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SOCIAL SECURITY (WORK TEST) AMENDMENT 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

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

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

AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE

Struck Out

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Text struck out

((*Subject to this Act,*))

Words struck out

Subject to this Act,

Words inserted

SOCIAL SECURITY (WORK TEST) AMENDMENT

ANALYSIS

Title	
1. Short Title and commencement	
PART I	
AMENDMENTS TO PRINCIPAL ACT	
2. Interpretation	
3. Right of appeal	
4. Voluntary unemployment or loss of employment through misconduct, etc	
5. Mandatory interviews	
6. Effect of work test on entitlement to supplementary benefits and on spouses	
7. New heading and sections inserted	
<i>Work Test</i>	
101. Purpose of section 60H and sections 102 to 123B	
102. Application of work test	
103. Delayed application of work test: age of dependent child	
103A. Delayed application of work test: bereavement or separation	
104. Exemption from obligations	
<i>Deferral of Work-Test Obligations</i>	
105. Application for deferral of work-test obligations	
106. Chief executive may defer work-test obligations	
107. Effect of deferral	
108. Persons who are to notify change of circumstances affecting exemption or deferral	
<i>Organised Activities</i>	
109. General specification of organised activities	
110. Direction to participate in organised activity	
	<i>Obligation to Accept Offer of Employment</i>
	111. Work-tested beneficiary to accept offer of suitable employment
	<i>Sanctions Regime</i>
	112. Procedure for imposing sanctions
	114. Notices
	115. Penalties for failure to accept offer of suitable employment
	116. Penalties for failure to participate in organised activity
	116A. Penalty for failure to participate in activity under section 60HA
	117. Penalties for failure to participate in organised activity to satisfaction of chief executive
	118. Calculation of failure rate
	119. Effect of sanctions on married rate of benefit
	119A. Effect of sanctions on benefit of sole parent
	<i>General Provisions</i>
	120. Meaning of recompliance
	121. Effect of ceasing to be subject to obligation to comply with section 60HA or work test
	122. Effect of employment on non-entitlement period
	123. Effect of participation in organised activity on non-entitlement period
	123A. Application of Health and Safety in Employment Act 1992 and Human Rights Act 1993
	123B. Regulations

PART 2
 REPEALS AND TRANSITIONAL PROVISIONS
 8. Repeals
 8A. Social Security Amendment Act 1998
 amended

9. Transitional provisions relating to persons subject to sanction on commencement of this section

A BILL INTITULED

An Act—

- (a) To amend the Social Security Act 1964 to provide a new work-test framework, and a sanctions regime, for all work-tested beneficiaries; and 5
- (b) To provide for related matters

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Social Security (Work Test) Amendment Act 1998, and is part of the Social Security Act 1964* (“the principal Act”). 10

(2) This Act comes into force on 1 October 1998.

*R.S. Vol. 32, p. 625

PART 1
 AMENDMENTS TO PRINCIPAL ACT

Struck Out (Unanimous) 15

2. Interpretation—Section 3 (1) of the principal Act is amended by repealing the definition of the term “work test”*, and substituting the following definition:
 “‘Work test’, in relation to a person, means the person’s obligations under section 102 (2); and ‘work-test obligations’ has a corresponding meaning.” 20

New (Majority)

2. Interpretation—(1) Section 3 (1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions: 25
 “‘Employment required to satisfy the work test’, in relation to a person, means the employment referred to in section 102 (3):
 “‘Organised activity’ means an organised activity determined under section 109.” 30

New (Majority)

(2) Section 3 (1) of the principal Act is amended by repealing the definition of the term “suitable employment” (as inserted by section 18 (1) of the Social Security Amendment Act 1998), and substituting the following definition:

“‘Suitable employment’, in relation to a person, means employment that the chief executive is satisfied is suitable for the person to undertake for any number of hours a week that is less than or equal to the employment required to satisfy the work test for that person.”

(3) Section 3 (1) of the principal Act is amended by repealing the definition of the term “work test” (as so inserted), and substituting the following definition:

“‘Work test’, in relation to a person, means the person’s obligations under **section 102 (2)**; and ‘work test obligations’ has a corresponding meaning.”

