

Social Security (Residence of Spouses) Amendment Bill

Government Bill

As reported from the Social Services Committee

Commentary

Recommendation

The Social Services Committee has examined the Social Security (Residence of Spouses) Amendment Bill and recommends that it be passed by majority with the amendments shown.

Introduction

The Social Security (Residence of Spouses) Amendment Bill (the bill) is based on the principle that, with some exceptions, New Zealand's social security system is funded out of general taxation so should be only for the benefit of people residing permanently and lawfully in New Zealand. The purpose of the bill is to correct an anomaly within section 74A of the Social Security Act 1964 (the Act) that allows a person temporarily and lawfully in New Zealand to receive a social security benefit if their partner is a New Zealand resident. When enacted, the bill will bring New Zealand legislation into line with comparable legislation in Australia, although unlike Australia, a person will be able to receive social security assistance as soon as residence is granted.

The current loophole and its closure

Section 74A(1) of the Act provides that people are not eligible for benefits if they are:

- unlawfully resident or present in New Zealand

- lawfully resident or present in New Zealand but under only a visitor's permit, limited purpose permit, temporary work permit or study permit.

This does not apply to people awaiting the outcome of an application for refugee status, people who already hold refugee status or people who have applied for permanent residence and have been forced to remain in New Zealand because of unforeseen circumstances.

Section 74A(2) of the Act creates an anomaly. Section 74A(2) provides that the benefit of a person married to someone who is unlawfully resident or present in New Zealand will be granted at the unmarried rate. But where a person is married to a person who lives lawfully in New Zealand, but who holds only a visitor's permit, limited purpose permit, temporary work permit or study permit, the benefit is paid at the married rate. This means the partner is living in New Zealand temporarily but can still indirectly receive part of the applicant's benefit, which is inconsistent with section 74A(1) and with the principle that benefits are paid to assist people living permanently in New Zealand.¹

The bill amends section 74A(2) of the Social Security Act 1964 so that it explicitly states 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 above), the benefit will be paid only at the unmarried rate. Changes caused by the bill will apply only to new applications for benefits after 1 July 2001. People who currently fall within the loophole will not be affected.

When enacted, the bill will ensure consistency between the treatment of partners who are in New Zealand unlawfully with partners who are in New Zealand lawfully but temporarily. Partners legally in New Zealand on temporary permits will be required to apply for (and be granted) a residence permit for their New Zealand resident partner in order to be entitled to the married rate of benefit.

Process of the bill

The bill was introduced to the House of Representatives on 15 May 2001, and referred to this committee on 22 May 2001 with a report back date of 12 June 2001 (later extended to 13 June 2001). This left

¹ For the purposes of this bill, the term "partner" includes both a lawfully married spouse, and a person of the opposite sex with whom the applicant has entered a relationship in the nature of marriage.

only 13 days for submissions to be requested and received. Five submissions were received on the bill, of which three were heard orally. We were informed that the short timeframe for reporting to the House on the bill was because it is related to the 2001/02 estimates of appropriations, so has to be in force by 1 July 2001.

Most submitters were unhappy with the tight timeframe set by the House for the bill to be reported back. One objection made by submitters was that the short timeframe resulted in many groups and individuals, who are directly affected by the changes proposed in the bill, being excluded from making a submission. The Wellington People's Centre (the People's Centre) expected that some affected groups and individuals had been too busy to prepare a submission within the deadline and told us that it could have networked with these groups and individuals to inform them about the bill if more time had been allowed.

Another concern of submitters was that the short timeframe for considering the bill did not allow for adequate assessment of the number of people affected by the bill, or of future problems that could emerge as a result of the bill. The Government estimates that least 125 couples will be affected by the bill and that it will save about \$700,000 per year. The People's Centre says this estimate does not take into account the number of children affected. We are uncertain whether further research and investigation would more accurately predict the number of people affected, because the number varies from year to year depending on immigration flows and peoples' individual circumstances.

National and Act members consider the process followed with this bill to be totally unacceptable. National and Act members say the timeframe has not allowed adequate time for all community groups in the welfare and immigration sectors to make submissions and question why it was necessary to rush the bill through its various stages.

National and Act members do not accept the Government's explanation, that the tight timeframe for processing the bill was necessary because the bill is related to the 2001/02 estimates of appropriations, is an adequate explanation.

Given that there is opposition to the bill from submitters, and that the Attorney-General has warned that the bill breaches the New Zealand Bill of Rights Act 1990, National and Act members believe time should have been allowed for proper process to be followed.

They do not accept that a budget impact of \$700,000 justifies what they believe to be an unnecessarily tight timeframe.

