

**Reprint
as at 26 November 2018**

Social Security Amendment Act 2001

Public Act 2001 No 1
Date of assent 7 March 2001

Social Security Amendment Act 2001: repealed, on 26 November 2018, pursuant to section 455(1) of the Social Security Act 2018 (2018 No 32).

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this eprint. See the notes at the end of this eprint for further details.

This Act is administered by the Ministry of Social Development.

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Social Security Amendment Act 2001.
- (2) In this Act, the Social Security Act 1964 is called “the principal Act”.

2 Commencement

- (1) Parts 1 and 2 come into force on 1 April 2001.
- (2) Part 3 and the Schedule come into force on 1 July 2001.
- (3) The rest of this Act comes into force on the day after the date on which the Act receives the Royal assent.

3 Purpose

The purpose of this Act is to amend the Social Security Act 1964 to—

- (a) remove the requirement that work-tested beneficiaries undertake community work; and
- (b) provide that activity in the community and voluntary work will be options that work-tested beneficiaries may undertake; and
- (c) disestablish the community wage, and re-establish an unemployment benefit and a non-work-tested sickness benefit; and
- (d) change the work test so that it focuses, through job seeker agreements, on assisting work-tested beneficiaries to gain employment; and
- (e) simplify the sanctions regime for failure to comply with the work test and related obligations; and
- (f) abolish the work capacity assessment process; and
- (g) increase the income thresholds for eligibility for the disability allowance.

4 Sections 47 to 51 and heading repealed

- (1) The principal Act is amended by repealing sections 47 to 51 (which relate to work capacity assessment), and the heading immediately above section 47.
- (2) The principal Act is consequentially amended by repealing sections 12J(3), 53A(1)(bb), and 132E.

- (3) The Social Security Amendment Act 1998 is consequentially amended by repealing sections 15(1), 16(1) and (4), and 17.

Part 1

Amendments to principal Act coming into force on 1 April 2001

5 General specification of organised activities

- (1) Section 110(3)(f) of the principal Act is amended by omitting the words “(including community work)”.
- (2) Section 110(3) is amended by inserting, after paragraph (h), the following paragraph:
- (ha) participation in a **recognised community activity**, which is participation in either of the following:
- (i) **activity in the community**, which is an activity associated with a community project under the supervision of a sponsor who is contracted by the chief executive to provide that activity:
 - (ii) **voluntary work**, which is work undertaken for no remuneration (other than any reimbursement of direct expenses) for a non-profit community organisation or other person, and that is of benefit to the community; but does not include activities in the community, or work undertaken as part of a work experience or work exploration activity:

6 Direction to participate in organised activity

- (1) Section 111(1) of the principal Act is amended by inserting, after the word “activities”, the words “(other than a recognised community activity)”.
- (2) Section 111 of the principal Act is amended by inserting, after subsection (1), the following subsection:
- (1A) The chief executive may request a person to whom the work test applies to participate in a recognised community activity if the chief executive considers that the activity—
- (a) would, or is likely to, assist the person improve his or her prospects for employment; and
 - (b) is suitable for the circumstances of that person.

7 Penalties for failure to participate in organised activity

Section 116 of the principal Act is amended by inserting, after subsection (1), the following subsection:

- (1A) Paragraphs (a) and (b) of subsection (1) do not apply if the relevant organised activity is a recognised community activity.

8 Penalties for failure to participate in organised activity to satisfaction of chief executive

Section 118 of the principal Act is amended by inserting, after subsection (1), the following subsection:

- (1A) Subsection (1) does not apply if the relevant organised activity is a recognised community activity.

9 Application of Health and Safety in Employment Act 1992 and Human Rights Act 1993

- (1) Section 123C(1) of the principal Act is amended by inserting, after the words “undertakes any work”, the words “(other than voluntary work)”.

- (2) Section 123C of the principal Act is amended by inserting, after subsection (1), the following subsection:

- (1A) Except as provided in subsection (1), nothing in this Part creates or implies an employment relationship between the person undertaking the work and the person providing it.

10 Amendments to Social Security (Participation Allowance) Regulations 1998

- (1) Regulations 3 and 4 and the second column of the Schedule of the Social Security (Participation Allowance) Regulations 1998 are amended by omitting the word “organised” wherever it appears.

