



HOUSE OF REPRESENTATIVES

# Supplementary Order Paper

Thursday, 6 April 1995

SOCIAL WELFARE REFORM BILL

*Proposed Amendments*

Hon. PETER GRESHAM, in Committee, to move the following amendments:

*Clause 4:* To omit this clause (page 4, lines 28 to 37), and substitute the following clauses:

**4. Power to obtain information**—(1) Section 11 (1) of the principal Act (as substituted by section 3 of the Social Security Amendment Act (No. 3) 1993) is hereby amended by inserting, after the word “section” where it first occurs, the words “and to the code of conduct established under **section 11B** of this Act”.

(2) Section 11 (2) of the principal Act (as so substituted) is hereby amended by inserting, after paragraph (d), the following paragraph:

“(da) Determining, pursuant to section 69C of this Act, the amount that any person is required to pay towards the cost of the home-based disability support services supplied to that person, and whether a person who has been so assessed is entitled to that assessment; or”.

(3) Section 11 (3) of the principal Act (as so substituted) is hereby amended by omitting the words “and, if the offence is a continuing one, to a further fine not exceeding \$200 for every day or part of a day during which the offence has continued”.

(4) Section 11 of the principal Act (as so substituted) is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) Except as provided in subsection (5) of this section, nothing in subsection (1) of this section requires any person to provide any information or produce any document that would be privileged in a Court of law.”

(5) Section 11 (6) of the principal Act (as so substituted) is hereby amended—

(a) By inserting, after the word “under”, the words “subsection (4) or”:

(b) By inserting, after the words “that person”, the words “or any other person to whom the information or document relates”.

(6) Section 11 of the principal Act (as so substituted) is hereby amended by repealing subsection (7), and substituting the following subsection:

“(7) Where a claim of privilege is made on the grounds specified in section 35 (1) of the Evidence Amendment Act (No. 2) 1980, for the purpose of determining an application made under subsection (6) of this section, the provisions of the said section 35 shall apply as if—

“(a) References to a witness were references to the person required to provide the information or produce the document; and

“(b) References to the evidence were references to the information or document concerned; and

“(c) In subsection (2) of that section, the words ‘disclosed to the Court’ were replaced by the words ‘disclosed to the Department’; and

“(d) In subsection (2) (a) of that section, the words ‘resolution of the issues to be decided in the proceeding’ were replaced by the words ‘purpose in connection with which the requirement was made’”.

**4A. Restrictions on obtaining information**—The principal Act is hereby amended by inserting, after section 11A (as substituted by section 3 of the Social Security Amendment Act (No. 3) 1993), the following sections:

**“11B. Code of conduct applying to obtaining information under section 11—**(1) The Director-General, in consultation with the Privacy Commissioner appointed under the Privacy Act 1993, shall within 3 months after the commencement of this section, issue a code of conduct that applies in respect of requirements to supply information or documents under section 11 (1) of this Act, and the Director-General, and every officer of the Department acting under the delegation of the Director-General pursuant to section 10 of this Act, shall comply with that code of conduct in relation to making any such requirement.

“(2) The code of conduct—

“(a) Shall include the matters specified in section 11c of this Act; and

“(b) May include restrictions from obtaining—

“(i) Specified classes of information or documents; and

“(ii) Information or documents from specified classes of persons or from persons in specified relationships—

pursuant to a requirement under section 11 (1) of this Act; and

“(c) Shall specify procedures applying to the obtaining of information or documents under section 11 of this Act.

“(3) The Director-General may from time to time, in consultation with the Privacy Commissioner, amend the code of conduct, or revoke the code of conduct and issue a new code of conduct.

“(4) Subject to **subsection (5)** of this section, nothing in the code of conduct shall derogate from any code of practice issued by the Privacy Commissioner under Part VI of the Privacy Act 1993 that applies to the information required under section 11 of this Act, and the Director-General, in consultation with the Privacy Commissioner, shall amend the code of conduct to conform with any such code of practice.