Hardship caused by implementation of the bill

The core issue in four of the five submissions received was that the bill will cause unnecessary hardship to affected families. The effect of the bill will be to lower the rate of benefit received by a beneficiary whose partner is living in New Zealand lawfully but temporarily. Submitters say the household income will therefore be lowered, causing hardship not only to the partner living in New Zealand temporarily, but also to dependants in the family. The People's Centre says the following reductions will occur in benefit rates:

- a couple with no children: \$103.02 per week
- a couple with one child: \$52.35 per week
- a couple with two or more children: \$32.21 per week.

The People's Centre says the bill will also have implications other than reducing the level of benefit paid. There may also be some additional reduction in family incomes due to reduced eligibility for the accommodation supplement, disability allowance and special benefit. We understand that the non-resident partner would almost certainly be issued with a work permit when they apply to the New Zealand Immigration Service, which makes them eligible for job search advice and assistance from the Department of Work and Income. The People's Centre says that even if the partner of an affected beneficiary is eligible to work, their work income will abate the level of benefit paid, making it difficult to increase the household income as a whole.

Many families affected by the bill will include a New Zealand permanent resident or citizen and their non-resident partner who is awaiting a decision on their application for New Zealand residence. According to the Combined Beneficiaries Union, it is unfair to cause hardship to these families because in most cases they will eventually make applications for (and be granted) New Zealand residence. The Combined Beneficiaries Union and other submitters claim that residence applications often take over six months to process, after which time the spousal relationship of the applicant will make the granting of residence almost inevitable. Hardship will therefore be endured unnecessarily and the length of time that hardship is endured

depends on the efficiency of the New Zealand Immigration Service in processing residence applications.

The New Zealand Immigration Service says that 53 percent of marriage and de facto residence permit applications are completed within three months and 71 percent are completed within six months. With the eight percent of applications not completed within a year, the reason is usually either a difficulty in obtaining the correct documents from the applicant, or that the New Zealand Immigration Service doubts the genuineness or stability of the applicant's relationship.² In cases where the applicant's relationship is in doubt, the New Zealand Immigration Service will review the application after an additional six months, so the application is either accepted or declined then.

We recognise submitter concerns in relation to the importance of the New Zealand Immigration Service being as efficient as possible in processing residence applications, particularly where the applicants are reliant on a benefit, to reduce possible hardship caused by the bill. We recommend that the New Zealand Immigration Service investigate ways to prioritise the processing of spousal residence applications where the applicant's spouse or partner is receiving a social welfare benefit at the time the application is lodged or if they apply for a benefit before their application is decided.

We accept that an effect of the bill is that some families will experience a decrease in household income because the benefit of a resident partner in the family will be paid at the single rather than the married rate. However, we also accept the principle behind the bill, that New Zealand's social security system should be only for the benefit of people residing permanently and lawfully in New Zealand. We do not believe that reduced household income (and hardship that may result) is a reasonable argument against the bill's provisions because current immigration policy makes it clear that non-residents living in New Zealand are expected to have made provision to support themselves by means other than relying on the social security system. A person on a temporary permit should generally have sufficient means to support him or herself, and a return airfare. The same conditions apply for a person applying for permanent residence, except for the requirement for a return air

² The New Zealand Immigration Service told us that these statistics are based on timeliness of marriage and de facto residence permit applications in 2000/01 to mid May 2001.

ticket. Furthermore, spouses and partners of permanent residents must, when applying for permanent residence, be sponsored by the New Zealand partner or spouse. The sponsor signs a financial undertaking for the first 24 months of the applicant's residence in New Zealand, making them the first port of call for financial assistance if the applicant cannot support him or herself. We accept that difficulties may arise where the sponsor abrogates this responsibility. However, to account for these individual cases (for example, to grant residence to someone who has applied under the spousal policy and whose relationship has broken down), it would be necessary to substantially change the basis on which immigration policy is based. The bill does not change the current provision for people having to remain in New Zealand through unforeseen circumstances. Assistance on a rate equivalent to the unemployment benefit and accommodation supplement is also available through a Special Needs Grant Programme of the Social Security Act 1964, for people in New Zealand on a temporary permit whose relationship breaks down because of domestic violence.

Discretion of the Chief Executive to grant social security assistance

Two submitters, Graham Howell and the Downtown Community Ministry, told us that granting of benefits needs to be relaxed rather than tightened. They say the Chief Executive of the Department of Work and Income should have discretion to grant emergency benefits to all people living in New Zealand, including those on temporary permits. We do not agree that the Chief Executive should have such a discretionary power. We do not regard this as being consistent with the principle that benefits should be for permanent residents of New Zealand.

The People's Centre expressed concern that if resident spouses currently receiving a benefit at the married rate are required to change benefits after the enactment of the bill, they will lose their entitlement to the married rate. The People's Centre assume that the Chief Executive would use discretionary powers under section 81(3) of the Act to transfer the applicant from one benefit to another. It suggests that these powers should be clearly stated in the bill.