- (2) The Schedule of the Social Security (Participation Allowance) Regulations 1998 is amended by omitting the words in the first column, and substituting the words “An activity in the community (as defined in the Act).”

- (3) The Schedule of the Social Security (Participation Allowance) Regulations 1998 is amended by omitting from paragraph (a) in the second column the words “was required”, and substituting the words “had undertaken”.

Part 2**Further amendments to principal Act coming into force on 1 April 2001****11 Rates of benefits, etc, may be increased by Order in Council**

Section 61H(1) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

- (aa) amend section 69C(1)(c); and

12 Disability allowance

Section 69C(1)(c) of the principal Act is amended by—

- (a) omitting the word “it”, and substituting the words “the income less 4.25% of that income”;
- (b) omitting the words “any one of the benefits referred to in paragraph (a) of this subsection”, and substituting the words “an invalid’s benefit”.

Part 3

Amendments to principal Act coming into force on 1 July 2001

Consequential amendments to definitions

13 Interpretation

- (1) Section 3(1) of the principal Act is amended by omitting from paragraph (a) of the definition of **benefit** the words “of this Act”, and substituting the words “or Part 2”.
- (2) Section 3(1) of the principal Act is amended by repealing paragraph (aa) of the definition of **benefit**.
- (3) Section 3(1) of the principal Act is amended by repealing paragraph (a) of the definition of **income-tested benefit**, and substituting the following paragraphs:
 - (a) an unemployment benefit:
 - (aa) a sickness benefit:
- (4) Section 3(1) of the principal Act is amended by omitting from paragraph (a) of the definition of **work-test married rate** the words “a community wage”, and substituting the words “an unemployment benefit or a sickness benefit”.
- (5) Section 3(1) of the principal Act is amended by repealing paragraph (a) of the definition of **work-tested beneficiary**, and substituting the following paragraph:
 - (a) a person granted an unemployment benefit; or
- (6) Section 3(1) of the principal Act is amended by repealing paragraph (a) of the definition of **work-tested benefit**, and substituting the following paragraph:
 - (a) an unemployment benefit; or
- (7) Section 3(1) of the principal Act is amended by inserting in paragraph (e) of the definition of **work-tested benefit**, after the word “includes”, the words “a sickness benefit,”.
- (8) Section 3(1) of the principal Act is amended by omitting from paragraph (c) of the definition of **work-tested spouse** the words “a community wage earner, or a person granted”, and substituting the words “a person granted an unemployment benefit, a sickness benefit, or”.
- (9) Section 3(1) of the principal Act is amended by repealing the definitions of **community wage**, **community wage earner**, **job seeker contract**, and **organised activity**.

*Re-establishment of sickness benefit***14 New sections 54 to 54F inserted**

The principal Act is amended by inserting, after the heading “Sickness Benefits” (which follows section 53A), the following sections:

54 Sickness benefit: standard eligibility requirements

- (1) A person is entitled to a sickness benefit if he or she satisfies the criteria in subsections (2), (3), and (4), and—
 - (a) is not in full-time employment, is willing to undertake it, but because of sickness, injury, or disability is limited in his or her capacity to seek, undertake, or be available for full-time employment; or
 - (b) is in employment, but is losing earnings because, through sickness or injury, he or she is not actually working, or is working only at a reduced level.
- (2) An applicant for a sickness benefit must be—
 - (a) aged 18 years or over; or
 - (b) aged 16 years or over, be married, and have 1 or more dependent children.
- (3) An applicant for a sickness benefit must have resided continuously in New Zealand for at least 2 years at any time.
- (4) An applicant for a sickness benefit must have—
 - (a) No income; or
 - (b) an income of less than the amount that would fully abate the benefit.
- (5) Nothing in subsection (4) affects the entitlement of a person to receive a sickness benefit if, during a temporary period, the person has income sufficient to fully abate the benefit but otherwise fulfils the conditions of entitlement to the benefit.
- (6) For the purposes of subsection (1)(b), any payment made by a person to any other person who acts as his or her substitute during a period of sickness or injury may be treated as a loss of earnings by the first-mentioned person.