“(5) Without limiting the general power to make regulations conferred by section 132 of this Act, the Governor-General may, by Order in Council, make regulations under that section authorising the Director-General to obtain—

“(a) Any specified class of information or document; or

“(b) Information or documents from any specified class of persons; or

“(c) Information or documents in any specified manner—  
pursuant to a requirement under section 11 (1) of this Act notwithstanding that the making of that requirement would otherwise be in breach of any code of practice issued by the Privacy Commissioner under Part VI of the Privacy Act 1993.

“11c. **Matters to be included in code of conduct—**

(1) The code of conduct established under **section 11b** of this Act shall contain the following matters:

“(a) Provisions—

“(i) Requiring any information or document to be first sought from a beneficiary; and

“(ii) Allowing the beneficiary a reasonable time to provide it—

before a requirement under section 11 (1) of this Act is issued to a person other than the beneficiary, except where compliance with such provision would prejudice the maintenance of the law:

“(b) A provision prohibiting a requirement under section 11 (1) of this Act being made to any person other than a beneficiary, or an employer or former employer of a beneficiary, or any financial institution, or law practitioner unless there is reason to suspect the beneficiary has committed an offence under this Act or has obtained by fraud any payment or credit or advance under this Act:

“(c) A provision prohibiting a requirement under section 11 (1) of this Act being made to an employer in respect of any information or document that relates solely to the marital status of an employee or former employee of that employer:

“(d) Provisions otherwise restricting requirements under section 11 (1) of this Act made to employers to specified information relating to that employment and the address of the employee or former employee.”

*New clause 7A:* To insert, after *clause 7*, the following clause:

**7A. Rates of invalids' benefits—**(1) Section 42 of the principal Act is hereby amended by adding the following subsection:

“(2) Notwithstanding the Sixth Schedule to this Act, where a married person (other than a person whose financial means have been assessed under section 69F of this Act) is receiving

residential care disability services because he or she has a psychiatric, intellectual, physical, or sensory disability—

“(a) The rate of the invalid’s benefit payable to the person receiving those services shall be one-half of the appropriate rate specified in that Schedule; and

“(b) The rate of invalid’s benefit payable to that person’s spouse (being a spouse who is not receiving residential care disability services) shall be the appropriate rate of an invalid’s benefit that would be payable under this Act if he or she was entitled to that benefit in his or her own right and was unmarried—

and section 83 of this Act shall not apply to either rate of benefit.”

(2) **Subsection (1)** of this section shall come into force on the 1st day of July 1995.

*New clause 52A:* To insert, after *clause 52*, the following clause:

**52A. Applications for veteran’s pension by members of “J Force”**—Section 10 of the principal Act (as substituted by section 3 (1) of the Social Welfare (Transitional Provisions) Amendment Act (No. 2) 1990) is hereby amended by adding the following subsections:

“(2) Notwithstanding the provisions of subsection (1) of this section, where—

“(a) Any person applies for a veteran’s pension after the 6th day of March 1995; and

“(b) The service qualifying that person for a veteran’s pension under section 8 (1)(a) of this Act was solely with the Japan section of the Second New Zealand Expeditionary Force on or after the 14th day of August 1945 and before the 28th day of April 1952,—

that person’s application for a veteran’s pension shall be deemed to have been received on the 1st day of April 1990.

“(3) Nothing in **subsection (2)** of this section limits section 8 (3) of this Act.”

*New Part VIII:* To omit Part VIII (*clauses 64 to 67*), and substitute the following Part:

## PART VIII

### TAX ADMINISTRATION ACT 1994

**64. This Part to be read with Tax Administration Act 1994**—This Part of this Act shall be read together with and deemed part of the Tax Administration Act 1994\* (in this Part of this Act referred to as the principal Act).

\*1994, No. 166

**65. Interpretation**—Section 3 (1) of the principal Act is hereby amended by adding to the definition of the term “benefit” the following paragraph:

“(c) Any grant for special needs or special assistance made pursuant to regulations made under **section 132c** of that Act:”.