We understand that the Government did intend to use the discretionary powers of the Chief Executive in these situations, but we agree with suggestions from submitters that these discretionary powers

should be clearly stated in the bill. We recommend inserting an amendment to paragraph (b) of proposed new section 74A(3) to clarify this.

Report of the Attorney-General

The Attorney-General considers that the bill gives rise to discrimination on the grounds of sexual orientation, under section 5 of the New Zealand Bill of Rights Act 1990, because provisions in the bill do not recognise same-sex relationships. Instead, the bill applies only to couples treated as “married” under the Social Security Act 1964. Under this definition, “married” means being legally married or living with an opposite-sex partner in the nature of marriage. The Attorney-General says that the bill’s lack of recognition of same-sex relationships constitutes a form of disadvantage for people in those relationships.

The Attorney-General says that, in addition, the exclusion of same-sex couples leads to two specific areas of different treatment between same-sex and opposite-sex couples, which can either be to their financial advantage or disadvantage depending on the circumstances involved. These two areas are:

- Assessment of the permanent resident’s eligibility for a benefit, and rate of benefit to be paid, is carried out on the basis of both partners’ income and assets. Permanent residents in same-sex relationships may therefore be financially advantaged because their benefit is calculated without taking into account their partner’s income and assets.
- Some allowances have been made in the bill for people in certain circumstances to be eligible for married rates of benefits where they would not usually be eligible (refugees, for example). In these circumstances, permanent residents in a same-sex relationship will not be eligible for a benefit at the married rate, because they are not regarded as “married” for the purposes of the bill. This may result in the same-sex couple being financially disadvantaged.

The Attorney-General says that the inconsistent treatment of same-sex and opposite-sex relationships within the bill is not required to achieve the objectives of the bill and can therefore not be justified.

The New Zealand Law Society notes the concerns of the Attorney-General and urges work on the general reform of legislation that is

“respectful of personal rights and equality between citizens and taking into account other public interests”.

We believe that it would be inappropriate to recognise same-sex couples for the purposes of section 74A of the Act before they are accorded equal recognition throughout the Act. To do so would mean that same-sex couples would be treated differently depending on whether one partner was temporarily resident, or permanently resident. We understand that the same-sex issue is being addressed in ongoing policy work by the Government.

Training of Department of Work and Income staff

The Combined Beneficiaries Union raised concerns about the ability of the Department of Work and Income to correctly interpret changes that will result from the bill’s enactment. It bases these on anecdotal evidence that the Department of Work and Income frequently misinterprets eligibility for benefits under the current legislation.

We believe it is essential that Department of Work and Income staff (especially front-line staff) receive training to inform them of the changes introduced from 1 July 2001 by the bill, when enacted. This will ensure that changes resulting from the bill are interpreted accurately and that people are not prevented from receiving the benefits they are entitled to because of misinterpretation by Department of Work and Income staff.

National Party and Green Party minority views

The Green and National members do not support this bill on the following grounds:

- It removes social security benefits from a category of people, lawfully in NZ, who are likely to be permanent residents.
- The waiting time for people seeking permanent residence is lengthy and uncertain, and could lead to significant hardship for affected families.
- The time allowed for consideration of this bill has been insufficient to ensure all relevant interest groups and affected individuals have been able to make submissions.

- There has not been sufficient data made available to give a clear picture of how many people will be affected by these changes, or of the real fiscal implications.

The Green Party supports the recommendations by submitters that the Chief Executive of Work and Income should have discretion to grant emergency benefits to all people living in New Zealand, including those on temporary permits.

Appendix

Committee process

The Social Security (Residence of Spouses) Amendment Bill was referred to the committee on 22 May 2001. The closing date for submissions was 4 June 2001. We received and considered five submissions from interested groups and individuals. We heard three submissions orally. Hearing evidence took one hour 39 minutes. Consideration took two hours 15 minutes.

We received advice from the Ministry of Social Policy, the Department of Work and Income, the New Zealand Immigration Service and the Ministry of Justice.

Committee membership

Taito Phillip Field (Chairperson)

Mahara Okeroa (Deputy Chairperson)

Sue Bradford

Hon David Carter

Helen Duncan

Dr Liz Gordon

Dr Muriel Newman

Jill Pettis

Katherine Rich

Bob Simcock

Dr Liz Gordon was absent on 5, 12 June 2001. Dr Gordon was replaced by Rick Barker for consideration on 5 June 2001.

Katherine Rich was absent on 23, 24 May 2001 and 5, 12 June 2001. Mrs Rich was replaced by Paul Hutchison on 24 May 2001.

