

SOCIAL SECURITY (CONJUGAL STATUS) AMENDMENT BILL

EXPLANATORY NOTE

GENERAL POLICY STATEMENT

Objectives of Key Measures

The measures in this Bill will amend the law to:

- (a) Provide the Director-General of Social Welfare with the discretion to grant an emergency benefit in lieu of, or in substitution for, a domestic purposes benefit in certain circumstances:
- (b) Provide the Director-General of Social Welfare with the discretion to grant an emergency benefit where battered woman's syndrome is present or there are grounds for believing it is present:
- (c) Ensure that the criteria used to determine marital status for social security purposes are transparent and that no 1 criterion or factor in a relationship is paramount.

Summary of Key Measures

Emergency Benefits

The insertion of the words “domestic purposes benefit” in the emergency benefit provisions will provide the Director-General of Social Welfare with specific discretion to grant an emergency benefit instead of a domestic purposes benefit in certain circumstances.

The Bill will also provide for the granting of an emergency benefit for a period of up to 6 months where battered woman's syndrome is present or there are grounds for believing that it is present. During the 6-month period the woman will be case-managed to help move her out of the violent relationship. Protocols will be developed for Income Support staff to help achieve this. The protocols will cover procedures for referral to specialist help from organisations and people such as women's refuge, lawyers, police, and child specialist services, accessing the provisions of the Domestic Violence Act, and the establishment of a case management plan involving reciprocal obligations and a safety plan.

Although the primary focus is on battered woman's syndrome, the Bill is drafted in such a way that the emergency benefit may be available to a person of either gender in situations where there is a violent relationship.

Marital Status for Social Security Purposes

The assessment of correct benefit entitlement is dependent on the conjugal status of a beneficiary being determined. The Director-General of Social Welfare has discretionary powers to determine the conjugal status of a person. Under this discretion, administrative criteria are used to determine, on balance, whether a person is single or living in a relationship in the nature of marriage. This in turn determines whether entitlement to the single or married couple benefit rates is appropriate.

The Criteria

The administrative criteria are currently contained in policy. The Bill proposes that they be enshrined in legislation which will make them transparent. The Bill also proposes that no 1 criterion or factor in a relationship should be paramount. For proper consideration to be given when determining whether a couple are living in a relationship in the nature of marriage, in any particular case, no 1 criterion can, or should, be considered paramount. To elevate 1 or more of the criteria would potentially introduce perverse incentives for people to rearrange their circumstances for the purposes of securing a social security benefit. Each case has to be looked at on its individual merits against the criteria and a judgement made on whether on balance a person can be deemed to be living in a relationship in the nature of marriage for social security purposes.

The Bill also makes it clear that violence is not a factor to be taken into account when determining whether or not a relationship in the nature of a marriage exists. Where there are indications of a high level of violence in a relationship, then the Bill allows for the granting of an emergency benefit.

CLAUSE BY CLAUSE ANALYSIS

Clause 1 provides that the Bill will come into force on the day after the date on which it receives the Royal assent.

Clause 2 amends section 61 of the principal Act, which relates to the granting of emergency benefits in cases of hardship.

Section 61 provides that the Director-General of Social Welfare may grant an emergency benefit in cases of hardship where a person is not qualified to be granted any benefit. A proviso to this section says that the Director-General may at any time grant an emergency benefit instead of or in substitution for certain named benefits. The amendment in *subclause (1)* adds the domestic purposes benefit to that category of named benefits.

Subclause (2) inserts a *new subsection (1A)* into section 61. The new subsection provides that if—

- (a) The relationship of a man and a woman who are married or living in a relationship in the nature of marriage is so characterised by violence or threats that the person subjected to the violence or threats is deprived of the ability to decide whether, or how, to escape from the violence or threats or to leave the relationship; and
 - (b) The person subjected to the violence or threats has inadequate financial support for himself or herself or any dependent children, or both,—
- the Director-General may grant an emergency benefit to the person subjected to the violence or threats.