**66. Disclosure of address information in relation to debtors**—Section 85 (6) of the principal Act is hereby amended—

- (a) By adding to paragraph (b) of the definition of the term “debtor” the word “; or”:
- (b) By adding to that definition the following paragraph:
- “(c) Any person liable to pay any maintenance under the Family Proceedings Act 1980 that remains unpaid and that may be enforced against the person pursuant to section 259 of the Child Support Act 1991.”

*New Parts IX and X:* To add the following Parts:

#### PART IX

##### PRIVACY ACT 1993

**68. This Part to be read with Privacy Act 1993**—This Part of this Act shall be read together with and deemed part of the Privacy Act 1993\* (in this Part of this Act referred to as the principal Act).

\*1993, No. 28

Amendments: 1993, No. 59; 1994, No. 70

**69. Protection and privileges of witnesses, etc.**—Section 94 of the principal Act is hereby amended by inserting, after subsection (1), the following subsections:

“(1A) Nothing in subsection (1) of this section shall prevent the Commissioner or any employee of the Commissioner from—

“(a) Requiring, under section 91 of this Act, the furnishing of any information or the production of any document or thing which is the subject of a complaint under Part VIII of this Act and in respect of which privilege is claimed by any person; and

“(b) Considering the information or inspecting any such document or thing—

for the purpose of determining whether the information, document, or thing would be properly withheld, but not so as to give the Commissioner or employee any information, or enable the Commissioner or employee to make any use of the information, document, or thing, that he or she would not, apart from this subsection, be entitled to.

“(1B) On the production of any information, document, or thing pursuant to **subsection (1A)** of this section, the Commissioner or any employee of the Commissioner—

“(a) Shall not release the information, document, or thing or any information derived from the document or thing to any person other than the producer of the information, document, or thing:

“(b) May only give his or her opinion to the parties to the complaint or to the Proceedings Commissioner or to the Complaints Review Tribunal as to whether or not the claim of privilege is valid:

“(c) Shall not take into account the information or any information in the document or thing in reaching any decision concerning the release of any other information.”

#### PART X

##### OMBUDSMEN ACT 1975

**70. This Part to be read with Ombudsmen Act 1975**—This Part of this Act shall be read together with and deemed

part of the Ombudsmen Act 1975\* (in this Part of this Act referred to as the principal Act).

\*R.S. Vol. 21, p. 657

Amendments: 1988, No. 77; 1988, No. 205; 1991, No. 121; 1992, No. 25; 1993, No. 34

**71. Protection and privileges of witnesses, etc.—**

Section 19 of the principal Act is hereby amended by inserting, after subsection (5), the following subsections:

“(5A) In any investigation carried out under this Act pursuant to the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987, nothing in subsection (5) of this section shall prevent an Ombudsman from—

“(a) Requiring, under subsection (1) of this section, the furnishing of any information or the production of any document, paper, or thing for which privilege is claimed by any person; and

“(b) Considering the information or inspecting any such document, paper, or thing—

for the purpose of determining whether the information, document, paper, or thing would be properly withheld, but not so as to give the Ombudsman any information, or enable the Ombudsman to make any use of the information, document, paper, or thing that he or she would not, apart from this subsection, be entitled to.

“(5B) On the production of any information, document, paper, or thing pursuant to **subsection (5A)** of this section, the Ombudsman—

“(a) Shall not release the information, document, paper, or thing or any information derived from the document, paper, or thing to any person other than the producer of the information, document, paper or thing or a court:

“(b) May only give his or her opinion to the producer of the information, document, paper or thing and the complainant as to whether or not the claim of privilege is valid:

“(c) Shall not take into account the information or any information in the document, paper, or thing in reaching any decision concerning the release of any other information, unless the Ombudsman considers the claim of privilege is not valid and has notified the person concerned of that decision.”