Mahara Okeroa was absent on 23, 24 May 2001. Mr Okeroa was replaced by Rick Barker on 23 May 2001 and Georgina Beyer on 24 May 2001.

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

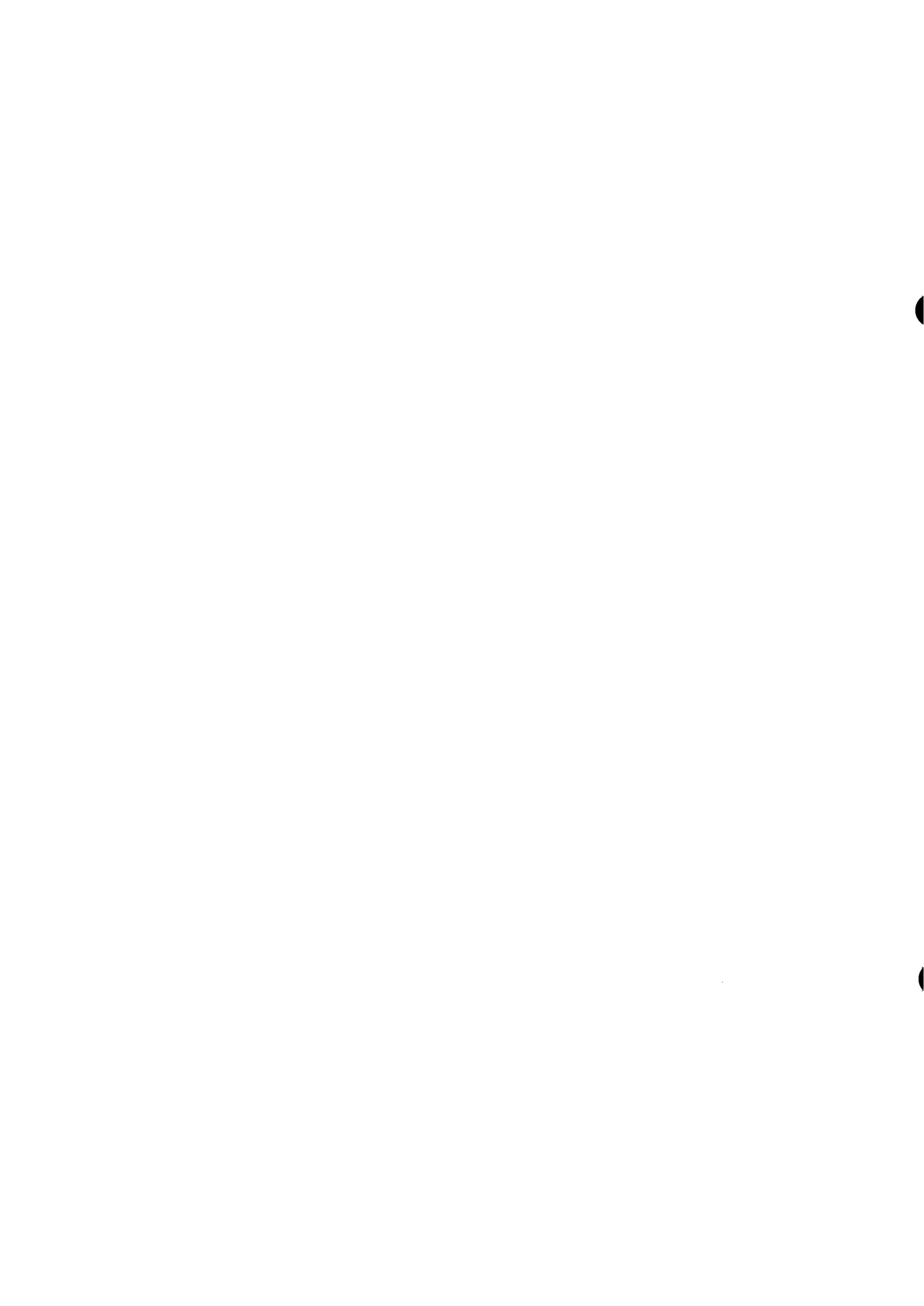
Subject to this Act,

Text struck out by a majority

New (majority)

Subject to this Act,

Text inserted by a majority



Hon Steve Maharey

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Government Bill

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 15
- “(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.
- “(3) **Subsection (2)** applies to— 20
- “(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

Struck out (majority)

- “(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).”

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New (majority)

- “(b) a person, other than a person who is already in receipt of a benefit applied for before 1 July 2001 that is being paid at the rate for a married person, who applies for a benefit on or after that date, 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).”

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- “(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.”

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Legislative history

15 May 2001	Introduction (Bill 129-1)
22 May 2001	First reading and referral to Social Services Committee