(4) Section 3 (1) of the principal Act is amended by inserting in the definition of the term “working day”, after paragraph (a), the following paragraph:

“(aa) The day observed as the anniversary of the appropriate province; and”

3. Right of appeal—Section 12J of the principal Act is amended by adding the following subsection:

“(4) Despite subsection (1), the Appeal Authority does not have the authority to hear and determine any appeal against any decision or determination made by the chief executive under <subsection (1) or subsection (2) of section 110 (which provisions relate to the range and provision of organised activities)> <section 109 (which relates to the general specification of organised activities)>.”

4. Voluntary unemployment or loss of employment through misconduct, etc—(1) Section 60H (1) of the principal Act is amended by repealing the definition of the term “rate of the benefit”.

(2) Section 60H of the principal Act is amended by repealing subsections (4) and (5), and substituting the following subsections:

“(4) If this section applies, the chief executive must cancel the benefit (if granted), and the person is not entitled to the cancelled benefit or a work-tested benefit during the period of 13 weeks commencing on—

“(a) The date the person’s employment ceased; or

“(b) The date the person’s participation in the scheme ceased.

“(5) **Subsection (4)** is subject to subsection (6) and to **sections 121, 122, and 123.**”

(3) Nothing in **subsection (1)** entitles a person who, before 1 October 1998, had his or her benefit reduced under section 60H of the principal Act, to receive the benefit without that reduction until either the expiry of the period for which the reduction was imposed under that section, or the person becomes entitled to another rate of benefit under the principal Act.

5. Mandatory interviews—Section 60HA of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

“(2) An interview under this section is for the purpose of increasing the person’s awareness of the opportunities for education, training, and employment so as to increase his or her prospects for self-reliance.”

6. Effect of work test on entitlement to supplementary benefits and on spouses—Section 80C (1) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:

“(c) The person is subject to a suspension of payment ~~of the~~ ~~of 100% of a~~ benefit under **section 115 (2) (a)** or **section 116 (4) (a) or (b).**”

7. New heading and sections inserted—The principal Act is amended by inserting, after **section 100**, the following headings and sections:

“Work Test

“101. Purpose of section 60H and sections 102 to 123B— The purposes of **section 60H and sections 102 to 123B** are—

“(a) To reinforce the reciprocal obligations of work-tested beneficiaries to seek work or take steps to improve their employment prospects as a condition of receiving the benefit:

- “(b) To provide a work-test structure that applies to all work-tested beneficiaries but is sufficiently flexible to take account of the different situations of different work-tested beneficiaries:
- 5 “(c) To provide the desired flexibility by creating a range of organised activities that work-tested beneficiaries may be required to undertake from time to time as the situation allows:
- 10 “(d) To use organised activities to increase the prospect for self-reliance of work-tested beneficiaries by increasing their awareness of, and participation in, opportunities for self-betterment, education, training, and employment:
- 15 “(e) To strengthen incentives for people to remain in employment and to move into unsubsidised employment.
- “102. **Application of work test**—(1) The work test applies to a person while he or she is a work-tested beneficiary.
- 20 “(2) A person to whom the work test applies must—
- “ (a) Be available for, and take reasonable steps to obtain, suitable employment; and
- “ (b) Participate satisfactorily in such organised activities as the chief executive requires under **section 110**.
- 25 “(3) The employment referred to in **subsection (2) (a)** is—
- “ (a) For a part-time work-tested beneficiary, part-time work:
- “ (b) For any other work-tested beneficiary, full-time employment.
- “ (4) The work test does not apply to a work-tested beneficiary if the chief executive is satisfied that the beneficiary is undertaking employment of the kind required to satisfy the work test for that beneficiary.
- 30 “103. **Delayed application of work test: age of dependent child**—(1) This section applies if a beneficiary has a dependent child and the beneficiary will become subject to the work test when the child attains a particular age.
- 35 “(2) A person to whom this section applies is not required to comply with the work test until 4 weeks after the child attains the particular age giving rise to the obligation to comply with the work test.