54A Sickness benefit: grounds of hardship

- (1) The chief executive may grant a sickness benefit under section 54 to a person who meets the criteria in subsections (1) and (2) of that section, but who does not meet the other criteria set out in that section, if—
 - (a) the person is suffering hardship; and
 - (b) the person is not qualified to receive any other benefit; and
 - (c) the person is unable to earn sufficient income to support the person and his or her spouse and any dependent children.

- (2) The chief executive may grant a sickness benefit under section 54 to a person who, if the person met the criteria in section 54(2), would be eligible under subsection (1) of this section to be granted a sickness benefit, but only if the person—
- (a) is unmarried and aged 16 or 17; and
 - (b) is either pregnant or undergoing treatment in a rehabilitation programme recognised by the chief executive.

54B Sickness benefit: medical examinations

- (1) A person who applies for a sickness benefit must include in the application a certificate by—
- (a) a medical practitioner; or
 - (b) a registered dentist (in respect of a condition that is within the ambit of his or her profession); or
 - (c) a registered midwife (in respect of a pregnancy, childbirth, or any related condition that is within the ambit of his or her profession).
- (2) The certificate under subsection (1) must—
- (a) certify that the applicant's capacity for work is affected by sickness, injury, or disability; and
 - (b) indicate the nature of the sickness, injury, or disability, the extent to which the applicant's capacity for work is affected by it, and the length of time that effect is likely to last; and
 - (c) contain such other particulars as the chief executive may require.
- (3) The chief executive may at any time require an applicant for a sickness benefit or a sickness beneficiary to submit himself or herself for examination by a medical practitioner or psychologist. The medical practitioner or psychologist must be agreed for the purpose between the applicant or beneficiary and the chief executive or, failing agreement, must be nominated by the chief executive.
- (4) A medical practitioner or psychologist who conducts an examination under subsection (3) must prepare a report that states whether the applicant's or beneficiary's capacity for work is affected by sickness, injury, or disability, and how long that effect is likely to continue; and must send a copy of the report to the chief executive.

54C Sickness benefit: payment

A sickness benefit is paid in respect of a 5-day working week.

54D Rates of sickness benefit

- (1) A sickness benefit must be paid to a sickness beneficiary at the appropriate rate in the Ninth Schedule, unless subsection (2) applies.

- (2) The appropriate rate in the Eighth Schedule that was payable immediately before 1 July 1998 must, until the appropriate rate in the Ninth Schedule is equal to or greater than that rate, be paid to a person who—
- (a) was a sickness beneficiary immediately before 1 July 1998; and
 - (b) continued to receive that benefit until it was changed to a community wage; and
 - (c) continued to receive the community wage on the grounds of sickness, injury, or disability until the community wage was changed to a sickness benefit; and
 - (d) has continued since then to receive a sickness benefit.
- (3) If no payment is made under this section in respect of the spouse of a sickness beneficiary, the chief executive may increase the rate of sickness benefit payable to the beneficiary by an amount not exceeding the amount specified in clause 2 of the Ninth Schedule in respect of any person who for the time being has the care of the home of the beneficiary.
- (4) An applicant is entitled to be paid the rate in clause 5 of the Ninth Schedule during any period when the applicant's spouse is ineligible for a benefit because of—
- (a) the application of section 60H (which relates to voluntary unemployment or loss of employment through misconduct, etc); or
 - (b) a strike, either by himself or herself, or by fellow members of the same union at the same place of employment.

54E Obligations of spouse of sickness beneficiary

From the time that payment of the sickness benefit commences, the spouse of a person granted a sickness benefit at a work-test married rate must—

- (a) comply with any request under section 60HA; or
- (b) if he or she is a work-tested spouse, comply with the work test.

