

Social Security (Residence of Spouses) Amendment Bill

Government Bill

Explanatory note

General policy statement

Section 74A(1) of the Social Security Act 1964 provides that persons who are unlawfully resident or present in New Zealand, or persons who are lawfully resident or present but only under a visitor's permit, a limited purpose permit, a temporary work permit, or a study permit, are not entitled to receive benefits. Subsection (2) of the section relates to married persons and provides that any benefit paid to an applicant who is lawfully resident or present but married to a person who is unlawfully resident or present is to be granted at the rate as if the applicant is not married (ie, at the single or sole parent rate). This section reflects the policy that social security benefits, which are funded out of general taxation, are intended for the benefit of people living permanently in New Zealand and are not for those who are here temporarily.

The problem is that, unlike subsection (1), subsection (2) does not also apply where the partner is "lawfully but temporarily" in New Zealand under one of the permits mentioned. This means that the partner can still be included in the applicant's benefit, and thus can indirectly receive part of the applicant's benefit.

This Bill will close this loophole. Clause 3 of the Bill amends subsection (2) of section 74A to make it clear that where a married person applies for a benefit and his or her partner is lawfully but temporarily resident or present in New Zealand under one of the permits mentioned, the benefit will only be paid at the unmarried rate. In addition, the income and assets of both partners will be taken into account in assessing the rate of the benefit. This will bring the

treatment of spouses who are in New Zealand lawfully but temporarily into line with the treatment of spouses here unlawfully.

Non-resident partners will be required to apply for, and be granted, a residence permit before their New Zealand resident spouse will be entitled to be granted the married rate of benefit.

This provision will bring New Zealand practice into line with that of Australia. Persons lawfully in New Zealand who have or are applying for refugee status, and applicants for residence permits who are compelled to remain in New Zealand through some unforeseen circumstances will not be affected.

The change brought about by this Bill will apply only to applicants for benefits after the Bill becomes law. Existing benefits paid to applicants, who are married to people lawfully but temporarily in New Zealand under one of the permits mentioned, will not be affected.

Clause by clause analysis

Clause 1 is the Title clause. The Bill amends the Social Security Act 1964 (“the principal Act”).

Clause 2 provides that the Act comes into force on 1 July 2001.

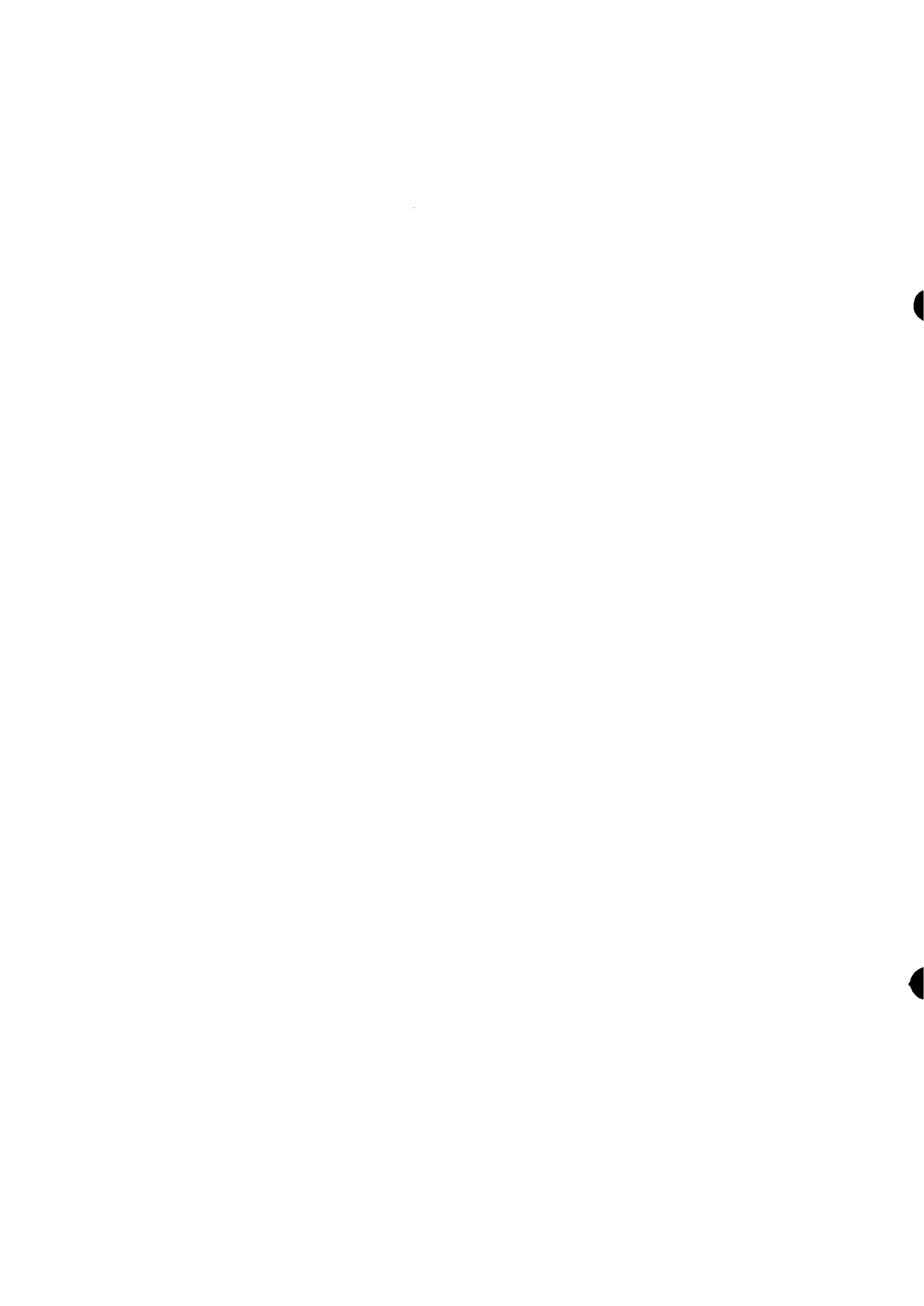
Clause 3 amends section 74A of the principal Act. Subclause (1) of that section provides that a person is not entitled to a benefit if he or she is unlawfully in New Zealand, or is in New Zealand only by virtue of one of the permits listed in paragraph (b) of subclause (1). The permits are: a visitor’s permit, a limited purpose permit, a temporary work permit, and a permit to study at a school or tertiary institute. However, this exclusion does not apply to a person who is described in any of paragraphs (c) to (e), namely—