New (Majority)

- “103A. **Delayed application of work test: bereavement or separation**—(1) A person who is a widow’s or domestic purposes beneficiary is not required to comply with the work test during the period of 6 months from— 5
- “(a) The date on which the person’s husband or wife died; or
- “(b) The date on which the person started to live apart from his or her husband or wife.
- “(2) In this section,— 10
- “ ‘Husband’, in relation to a widow’s beneficiary, has the meaning in section 21, and in relation to a domestic purposes beneficiary, has the meaning in section 27A:
- “ ‘Wife’, in relation to a domestic purposes beneficiary, has the same meaning as it has in section 27A.
-
- “104. **Exemption from obligations**—(1) A *work-tested* 15
beneficiary of a category specified in regulations made under **section 123B** may apply to the chief executive for an exemption from the work test or from complying with section 60HA.
- “(2) The chief executive may grant the exemption on any ground specified in regulations made for the purpose under **section 123B**. 20
- “(3) Before determining the application, the chief executive may require verification of matters relevant to the application in such manner as the chief executive specifies, either generally or specifically. 25
- “(4) An exemption under this section may be granted—
- “(a) For a time set by the chief executive; or
- “(b) On conditions set by the chief executive; or
- “(c) For both a time and on conditions set by the chief executive. 30
- “(5) On or after the grant of an exemption under this section from the work test, the chief executive may request the beneficiary to whom the exemption applies to attend and participate in an interview of a kind referred to in **(section 109 (2) (a)) section 109 (3) (a)**, and **section 116** applies as if the person were a work-tested beneficiary and as if the interview were an organised activity. 35
- “(6) The chief executive may from time to time review an exemption granted under this section, and may extend, vary, or revoke it. 40

“(7) The chief executive may grant an exemption under this section whether or not a formal application is made by or on behalf of the person to whom it relates.

“Deferral of Work-Test Obligations

5 **“105. Application for deferral of work-test obligations—**(1) A person may apply to the chief executive for a deferral of all or any of the person’s work-test obligations.

 “(2) An application may be made on any of the following grounds:

10 “(a) That the applicant’s capacity for work is limited by sickness, injury, or disability:

 “(b) Any ground specified by regulations made under **section 123B**.

15 “(3) The chief executive may require an applicant to verify any particulars relevant to the application in such manner as the chief executive specifies either generally or specifically.

“106. Chief executive may defer work-test obligations—(1) If the chief executive is satisfied that an application for a deferral of all or any of the applicant’s work-test obligations is made on a ground referred to in **section 105 (2)**, he or she may defer all or any of the applicant’s work-test obligations.

20 “(2) In granting a deferral under this section of some of the applicant’s work-test obligations, the chief executive may still require the applicant to participate in 1 or more specified organised activities.

25 “(3) A deferral under this section must be in writing and may be granted—

 “(a) For a time set by the chief executive; or

30 “(b) On conditions set by the chief executive; or

 “(c) For both a time and on conditions set by the chief executive.

35 “(4) The chief executive may from time to time review a deferral granted under this section and may extend, vary, or revoke it.

 “(5) The chief executive may grant a deferral under this section on a ground set out in **section 105 (2)** whether or not a formal application is made by or on behalf of the person to whom it relates.

40 **“107. Effect of deferral—**While a deferral under **section 106** is in force, the work-test obligations of the person concerned are deferred for the time and to the extent specified in the deferral.

“108. Persons who are to notify change of circumstances affecting exemption or deferral—(1) This section applies to a person who is granted an exemption under **section 104** or a deferral under **section 106**.

“(2) A person to whom this section applies must notify the chief executive as soon as practicable of any change in the person’s circumstances that may affect his or her entitlement to the exemption or deferral. 5

“Organised Activities

Struck Out (Majority) 10

“109. Organised activities—(1) For the purposes of this Act, an activity is an organised activity if—

“(a) It is an activity within the range of activities determined by the chief executive under **section 114 (1)**; and

“(b) The chief executive considers the activity would or might assist any work-tested beneficiary to improve his or her prospects for employment. 15

“(2) Without limiting **subsection (1)**, organised activities may include all or any of the following:

“(a) Interviews by or on behalf of the chief executive: 20

“(b) Work assessment:

“(c) Attending a job interview for suitable employment:

“(d) Creating an individual action plan:

“(e) Complying with an individual action plan:

“(f) Participation in a programme, seminar, scheme, or specified activity (including community work): 25

“(g) Participation in a work experience or work exploration activity:

“(h) Participation in training:

“(i) Activities for a person whose capacity for work is reduced by sickness, injury, or disability: 30

“(j) In any case where the chief executive considers it appropriate, medical or psychological assessment or examination, and provision to the chief executive of a report or certificate relating to the assessment or examination. 35

“110. Chief executive to determine range and application of organised activities—(1) Subject to any direction from the Minister under section 5, the chief executive may from time to time determine— 40

Struck Out (Majority)

5 “(a) The range of organised activities in which persons to whom the work test applies may be required to participate, which activities are those the chief executive considers achieve the purposes set out in paragraphs (d) and (e) of section 101; and

“(b) The conditions applying to those activities.