54F Transfer from community wage to sickness benefit on 1 July 2001

- (1) This section applies to a person who, immediately before 1 July 2001, was—
- (a) in receipt of a community wage on the ground of the person's sickness, injury, or disability; and
 - (b) either—
 - (i) was fulfilling the conditions of entitlement to the community wage on that ground; or
 - (ii) was eligible to be granted a community wage on that ground under former section 90.
- (2) On 1 July 2001, in relation to a person to whom this section applies,—

- (a) the community wage becomes a sickness benefit as if it were granted under section 54; and
 - (b) the person ceases to be subject to the work test; and
 - (c) any sanctions to which the person was subject under any of former sections 115, 116, or 118 cease to apply.
- (3) For the avoidance of doubt, the operation of subsection (2) does not affect—
- (a) the rate of benefit paid to the person and his or her spouse (if any); and
 - (b) in relation to the person’s spouse, any of the following:
 - (i) the requirements of section 54E;
 - (ii) any exemption from the work test under section 105;
 - (iii) a sanction under any of former sections 115 to 118 applying to the spouse.
- (4) In this section, **former section** means a section of this Act as it was before 1 July 2001.

15 Consequential amendments relating to sickness benefit

- (1) The principal Act is consequentially amended by omitting from each of the following provisions the words “community wage on the grounds of sickness, injury, or disability”, and substituting in each case the words “sickness benefit”:
- (a) section 12J(2)(e);
 - (b) section 53A(1)(ba);
 - (c) section 66(1);
 - (d) the second proviso to section 72(b).
- (2) Section 53A(1)(ba) of the principal Act is amended by omitting the words “person’s community wage”, and substituting the words “person’s sickness benefit”.
- (3) The principal Act is consequentially amended by omitting from each of the following sections the words “a community wage” wherever they appear, and substituting in each case the words “an unemployment benefit or a sickness benefit”:
- (a) section 61(1);
 - (b) section 61E(1);
 - (c) section 69C(1)(a) and (5)(a);
 - (d) section 77(2) and (3);
 - (e) section 80BD(3).

- (4) Section 60FD of the principal Act is consequentially amended by omitting the words “Sections 92(1) to (3) and 97(3)”, and substituting the expression “Section 54B(1) to (3)”.
- (5) Section 60FD of the principal Act is consequentially amended by omitting the words “community wage”, and substituting the words “sickness benefit”.
- (6) Section 60H(1) of the principal Act is consequentially amended by repealing paragraph (c) of the definition of **employment**, and substituting the following paragraph:
- (c) in the case of any other work-tested beneficiary, full-time employment
- (7) Section 61(1A) of the principal Act is consequentially amended by omitting the words “a community wage under section 89”, and substituting the words “a sickness benefit under section 54A or an unemployment benefit under section 90”.
- (8) Section 70A(1)(b) of the principal Act is amended by repealing subparagraph (iv), and substituting the following subparagraphs:
- (iv) a sickness benefit; or
- (v) an unemployment benefit; or
- (9) Section 80B of the principal Act is consequentially amended by repealing subparagraph (iv) of paragraph (a) of the definition of **income**, and substituting the following subparagraphs:
- (iv) a community wage paid before 1 July 2001:
- (v) a sickness benefit:
- (vi) an unemployment benefit:
- (10) The principal Act is consequentially amended by omitting from each of the following provisions the words “community wage granted on the grounds of sickness, injury, or disability”, and substituting in each case the words “sickness benefit”:
- (a) section 80(5)(c):
- (b) section 80(14)(a):
- (c) section 80BA(4)(b)(i).

16 Independent youth benefits: unmarried person

Section 60F(3)(a) of the principal Act is amended by omitting the words “employees organisation”, and substituting the word “union”.

Clarifying references to chief executive

17 Independent youth benefits: unmarried persons

Section 60FA(3)(b) of the principal Act is amended by inserting, after the words “chief executive”, the words “of the Department of Child, Youth and Family Services”.

18 Independent youth benefits: persons enrolled in full-time course of secondary instruction

Section 60FC(3)(b) of the principal Act is amended by inserting, after the words “chief executive”, the words “of the Department of Child, Youth and Family Services”.

Re-establishment of unemployment benefit

19 New heading and section 88A substituted

Sections 87 and 88 and the heading to Part 2 of the principal Act are repealed, and the following headings and section substituted:

Part 2

Unemployment benefit and work testing

88A Interpretation

In this Part, unless the context otherwise requires,—

activity in the community means an activity associated with a community project under the supervision of a sponsor who is contracted by the chief executive to provide that activity

job-search activity means an activity undertaken by a work-tested beneficiary for the purpose of seeking or obtaining employment

job seeker agreement means an agreement of the kind described in section 105A

job seeker development activity means an activity defined by the chief executive under section 110 as being a job seeker development activity

recognised community activity means an activity in the community or voluntary work

voluntary work means work undertaken by a person for no remuneration (other than any reimbursement of direct expenses) for a non-profit community organisation or other person, and that is of benefit to the community; but does not include activities in the community, or work undertaken as part of a work experience or work exploration activity.