EXPLANATORY NOTE

*Clause 4: Subclause (1)* amends section 11 (1) of the Social Security Act 1964 to make its provisions subject to the code of conduct established under the new section 11 of the Act.

*Subclause (2)* contains the amendment to section 11 (2) of that Act that is currently provided for in clause 4 of the Bill, enabling information to be obtained for the purpose of financial means assessments for home-based disability support services.

*Subclause (3)* amends section 11 (3) of the Social Security Act 1964 so that non-compliance with a requirement under section 11 (1) is no longer a continuing offence.

*Subclause (4)* repeals and substitutes section 11 (4) of the Social Security Act 1964 to restore all the privileges available in a Court of law to anyone who is required to provide information or documents pursuant to section 11 (1).

*Subclause (5)* amends section 11 (6) of the Social Security Act 1964. It extends the right to apply to a District Court Judge for a determination whether any

information or document is privileged, to all the privileges available under subsection (4) and subsection (5), and not just, as at present, legal professional privilege. It also extends the right to apply to a person who is the subject of the information or document.

*Subclause (6)* repeals and substitutes section 11 (7) of the Social Security Act 1964. That subsection at present provides that, except as provided in subsections (4) to (6), no person is to be excused from supplying information or producing a document that would be privileged in a Court of law.

The substituted subsection (7) allows a District Court Judge to determine a claim of privilege based on a confidential relationship between the person required to supply the information and another person, under section 35 of the Evidence Amendment Act (No. 2) 1980. That section is to apply to the determination with appropriate modifications.

The new *clause 4A* inserts a new section 11B and a new section 11C into the Social Security Act 1964.

The new section 11B (1) provides that the Director-General, in consultation with the Privacy Commissioner, is to issue a code of conduct that applies to requirements made under section 11 of the Social Security Act 1964, within 3 months after the section commences. The Director-General and officers of the Department acting under delegation are to comply with the code.

The new subsection (2) specifies that the code is to contain the matters specified in the new section 11C, and may contain restrictions upon obtaining specified classes of information or documents, or from obtaining information or documents from specified classes of persons or persons in specified relationships. The code is also to specify procedures applying to the obtaining of information or documents under section 11 of the Social Security Act 1964.

The new subsection (3) provides that the Director-General may, in consultation with the Privacy Commissioner, amend the code of conduct or may revoke it and issue a new code.

The new subsection (4) provides that if the Privacy Commissioner issues a code of practice under the Privacy Act 1993 relating to section 11, that code of practice has precedence, and the code of conduct is to be amended to conform to it.

The new subsection (5) allows the Governor-General to make regulations under section 132 of the Act to allow the Director-General to obtain information or documents pursuant to section 11 when the making of the requirement would otherwise be in breach of a code of practice issued by the Privacy Commissioner.

The new section 11C sets out matters that must be included in the code of conduct referred to in the new section 11B. These are—

(a) Provisions—

(i) Requiring any information or document to be first sought from a beneficiary; and

(ii) Allowing the beneficiary a reasonable time to provide it—before a requirement under section 11 (1) of the Act is issued to a person other than the beneficiary, except where compliance with such provision would prejudice the maintenance of the law;

(b) A provision prohibiting a requirement under section 11 (1) of the Act being made to any person other than a beneficiary, or an employer or former employer of a beneficiary, or any financial institution, or law practitioner unless there is reason to suspect the beneficiary has committed an offence under the Act or has obtained by fraud any payment or credit or advance under the Act;

(c) A provision prohibiting a requirement under section 11 (1) of the Act being made to an employer in respect of any information or document that relates solely to the marital status of an employee or former employee of that employer;

(d) Provisions otherwise restricting requirements under section 11 (1) of the Act made to employers to specified information relating to that employment and the address of the employee or former employee.

The new *clause 7A* amends section 42 of the Social Security Act 1964, which provides for the rates of invalid's benefit. It provides that where a married person with a psychiatric, intellectual, physical, or sensory disability is in residential care, the rate of invalid's benefit payable to that person is half the married rate, and the rate payable to the person's spouse is the appropriate rate as if the spouse was single and qualified for an invalid's benefit in his or her own right. Section 83 of the Social Security Act 1964, which provides for apportionment of benefit between a husband and wife, is not to apply to either rate of benefit.