10 “(2) Different organised activities may be provided in different geographical locations, as the chief executive considers appropriate.

“(3) The chief executive may from time to time require a person to whom the work test applies to participate in 1 or more specified organised activities.

15 “(4) In exercising the power to require a person to participate in an organised activity, the chief executive—

“(a) Is not required to ensure that all activities within the range determined under subsection (1) are available to the applicant; and

20 “(b) May promote or utilise particular activities over other activities.

25 “(5) A requirement to participate in 1 or more particular organised activities in a particular geographical location is not invalid merely because the person could have been required to participate in any different organised activities if he or she were residing in a different location at the time the requirement was made of him or her.

30 “(6) A requirement to participate in organised activities is subject to the provisions of section 98 and, for the purposes of this subsection, section 98 applies with any necessary modifications to all work-tested beneficiaries.

New (Majority)

“109. **General specification of organised activities—**

35 (1) For the purposes of this Act, organised activities include activities of a type determined from time to time by the chief executive under subsection (2).

“(2) Subject to—

“(a) Any direction from the Minister; and

“(b) The criteria set out in subsection (4),—

New (Majority)

the chief executive may from time to time determine the range of organised activities.

“(3) The types of organised activities that may be determined under **subsection (2)** include— 5

“(a) Interviews by or on behalf of the chief executive:

“(b) Work assessment:

“(c) Attending a job interview for suitable employment:

“(d) Creating an individual action plan:

“(e) Complying with an individual action plan: 10

“(f) Participation in a programme, seminar, scheme, or specified activity (including community work):

“(g) Participation in a work experience or work exploration activity:

“(h) Participation in training: 15

“(i) Activities for a person whose capacity for work is reduced by sickness, injury, or disability:

“(j) In any case where the chief executive considers it appropriate, medical or psychological assessment or examination, and provision to the chief executive of a report or certificate relating to the assessment or examination. 20

“(4) The chief executive may determine an activity or category of activity to be an organised activity only if the chief executive is satisfied that the activity concerned— 25

“(a) Is likely to increase the prospect for self-reliance of work-tested beneficiaries who participate in it by increasing their awareness of, and participation in, opportunities for self-betterment, education, training, and employment; or 30

“(b) Is likely to strengthen incentives for persons who participate in it to remain in employment and to move into unsubsidised employment.

“(5) When the chief executive determines that any activity or category of activity is to be within the range of organised activities under this Act, the chief executive must at the same time determine the conditions that apply in relation to that activity as an organised activity. 35

“(6) Different organised activities may be provided in different geographical locations as the chief executive considers appropriate. 40

New (Majority)

“110. Direction to participate in organised activity—

(1) The chief executive may from time to time require a person to whom the work test applies to participate in 1 or more specified organised activities that the chief executive considers—

5 “(a) Would or is likely to assist the person to improve his or her prospects for employment; and

“(b) Is suitable for the circumstances of that person.

10 “(2) In exercising the power to require a person to participate in any organised activity, the chief executive—

“(a) Is not required to ensure that all activities within the range determined under **section 109** are available to the person; and

15 “(b) May promote or utilise particular activities over other activities.

“**(3)** A requirement to participate in 1 or more particular organised activities in a particular geographical location is not invalid merely because the person could have been required to participate in any different organised activities if he or she were residing in a different location at the time the requirement was made of him or her.

20 “**(4)** A requirement to participate in organised activities is subject to the provisions of **section 98** and, for the purposes of this subsection, **section 98** applies with any necessary modifications to all work-tested beneficiaries.

“Obligation to Accept Offer of Employment

30 **“111. Work-tested beneficiary to accept offer of suitable employment—**(1) A person who is a work-tested beneficiary must accept any offer of suitable employment.

“**(2) Subsection (1)** applies whether or not the employment is—

“**(a)** Full-time employment; or

“**(b)** Part-time work; or

“**(c)** Seasonal or temporary employment; or

35 “**(d)** Subsidised employment.

“Sanctions Regime

“112. Procedure for imposing sanctions—(1) This section applies where a sanction is to be imposed on a beneficiary under **sections 115 to 117**.