*Unemployment benefit***20 Community wage: standard eligibility requirements**

- (1) Section 89(1) of the principal Act is amended by repealing paragraphs (b) and (c).
- (2) Section 89(4)(b) of the principal Act is amended by omitting the words “community wage under the appropriate income test referred to in the Ninth Schedule”, and inserting the word “benefit”.
- (3) Section 89(5) of the principal Act is amended by—
 - (a) omitting the words “the community wage”, and substituting the words “the benefit”;
 - (b) omitting the words “the wage”, and substituting the words “the benefit”.
- (4) Section 89(6) of the principal Act is repealed.
- (5) Section 89 of the principal Act is amended by omitting the words “a community wage” wherever they appear, and substituting in each case the words “an unemployment benefit”.
- (6) The heading to section 89 of the principal Act is amended by omitting the words “**Community wage**”, and substituting the words “**Unemployment benefit**”.

21 Community wage: grounds of hardship

- (1) Section 90(1) of the principal Act is amended by inserting, after the expression “89(1)”, the expression “and (2)”.
- (2) Section 90 of the principal Act is amended by omitting the words “a community wage” wherever they appear, and substituting in each case the words “an unemployment benefit”.
- (3) Section 90 of the principal Act is amended by adding the following subsection:
 - (3) Despite section 91, the chief executive may, during the period between the end of 1 academic year and the start of the next, grant an unemployment benefit under section 89 to a full-time student who is aged 16 or 17 if the chief executive is satisfied that—
 - (a) section 60FA(1)(b) applies to the student; or
 - (b) the student is married.
- (4) The heading to section 90 of the principal Act is amended by omitting the words “**Community wage**”, and substituting the words “**Unemployment benefit**”.

22 Community wage: ineligibility

- (1) Section 91(1)(a) of the principal Act is amended by inserting, after the expression “90(2)”, the expression “or (3)”.

- (2) Section 91(1) of the principal Act is amended by omitting the words “a community wage”, and substituting the words “an unemployment benefit”.
- (3) Section 91(1)(b) of the principal Act is amended by omitting the words “employees organisation”, and substituting the word “union”.
- (4) Section 91(2) of the principal Act is repealed.
- (5) The heading to section 91 of the principal Act is amended by omitting the words “**Community wage**”, and substituting the words “**Unemployment benefit**”.

23 Sections 92 to 96 repealed

Sections 92 to 96 of the principal Act are repealed.

24 New section 97 substituted

The principal Act is amended by repealing section 97, and substituting the following section:

97 Unemployment benefit: obligations on beneficiaries

- (1) A person granted an unemployment benefit is subject to the work test from the time that payment of the unemployment benefit commences.
- (2) From the time that payment of an unemployment benefit commences, the spouse of a person granted an unemployment benefit at a work-test married rate must—
 - (a) comply with a request under section 60HA; or
 - (b) if he or she is a work-tested spouse, comply with the work test.

25 New section 98 substituted

The principal Act is amended by repealing section 98, and substituting the following section:

98 Unemployment benefit: payment

- (1) Payment of an unemployment benefit commences in accordance with section 80.
- (2) An unemployment benefit must be paid in weekly instalments, in accordance with section 82.
- (3) An unemployment benefit is paid in respect of a 5-day working week.
- (4) The days of the week to be included in the working week of a person granted an unemployment benefit are determined by the chief executive after consultation with the beneficiary, but must not include—
 - (a) a Saturday, except with the agreement of the beneficiary; or
 - (b) a Sunday.

- (5) Payment of an unemployment benefit may be suspended or cancelled in accordance with sections 80 to 82. This provision does not limit any other provision in this Act.