This clause is to come into force on 1 July 1995.

The new *clause 52A* amends section 10 of the Social Welfare (Transitional Provisions) Act 1990, which provides for the date of commencement of veteran's pension. That section at present provides that the pension commences on the later of the date of application or the date of entitlement. The clause adds 2 new subsections. The new subsection (2) provides that where the service qualification for the pension was solely with "J Force" (the Japan section of the Second New Zealand Expeditionary Force), and the person applies for veteran's pension after the 6th day of March 1995, the person's application is deemed to have been made on the 1st day of April 1990. This will enable "J Force" personnel who qualify for a veteran's pension under section 8 to have their entitlement to the pension back-dated.

The new subsection (3) provides that nothing in the new subsection (2) limits section 8 (3) of the Social Welfare (Transitional Provisions) Act 1990. Section 8 (3) prevents the payment of a veteran's pension to a person who has at any time received New Zealand Superannuation unless he or she is qualified to receive a war service pension at not less than 70 percent of the maximum rate of pension for total disablement, or received New Zealand Superannuation under section 66M of the War Pensions Act 1954 and elects to change to a veteran's pension.

*New Part VIII:* The new Part VIII makes the same amendments to the Tax Administration Act 1994 as are contained in the Bill to amend the (now repealed) Inland Revenue Department Act 1974.

*New Parts IX and X: Clause 68* provides that the new Part IX of the Bill is to be read with the Privacy Act 1993.

*Clause 69* amends section 94 of that Act, which provides that a person or agency has the same privileges from producing any information, document, or thing to the Privacy Commissioner or any employee of the Commissioner as witnesses have in a Court of law.

The amendment allows the Commissioner or employee to require production of, and to consider or inspect, any information, document, or thing in respect of which privilege is claimed to ascertain whether the claim of privilege is valid, but not so as to give the Commissioner or employee any information, or enable the Commissioner or employee to make use of the information, document, or thing, that he or she would not, but for the subsection, be entitled to.

On the production of any such information, document, or thing, the Commissioner or any employee of the Commissioner—

- (a) Shall not release the information, document, or thing or any information derived from the document or thing to any person other than the producer of the information, document, or thing;
- (b) May only give his or her opinion to the parties to the complaint or to the Proceedings Commissioner or to the Complaints Review Tribunal as to whether or not the claim of privilege is valid;
- (c) Shall not take into account the information or any information in the document or thing in reaching any decision concerning the release of any other information.

*Clause 70* provides that the new Part X of the Bill is to be read with the Ombudsmen Act 1975.

*Clause 71* amends section 19 of that Act, which relates to the powers of an Ombudsman to require the production of information, documents, papers, or things. Subsection (5) of that section provides that a person has the same privileges from the production of any information, document, paper, or thing to the Ombudsman as witnesses have in a Court of law.

The amendment applies to investigations carried out pursuant to the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987. It will allow an Ombudsman to require production of, and to inspect, any information, document, paper, or thing for which privilege is claimed to ascertain whether the claim of privilege is valid, but not so as to give the Ombudsman any information, or enable the Ombudsman to make use of the information, document, paper, or thing that he or she would not, but for the subsection, be entitled to.

On the production of any such information, document, paper, or thing the Ombudsman—

- (a) Shall not release the information, document, paper, or thing or any information derived from the document, paper, or thing to any person other than the producer of the information, document, paper, or thing or a court:



- (b) May only give his or her opinion to the producer of the information, document, paper, or thing and the complainant as to whether or not the claim of privilege is valid:
- (c) Shall not take into account the information or any information in the document, paper, or thing in reaching any decision concerning the release of any other information, unless the Ombudsman considers the claim of privilege is not valid and has notified the person concerned of that decision.