“(2) Where this section applies, the chief executive must not suspend or cancel or reduce a benefit payable to a beneficiary unless the chief executive has given the beneficiary written notice—

- “(a) Stating that the beneficiary has failed to comply with a specified obligation under this Act; and 5
- “(b) Specifying the nature of that non-compliance; and
- “(c) Stating that, on the basis of that non-compliance, the chief executive is suspending or cancelling or reducing the benefit payable to the beneficiary; and 10
- “(d) Specifying a date on which the suspension or cancellation or reduction is to take effect, and, in the case of a suspension or reduction, the nature and duration of the suspension or reduction; and
- “(e) Stating that the beneficiary has 5 working days from the giving of the notice to dispute the suspension or cancellation or reduction; and 15
- “(f) Advising the beneficiary to contact the department if the beneficiary wants to dispute or discuss the decision to suspend or cancel or reduce the benefit; and 20
- “(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.

“(3) The suspension or cancellation or reduction of the benefit must not take effect before the close of the 5 working days specified in the notice under **subsection (2) (e)**. 25

Struck Out

“(4) The provisions of **subsections (2) (e) and (3)** are subject to **section 113**. 30

Struck Out (Majority)

“113. **Reduction of notice period**—(1) This section applies where—

- “(a) A day that would normally count as a working day for the purposes of a notice given under **section 112 (2)** would not count because that particular day falls on Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, or Waitangi Day; and 35

Struck Out (Majority)

5 “(b) The fact that the particular day would not count as a working day means that **section 112 (3)** would prevent the chief executive from suspending or cancelling the benefit until the pay day following the pay day on which the suspension or cancellation would take effect if that day did count as a working day.

5 “(2) Where this section applies, the references in **section 112** to 5 working days are to be read as references to 4 working days.

10 “114. **Notices**—A notice may be given under **section 112** to a person—

“(a) By delivering it to that person personally; or

“(b) By leaving it—

15 “(i) At that person’s usual or last known place of residence or business; or

“(ii) At the address given by that person in the most recent application or other document received from that person,—

20 in which case the notice is given when it is left for that person; or

“(c) By posting it in a letter addressed to that person at that place of residence or business or at that address, in which case the notice is given when it is posted.

25 “115. **Penalties for failure to accept offer of suitable employment**—(1) This section applies to a person if the work test applies to the person and the chief executive considers the person has failed, without a good and sufficient reason, to accept an offer of suitable employment.

“(2) The chief executive must,—

30 “(a) For a first failure, suspend payment of the person’s benefit for at least 1 week and continue the suspension until the person recomplies; or

35 “(b) For a second failure (which failure is one that occurs after a person has complied following a previous failure), cancel the benefit.

“(3) Where a benefit is cancelled under **subsection (2)**,—

“(a) The person is not entitled to any benefit for 13 weeks commencing on the date of cancellation; and

40 “(b) If the person wishes to again become entitled to the benefit, the person must apply for the benefit and establish the person’s eligibility to receive it.

“(4) **Subsection (3)** is subject to **sections 122 and 123**.

“(5) A person has good and sufficient reason for *⟨failing⟩*
~~⟨not⟩~~—

“(a) ~~⟨To accept⟩~~~~⟨Accepting⟩~~ an offer of suitable employment,
 in terms of **subsection (1)**; or

5

“(b) ~~⟨To attend⟩~~~~⟨Attending⟩~~ an interview for suitable
 employment, in terms of **section 116 (1) (c)**,—

if the person has at least 1 dependent child and the
 employment concerned involves working during hours when it
 would be unreasonable to expect any dependent child of the
 person to be without ~~⟨the⟩~~ ~~⟨that⟩~~ person’s supervision.

10

“**116. Penalties for failure to participate in organised
 activity**—(1) This section applies to a person if the work test
 applies to the person and the chief executive considers the
 person has failed, without a good and sufficient reason,—

15

“(a) To commence participation in an organised activity in
 which he or she is required to participate; or

“(b) To complete any organised activity in which he or she is
 required to participate, because the person has left
 or been dismissed from the activity; or

20

“(c) To attend an interview for suitable employment that he
 or she is required to attend.

“(2) For the purposes of **subsection (1) (b)**, where a work-tested
 beneficiary is in part-time work ~~⟨or employment averaging less
 than 15 hours a week,⟩~~ and leaves or is dismissed from it, then,
 except where section 60H applies, that work is to be treated as
 if it were an organised activity.