26 Community wage: rates

- (1) Section 99(1) of the principal Act is amended by—
- (a) omitting the words “A community wage must be paid to a community wage earner”, and substituting the words “An unemployment benefit must be paid to a person granted the benefit”;
 - (b) omitting the words “, unless subsection (2) applies”.
- (2) Section 99(2) of the principal Act is repealed.
- (3) Section 99(3) of the principal Act is consequentially amended by—
- (a) omitting the words “community wage earner”, and substituting the words “person granted an unemployment benefit”;
 - (b) omitting the words “community wage”, and substituting the words “unemployment benefit”;
 - (c) omitting the words “an earner” and “the earner”, and substituting the words “a beneficiary” and “the beneficiary”, respectively.
- (4) Section 99(4) of the principal Act is consequentially amended by—
- (a) omitting the words “a community wage”, and substituting the words “an unemployment benefit”;
 - (b) omitting the words “community wage”, and substituting the words “unemployment benefit”.
- (5) Section 99(4)(b) of the principal Act is amended by omitting the words “employees organisation (as defined in section 91(2))”, and substituting the word “union”.
- (6) The heading to section 99 of the principal Act is amended by omitting the words “**Community wage**”, and substituting the words “**Unemployment benefit**”.

27 New section 99A inserted

The principal Act is amended by inserting, after section 99, the following section:

99A Transfer from community wage to unemployment benefit on 1 July 2001

- (1) This section applies to a person who, immediately before 1 July 2001, was—
- (a) in receipt of a community wage on a ground other than the person’s sickness, injury, or disability; and
 - (b) either—

- (i) was fulfilling the conditions of entitlement to the community wage; or
 - (ii) was eligible to be granted a community wage under former section 90.
- (2) On 1 July 2001, in relation to a person to whom this section applies, the community wage becomes an unemployment benefit as if it were granted under section 89.
- (3) For the avoidance of doubt, the operation of subsection (2) does not affect, in relation to a person to whom this section applies and his or her spouse (if any),—
 - (a) the rate of benefit paid; and
 - (b) the obligations under section 97; and
 - (c) any requirement to undertake an organised activity under former section 111; and
 - (d) any exemption from the work test under section 105; and
 - (e) a sanction applying under any of former sections 115 to 118.
- (4) In this section, **former section** means a section of this Act as it was before 1 July 2001.

28 Section 100 repealed

Section 100 of the principal Act is repealed.

Amendments relating to work test and job seeker agreements

29 Section 101 repealed

Section 101 of the principal Act is repealed.

30 New section 102 substituted

The principal Act is amended by repealing section 102, and substituting the following section:

102 Application and obligations of work test

- (1) The work test applies to a person while he or she is a work-tested beneficiary, and the person is subject to the obligations of the work test set out in subsection (2) from the date on which the work-tested benefit is first paid.
- (2) The work test obligations are—
 - (a) to be available for, and take reasonable steps to obtain, suitable employment; and
 - (b) to accept any offer of suitable employment, whether full-time employment, part-time work, temporary employment, or employment that is seasonal or subsidised; and

- (c) to attend and participate in an interview for any opportunity of suitable employment to which the beneficiary is referred by the chief executive; and
 - (d) when required by the chief executive, to attend and participate in any interview with an officer of the department or other person on behalf of the chief executive; and
 - (e) when required by the chief executive, to co-operate in the development of a job seeker agreement to the satisfaction of the chief executive, and then to sign it; and
 - (f) when required to by the chief executive, to select at least 1 job seeker development activity from a list of activities that the chief executive considers are suitable for the beneficiary, and to include it or them in the beneficiary's job seeker agreement; and
 - (g) once the person has signed a job seeker agreement,—
 - (i) to undertake the job-search activities set out in the agreement; and
 - (ii) to undertake and complete any job seeker development activity or recognised community activity set out in the agreement (subject to the chief executive taking reasonable steps to arrange for the beneficiary to undertake the activity); and
 - (iii) to undertake and complete any other activities set out in the agreement.
- (3) The failure by a beneficiary to undertake or complete a recognised community activity, as set out in his or her job seeker agreement, is not a failure to comply with a work test obligation for the purpose of section 115(1)(a).
- (4) 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.
- (5) 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.
- (6) The work test obligations apply,—
- (a) in the case of a person granted the unemployment benefit, on the same days as are included in the person's working week under section 98; and
 - (b) in the case of any other work-tested beneficiary, on any 5 days of the week determined by the chief executive after consultation with the beneficiary, which must not include—
 - (i) a Saturday, except by agreement with the beneficiary; or
 - (ii) a Sunday.