- a person lawfully present in New Zealand who is awaiting the outcome of an application for refugee status;
- a person who has refugee status in New Zealand;
- a person who has applied for a residence permit and is compelled to stay in New Zealand through some unforeseen circumstances.

Subclause (2) of section 74A presently provides that the rate of benefit granted to a person who is married to a person who is “unlawfully resident or present” in New Zealand is the unmarried rate, rather the married rate. It also provides that the income and

assets of both the applicant and his or her spouse must be taken into account when assessing the rate payable.

The amendment effected by *clause 3* repeals subsection (2), and substitutes 4 new subsections. The current position is retained for people who apply for a benefit before this Act comes into force on 1 July 2001. The substantive change affects only people who apply for a benefit after this Act commences, and is contained in *new subsections (3)(b)(ii) and (4)*. The effect of these provisions is that a married person who applies for a benefit must be paid at the unmarried rate if the person's spouse is either unlawfully in New Zealand or (and this is the new part) is lawfully in New Zealand but only by virtue of one of the permits listed in subsection (1)(b). *New subsection (4)* then provides an exemption for certain spouses, as is provided in subsection (1)(c) to (e).



Hon Steve Maharey

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Contents

1	Title	3	Persons unlawfully resident or present in New Zealand
2	Commencement		

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Social Security (Residence of Spouses) Amendment Act **2001**.
- (2) In this Act, the Social Security Act 1964¹ is called “the principal Act”. 5
- ¹ 1964 No 136

2 Commencement

This Act comes into force on **1 July 2001**.

3 Persons unlawfully resident or present in New Zealand

Section 74A of the principal Act is amended by repealing subsection (2), and substituting the following subsections: 10

- “(2) If **subsection (3)** applies to a person,—
- “(a) the rate of benefit payable to the person is the appropriate rate for an unmarried person (and not the rate for a married person); and
- “(b) the income and assets of both the person and the person’s spouse must be taken into account as the person’s income and assets in determining the rate of benefit payable to the person. 15

- “(3) **Subsection (2)** applies to—
- “(a) a person who applies for a benefit before **1 July 2001**, and who is married to a person who is unlawfully resident or present in New Zealand; and 5
- “(b) a person who applies for a benefit on or after **1 July 2001**, and who is married to a person who is—
- “(i) unlawfully resident or present in New Zealand; or
- “(ii) lawfully resident or present in New Zealand, but only by virtue of one of the permits listed in paragraph (b) of subsection (1). 10
- “(4) Despite **subsection (3)(b)(ii)**, **subsection (2)** does not apply to a person described in any of paragraphs (c), (d), or (e) of subsection (1).
- “(5) **Subsection (2)** applies despite anything in this Act or the Social Welfare (Transitional Provisions) Act 1990.” 15