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Struck Out (Majority)

“(3) This section also applies to a person if the chief executive
 considers the person has failed, without a good and sufficient
 reason, to comply with a request under section 60HA.

30

“(4) The chief executive must,—

“(a) For a first failure, suspend payment of the person’s
 benefit until the person recomplies; or

“(b) For a second failure (which failure is one that occurs
 after a person has recomplied following a first
 failure), suspend payment of the benefit for at least
 1 week and continue the suspension until the person
 recomplies; or

35

“(c) For a third failure (which failure is one that occurs after a person has recompiled following a previous failure), cancel the benefit.

5 “(5) Where a first failure occurs and the person recompiles before the end of the notice period in **section 112 (2)**, payment of the benefit must not be suspended but the failure must be counted as a failure if the chief executive is subsequently required to calculate the number of failures under this section.

“(6) Where a benefit is cancelled under **subsection (4)**,—

10 “(a) The person is not entitled to receive any benefit for 13 weeks commencing on the date of cancellation; and

“(b) If the person wishes to again become entitled to a benefit, the person must apply for the benefit and establish the person’s eligibility to receive it.

15 “(7) **Subsection (6)** is subject to ~~section 60H (6) and (7)~~ (which apply with all necessary modifications) and to **sections 122 and 123**.

New (Majority)

“(8) A person has a good and sufficient reason for not—

20 “(a) Commencing participation in an organised activity in which he or she is required to participate, in terms of **subsection (1) (a)**; or

“(b) Completing an organised activity in which he or she is required to participate because the person has left the activity, in terms of **subsection (1) (b)**; or

25 “(c) Participating satisfactorily in an organised activity in which he or she is required to participate, in terms of **section 117 (1)**,—

30 if the person has at least 1 dependent child and the activity involves participation during hours when it would be unreasonable to expect any dependent child of the person to be without that person’s supervision.

35 “116A. **Penalty for failure to participate in activity under section 60HA**—(1) This section applies to a person who is required to comply with a request under section 60HA if the chief executive considers that the person has, without a good and sufficient reason, not complied with a request under that section.

40 “(2) The chief executive must reduce the benefit of a person to whom this section applies by 20%.

New (Majority)

“(3) A reduction under **subsection (2)** applies only to the payment of the benefit on the pay day to which the reduction is applied.

“**117. Penalties for failure to participate in organised activity to satisfaction of chief executive**—(1) This section applies to a person if the work test applies to the person and the chief executive considers that the person’s participation in an organised activity was, without a good and sufficient reason, unsatisfactory. 5

“(2) This section also applies to a person if the chief executive considers the person’s compliance with a request under section 60HA was, without a good and sufficient reason, unsatisfactory. 10

“(3) The chief executive must reduce the benefit of a person to whom this section applies by the appropriate percentage specified in regulations made under **section 123B** (which reduction must not be more than 40%). 15

“(4) A reduction under **subsection (3)** applies only to the payment of the benefit on the pay day on which the reduction is applied. 20

“**118. Calculation of failure rate**—(1) In calculating the number of failures under **section 115 or section 116 or section 117**, the chief executive—

“(a) May count applicable failures only while a benefit or benefits to which the applicable failure relates have been continuously paid in respect of that beneficiary; but 25

“(b) May not count any failure if—

“(i) It is not of a kind to which that particular section applies; or 30

Struck Out (Majority)

“(ii) It occurred more than 18 months before the failure for which the calculation is made.

New (Majority)

5 “(ii) It occurred more than 12 months before the failure for which the calculation is made if, during that period, that beneficiary has not incurred a failure to which any of those sections applies.

10 “(1A) For the purpose of **subsection (1) (b) (iii)**, a failure under any of **sections 115, 116, and 117** is considered to have occurred on the date the chief executive decides he or she is satisfied the beneficiary has failed without a good and sufficient reason to comply with the appropriate work test obligation.

15 “(2) In determining whether a benefit has been continuously paid in respect of the beneficiary, the chief executive must disregard any period during which the benefit was cancelled or suspended because the beneficiary commenced in employment that continued for less than 10 working days.

“(3) Nothing in **subsection (1) (b) (iii)** affects the implementation, after the ~~18-month~~ 12-month period, of a sanction based on any prior calculation of the number of failures by a person to comply with the work test.