31 New section 104A inserted

The principal Act is amended by inserting, after section 104, the following section:

104A Transitional provision dealing with deferrals

- (1) This section applies to a work-tested beneficiary who, immediately before 1 July 2001, was subject to a deferral of work test obligations granted under section 107 of the principal Act before its repeal on that date.
- (2) On and after 1 July 2001, the deferral becomes an exemption from the work test as if the exemption were granted under section 105 and,—
 - (a) if the deferral was granted for a time, that time applies to the exemption; and
 - (b) if the deferral was granted on conditions, those conditions apply to the exemption; and
 - (c) if, in granting the deferral, the chief executive required the person to participate in 1 or more organised activities, that requirement continues to apply as if the organised activities were job seeker development activities included in a job seeker agreement signed by the beneficiary.

32 Exemption from obligations

Section 105 of the principal Act is amended by repealing subsection (5), and substituting the following subsections:

- (5) A beneficiary who has been granted an exemption from the work test may be required to attend an interview with an officer of the department or other person on behalf of the chief executive. Failure to attend or participate in the interview may result in sanctions under section 117 being imposed.
- (5A) A person granted an exemption 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.

33 New heading and sections 105A to 105D inserted

The principal Act is amended by inserting, after section 105, the following heading and sections:

Job seeker agreements

105A Description of job seeker agreement and responsibilities arising from it

- (1) A job seeker agreement is a statutory agreement in which—
 - (a) the chief executive sets out what the department will do to assist a work-tested beneficiary to obtain employment, improve his or her employment prospects, or both; and

- (b) the beneficiary acknowledges the responsibilities arising out of receipt of the benefit or (in the case of a work-tested spouse) payment of part of the benefit in respect of the spouse.
- (2) A job seeker agreement—
 - (a) must include an acknowledgment by the beneficiary that he or she is subject to the work test obligations (as set out in section 102); and
 - (b) must specify the job-search activities the beneficiary will undertake; and
 - (c) may include any job seeker development activities, recognised community activities, or other activities that the beneficiary agrees to undertake; and
 - (d) must explain the sanctions that may be imposed if the beneficiary fails to comply with certain parts of the work test (as set out in section 117); and
 - (e) must specify the assistance the department will give to assist the beneficiary obtain employment or improve his or her employment prospects, and any conditions on which the assistance will be provided or to which it is subject.
- (3) A signed job seeker agreement does not create or imply an employment relationship between the chief executive and the beneficiary, nor does it create rights or obligations that are enforceable in any court or tribunal.
- (4) Nothing in subsection (3) affects section 10A, or sections 12J to 12R.

105B Entering into and reviewing job seeker agreement

- (1) A job seeker agreement should be developed through a process of negotiation between the beneficiary and the chief executive in which the parties aim to promptly conclude and sign an agreement acceptable to both of them.
- (2) If, despite reasonable efforts by the chief executive, the beneficiary does not co-operate in the prompt development of a job seeker agreement, or does not sign it within a reasonable period once it is satisfactory to the chief executive, the chief executive may conclude that the beneficiary has failed his or her work test obligations under section 102(2)(e).
- (3) At any time after a job seeker agreement is signed, a beneficiary may ask for a review of the agreement; but, until a review is complete, the beneficiary must comply with the job seeker agreement in its current form.
- (4) When a beneficiary asks for a review of his or her job seeker agreement, the chief executive must review it as soon as practicable and may, by agreement with the beneficiary, amend the job seeker agreement.
- (5) The chief executive may at any time review a beneficiary's job seeker agreement, and may then,—
 - (a) by agreement with the beneficiary, amend the agreement; or

- (b) require the beneficiary to co-operate in the development of a replacement job seeker agreement to the satisfaction of the chief executive, and then to sign the new agreement.
- (6) An agreement entered into under subsection (5)(b) replaces any earlier agreement and is for all purposes to be treated as an agreement entered into under subsection (1).

