beneficiary's dependent children. | | 20 |

ss 27B, 27C, 27H

Schedule 16 Rates of domestic purposes benefits

| | | | | |
|---|-----|--|---|----|
| 1 | (a) | To a beneficiary with 1 dependent child | $\langle \$221.37 \rangle$ $\langle \$225.40 \rangle$ a week, subject to Income Test 1 | 5 |
| | (b) | To a beneficiary with 2 or more dependent children | $\langle \$241.51 \rangle$ $\langle \$245.91 \rangle$ a week, subject to Income Test 1 | 10 |
| 2 | | To a beneficiary without any dependent children | $\langle \$160.99 \rangle$ $\langle \$163.92 \rangle$ a week, subject to Income Test 1 | 15 |
| 3 | | For the purposes of clause 1 , the chief executive may, in his or her discretion, disregard up to \$20 a week of the beneficiary's personal earnings used to meet the cost of child care for any of the beneficiary's dependent children. | | 20 |

Legislative history

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|-----------------------|---|
| 3 December 2001 | Introduction (Bill 178-1) |
| 18 December 2001 | First reading and referral to Social Services Committee |
| 27 May 2002 | Reported from Social Services Committee (Bill 178-2) |
| 10 September 2002 | Second reading |
| 12, 17 September 2002 | Committee of the whole House (Bill 178-3) |