20 “(4) In this section, ‘working day’ means a day on which a person was required to work in the employment referred to in **subsection (2)**.

“**119. Effect of sanctions on married rate of benefit—**

25 (1) Where under **section 115 or section 116** the payment of a benefit is to be suspended or the benefit is to be cancelled, and the benefit is payable at a married rate,—

“**(a)** The suspension or cancellation applies only to 50% of the applicable married rate of the benefit before any abatement on account of income; and

30 “**(b)** The person’s spouse is entitled to receive 50% of that married rate of the benefit, and the appropriate Income Test applies to that rate, but at half the abatement rate in that Income Test.

35 “(2) Where the benefit to be reduced under **section 117** is payable at a married rate,—

“**(a)** The reduction is to be calculated as the applicable percentage of that rate of the benefit before abatement on account of income; and

“**(b)** The reduction is to be applied,—

“(i) In the first instance, to the proportion paid under section 83 to the person whose failure led to the reduction; and

“(ii) Then to the proportion payable to that person’s spouse, but not so as to reduce the amount payable to the spouse to less than 50% of the applicable rate of the benefit after any abatement on account of income. 5

New (Majority)

“119A. **Effect of sanctions on benefit of sole parent**— 10
Where under section 60H or **section 115 or section 116** the payment of a benefit of a person who is a sole parent is to be suspended or cancelled—

“(a) The suspension or cancellation applies only to 50% of the applicable rate of the benefit before any abatement on account of income; and 15

“(b) The person is entitled during the period of suspension or cancellation to receive 50% of that rate of benefit, and the appropriate Income Test applies to that rate but at half the abatement rate in that Income Test. 20

“General Provisions

“120. **Meaning of recompliance**—In **sections 115 and 116**, ‘recomplied’ means, in relation to a person’s failure to comply with the work test, that the person—

“(a) Has remedied the failure; or 25

“(b) Where it is not possible to remedy the failure, has undertaken some other organised activity to the satisfaction of the chief executive;—
and ‘recomplies’ has a corresponding meaning.

“121. **Effect of ceasing to be subject to obligation to comply with section 60HA or work test**—(1) This section applies to a person— 30

Struck Out (Majority)

“(a) Whose benefit has been suspended, or who is subject to an non-entitlement period, under section 60H or **section 115 or section 116**; and 35

New (Majority)

“(a) Whose benefit has been suspended, or who is not entitled to a benefit for 13 weeks, under section 60H or **section 115 or section 116**; and

5 “(b) Who either—

“(i) Ceases to be a work-tested beneficiary *<or (as the case requires) ceases to be subject to the obligation to comply with section 60HA>* (other than because of the imposition of that suspension or *<non-entitlement period>* <13-week period>); or

10 “(ii) Obtains, under **section 104**, an exemption from the work test *<or (as the case requires) the obligation to comply with section 60HA>*.

“(2) From the date the chief executive decides he or she is satisfied this section applies to a person,—

“(a) The period of suspension of the benefit ends; or

“(b) The person is no longer subject to the *<non-entitlement period>* <13-week period> and that period lapses.

20 “(3) If a person to whom **subsection (2) (b)** applies wishes to again become entitled to a benefit, the person must apply for the benefit and establish the person’s eligibility to receive it.

New (Majority)

“(4) In **subsection (1)**, ‘benefit’ includes part of a benefit.

25 “**122. Effect of employment on non-entitlement period**—(1) This section applies to a person who is not entitled to a benefit for 13 weeks because of the operation of *<section 60H or>* **section 115 or section 116**.

30 “(2) If a person to whom this section applies completes a period of employment approved by the chief executive for the purposes of this section of not less than 6 weeks, the remainder of the *<non-entitlement period>* <13-week period> lapses.

35 “(3) In calculating the period of employment, the chief executive must disregard any employment within 4 weeks after the date the *<non-entitlement period>* <13-week period> took effect.

New (Majority)

“(4) In **subsection (1)**, ‘benefit’ includes part of a benefit.