Subclauses (3) and (4) relate to the duration of an emergency benefit granted under *new subsection (1A)*. The benefit must not continue for longer than 6 months.

Clause 3 adds *new subsections (2) to (4)* to section 63 of the principal Act. Section 63 provides that for the purposes of determining an application relating to a benefit or grant the Director-General may—

- (a) Regard as unmarried a married person who is living apart from his or her spouse;
- (b) Regard as husband and wife any man and woman who, not being legally married, have entered into a relationship in the nature of marriage.

New subsections (2) to (4) relate to the exercise by the Director-General of that discretion.

New subsection (2) provides that the Director-General may have regard to all the circumstances of a relationship, and must have regard to the matters set out in that new subsection.

New subsection (3) provides that the Director-General is not required to—

- (a) Establish that any particular circumstance or feature of a relationship is present or absent; or
- (b) Establish that the parties are financially interdependent; or
- (c) Give any circumstance or feature of a relationship greater weight than any other circumstance or feature.

New subsection (3) is in response to a decision of the Court of Appeal in 1996 on an appeal against a conviction for benefit fraud (reported [1997] 1 NZLR 154). The Court of Appeal held that in determining whether a relationship is in the nature of marriage for the purposes of the Social Security Act 1964 the existence of financial interdependence and mental and emotional commitment are necessary factors.

New subsection (4) provides that the Director-General must not have regard to the existence or effect of violence or threats by either person in the relationship towards the other.

New subsection (4) responds to another aspect of the Court of Appeal decision referred to above. The Court held that the existence of battered woman's syndrome is available to be taken into account when considering whether a relationship in the nature of marriage exists.

Clause 4 relates to determinations of the Director-General made under section 63 of the principal Act before the commencement of this Bill. It provides that the Director-General has never been required to—

- (a) Establish that any particular circumstance or feature of a relationship is present or absent; or
- (b) Establish that the parties are financially interdependent; or
- (c) Give any circumstance or feature of a relationship greater weight than any other circumstance or feature.

Clause 5 is a savings provision. It provides that the amendments made to section 63 of the principal Act by *clause 3* of this Bill, and *clause 4* of the Bill, do not affect—

- (a) Any decision of a benefits review committee or the Social Security Appeal Authority, or any judgment of a court, given on or after 1 October 1996 but before 16 September 1997 (being the date of introduction of this Bill); or
- (b) Any decision of a benefits review committee or the Social Security Appeal Authority, or any judgment of a court, on any application, appeal, or proceedings, as the case may be, lodged on or after 1 October 1996 but before 16 September 1997.

1 October 1996 is the date on which the Court of Appeal decision previously referred to was given.

Hon Roger Sowry

**SOCIAL SECURITY (CONJUGAL STATUS)
AMENDMENT**

ANALYSIS

Title	3. Conjugal status for benefit purposes
1. Short Title and commencement	4. Determinations of Director-General before commencement of this Act
2. Director-General may grant emergency benefit in cases of hardship	5. Savings provision

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 (Conjugal Status) 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. Director-General may grant emergency benefit in cases of hardship**—(1) Section 61 of the principal Act is amended by inserting in the first proviso, after the words “in substitution for”, the words “a domestic purposes benefit,”.

15 (2) Section 61 of the principal Act is amended by inserting, after subsection (1), the following subsection:

 “(1A) If—

20 “(a) The Director-General has grounds for believing that the relationship of a man and a woman who are married or have entered into a relationship in the nature of marriage is so characterised by violence or threats by one towards the other that the person

*R.S. Vol. 32

Amendments: 1994, Nos. 86, 142; 1996, Nos. 20, 42, 49, 145, 155, 157; 1997, Nos. 21, 22,
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subjected to the violence or threats is deprived of the ability to decide whether, or how, to escape from the violence or threats or to leave the relationship; and

“(b) The Director-General is satisfied that the person 5
subjected to the violence or threats has inadequate financial support for herself or himself or any dependent children, or both,—

the Director-General may grant an emergency benefit to the person subjected to the violence or threats.” 10

(3) Section 61 of the principal Act is amended by inserting, at the beginning of subsection (3), the words “Subject to subsection (4),”.