“**123. Effect of participation in organised activity on non-entitlement period**—(1) This section applies to a person who is not entitled to a benefit for 13 weeks because of the operation of ~~section 60H or~~ **section 115 or section 116**. 5

“(2) If a person to whom this section applies participates in an organised activity or activities approved by the chief executive for the purposes of this section, the chief executive must, not less than 4 weeks after the ~~non-entitlement period~~ **13-week period** took effect, on application grant the person a benefit during the person’s satisfactory participation in the activities concerned. 10

“(3) For the purposes of **subsection (2)**, an approved activity may include participation in part-time work if the person is a part-time work-tested beneficiary. 15

“(4) A benefit under **subsection (2)** is granted provisionally and on the condition that, if the person does not continue satisfactory participation in the activity or activities for a period of not less than 6 weeks, or until the end of the ~~non-entitlement period~~ **13-week period**, whichever is the earlier, the person is liable to repay the whole amount provisionally paid to him or her during the ~~non-entitlement period~~ **13-week period**. 20

“(5) At the end of the ~~non-entitlement period~~ **13-week period**, a benefit granted under **subsection (2)** ceases to be granted provisionally if the person is then still entitled to that benefit. 25

“(6) Any amount a person is liable to repay under this section may be recovered by the chief executive under section 86 (1A).

New (Majority)

“(7) In **subsection (1)**, ‘benefit’ includes part of a benefit.

“**123A. Application of Health and Safety in Employment Act 1992 and Human Rights Act 1993**—(1) Where a person is participating in an organised activity that involves undertaking any work, the Health and Safety in Employment Act 1992 ~~applies~~ **and the Human Rights Act 1993 apply** to the person participating and to the person who 35

provides the work as if the relationship between them is that of employee and employer.

“(2) Nothing in the Health and Safety in Employment Act 1992 applies to any requirement of the chief executive under
5 **section 110** that any person participate in an organised activity.

“123B. **Regulations**—Without limiting the general power to make regulations conferred by section 132, the Governor-General may from time to time, by Order in Council, make
10 regulations for all or any of the following purposes:

“(a) Specifying the categories of beneficiaries who may be
exempted under **section 104** from the work test ~~or~~
the obligation to comply with section 60HA and
specifying the grounds on which exemptions may
15 be granted for each of those categories:

“(b) Specifying the grounds on which a person’s obligations
under the work test may be deferred for the
purposes of **section 105 (2) (b)**:

“(c) Specifying the percentage reduction in a benefit that is
to be applied where specified kinds of unsatisfactory
20 participation in an organised activity occur.”

PART 2

REPEALS AND TRANSITIONAL PROVISIONS

8. Repeals—(1) Sections 60GA, 60HB, and 60HC, and
25 sections 60HD to 60KA of the principal Act are repealed.

(2) The following enactments are consequentially repealed:

- (a) Section 16 of the Social Security Amendment Act 1991:
- (b) Sections 5, 6, 7, 8, 16, 17, 18, 19, 20, 22, 23, 24, 26, 27,
and 28 of the Social Security Amendment Act 1996:
- (c) Section 2 of the Social Security Amendment Act (No. 2)
30 1997.

New (Majority)

8A. Social Security Amendment Act 1998 amended—
Section 58 of the Social Security Amendment Act 1998 is
35 amended by repealing subsection (4), and substituting the
following subsection:

“(4) The definition of the term ‘work-tested benefit’ in
section 3 (1) of the principal Act is amended by adding the
expression ‘; or’, and also adding the following paragraph:

“(e) In relation to a work-tested spouse, includes
40 an emergency benefit or an invalid’s benefit.”

- 9. Transitional provisions relating to persons subject to sanction on commencement of this section—**(1) This section applies to every person who, immediately before the date of commencement of this section, was subject to a non-entitlement period of 13 weeks or a reduced benefit for 13 weeks, under section 60H or section 60JA of the principal Act. 5
- (2) A person to whom this section applies may,—
- (a) In the case of a person who was participating in a programme or project referred to in section 60KA of the principal Act, continue to participate in that programme or project; or 10
- (b) In any other case, continue *<to serve>* his or her non-entitlement period or continue to receive a reduced benefit and, subject to section 60KA, participate in a programme or project referred to in that section. 15
- (3) Section 60KA of the principal Act is deemed to continue to apply to persons referred to in **subsection (2)** of this section as if that section had not been repealed by **section 8**.
- (4) Where a person was, immediately before the date of commencement of this section, subject to any sanction under the principal Act other than a sanction referred to in **subsection (1)**, that sanction is revoked with effect on the commencement of this section and any work-test failure on the person's part that occurred before that date is not to be counted as a work-test failure on or after that date. 20 25