(4) Section 61 of the principal Act is amended by adding, after subsection (3), the following subsection: 15

“(4) The period for which an emergency benefit granted under subsection (1A) continues must not exceed 6 months.”

3. Conjugal status for benefit purposes—Section 63 of the principal Act (as substituted by section 17 (1) of the Social Security Amendment Act 1978) is amended by adding the following subsections: 20

“(2) In exercising the discretions in subsection (1), the Director-General may have regard to all the circumstances of a relationship, and must have regard to the following matters:

“(a) The financial aspects of the relationship, including— 25

“(i) Any joint ownership of real estate or other significant assets, and any joint liabilities; and

“(ii) Any significant pooling of financial resources; and

“(iii) Any legal obligations owed by one person in respect of the other person; and 30

“(iv) Any arrangements for the sharing of day-to-day household expenses:

“(b) The nature of household arrangements, including—

“(i) Arrangements for providing care and support of children; and 35

“(ii) The living arrangements of the 2 persons; and

“(iii) Arrangements for the carrying out of household tasks:

“(c) The social aspects of the relationship, including— 40

“(i) Whether the 2 persons hold themselves out as being in a relationship; and

“(ii) Whether the 2 persons plan or engage in social activities together; and

5 “(iii) Any assessment by any person about the nature of the relationship that comes to the attention of the Director-General or that is otherwise obtained by or made available to the Director-General:

 “(d) Any sexual relationship between the 2 persons:

10 “(e) The nature of the commitment of each of the 2 persons to the other, including—

 “(i) The length of the relationship and whether the relationship seems likely to continue for the foreseeable future; and

15 “(ii) Any companionship and emotional support that the 2 persons provide to each other.

 “(3) In exercising the discretions in subsection (1), the Director-General is not required to—

 “(a) Establish that any particular circumstance or feature of a relationship is present or absent; or

20 “(b) Establish the presence of financial interdependence between the parties to a relationship; or

 “(c) Give the presence or absence of any particular circumstance or feature of a relationship any greater weight than any other circumstance or feature.

25 “(4) In exercising the discretions in subsection (1), the Director-General must not have regard to the existence or effect of violence or threats by either person in the relationship towards the other.”

30 **4. Determinations of Director-General before commencement of this Act**—In making any determination under section 63 of the principal Act before the date on which this Act came into force, the Director-General has never been required to—

35 (a) Establish that any particular circumstance or feature of a relationship is present or absent; or

 (b) Establish the presence of financial interdependence between the parties to a relationship; or

40 (c) Give the presence or absence of any particular circumstance or feature of a relationship any greater weight than the presence or absence of any other circumstance or feature.

*Social Security (Conjugal Status)
Amendment*

5. Savings provision—Nothing in section 63 (2) to (4) of the principal Act (as added by **section 3** of this Act) or in **section 4** of this Act affects the rights of any party under—

- (a) Any decision of a benefits review committee or the Social Security Appeal Authority, or any judgment of a court, given on or after 1 October 1996 but before **16 September 1997** (being the date of introduction of the Social Security (Conjugal Status) Amendment Bill); or 5
- (b) Any decision of a benefits review committee on an application for review made on or after 1 October 1996 but before **16 September 1997**; or 10
- (c) Any decision of the Social Security Appeal Authority on any appeal lodged on or after 1 October 1996 but before **16 September 1997**; or
- (d) Any judgment of a court on any proceedings filed or any notice of appeal lodged on or after 1 October 1996 but before **16 September 1997**. 15