105C Department to explain to beneficiaries their rights and obligations

The chief executive must take reasonable and appropriate steps to make every work-tested beneficiary aware, before he or she signs a job seeker agreement, of—

- (a) his or her obligations arising from payment of a work-tested benefit; and
- (b) the import and consequences of signing a job seeker agreement; and
- (c) the consequences of failure to comply with the work test and, in particular, the sanctions that may be imposed under section 117; and
- (d) the beneficiary's right under section 105B(3) to ask for a review of his or her job seeker agreement; and
- (e) the beneficiary's rights under sections 10A and 12J to review and appeal decisions relating to the job seeker agreement.

105D Job seeker contracts to have effect as job seeker agreements

Every job seeker contract that was in effect under this Act on 30 June 2001 continues in effect, in relation to a work-tested beneficiary, after that date as if it were a job seeker agreement entered into under section 105B, and remains in effect until—

- (a) the person to whom it applies ceases to be a work-tested beneficiary; or
- (b) it is replaced by a new job seeker agreement entered into under section 105B.

34 Sections 106 to 109 and heading repealed

Sections 106 to 109 and the heading immediately above section 106 of the principal Act are repealed.

35 New heading and sections 110 to 112 substituted

The principal Act is amended by repealing sections 110 to 112, and the heading immediately above section 110, and substituting the following heading and sections:

*Job seeker development activities***110 Defining job seeker development activities**

- (1) A **job seeker development activity** is an activity defined from time to time by the chief executive under this section as a job seeker development activity.
- (2) The activities that the chief executive may define as job seeker development activities include, but are not limited to,—
 - (a) work assessment;
 - (b) participation in a programme or seminar to increase particular skills or enhance motivation;
 - (c) participation in a work experience or work exploration activity;
 - (d) participation in employment-related training.
- (3) The chief executive may define an activity or category of activity as a job seeker development activity only if the chief executive is satisfied that the activity—
 - (a) is likely to increase the prospect for self-reliance of beneficiaries who participate in it by increasing their awareness of, and participation in, opportunities for employment, and for self-betterment, education, or training; or
 - (b) is likely to strengthen incentives for persons who participate in it to remain in employment or move into unsubsidised employment.
- (4) The chief executive must specify any conditions that apply to an activity that he or she defines as a job seeker development activity.
- (5) The chief executive must define a range of job seeker development activities, and may define different job seeker development activities for different geographical locations.
- (6) The chief executive's discretion to define job seeker development activities is subject to any direction by the Minister.

111 Assistance provided by department

- (1) If, following a requirement under section 102(2)(f), a beneficiary has included 1 or more job seeker development activities from the list in his or her job seeker agreement, then the chief executive must take reasonable steps to arrange for the beneficiary to undertake those activities.
- (2) If a beneficiary's job seeker agreement includes any other job seeker development activity, then the chief executive may take reasonable steps to arrange for the beneficiary to undertake that activity, but only if the chief executive considers the activity—
 - (a) is suitable for the circumstances of the beneficiary; and
 - (b) is likely to improve his or her employment prospects.

- (3) If a beneficiary's job seeker agreement includes a recognised community activity, the chief executive may take reasonable steps to arrange for the beneficiary to undertake the recognised community activity, but only if—
 - (a) the chief executive considers the recognised community activity is suitable for the beneficiary to undertake; and
 - (b) there are no job seeker development activities or other activities specified in the agreement that would be more suitable for the beneficiary to undertake.
- (4) If a beneficiary's job seeker agreement specifies other assistance that the Department will give the beneficiary, then the chief executive must provide that specified assistance, subject to any conditions set out in the job seeker agreement.

112 Organised activities to have effect as job seeker development activities

- (1) A work-tested beneficiary who, immediately before 1 July 2001, was required to participate in an organised activity (other than a recognised community activity) is obliged to continue to participate in that activity as if the activity were a job seeker development activity included in the beneficiary's job seeker agreement.
- (2) The obligation to continue participating in the activity continues until the beneficiary enters into a job seeker agreement.

36 New sections 115 to 117 substituted

The principal Act is amended by repealing sections 115 to 118, and substituting the following sections:

115 Failure to comply with work test

- (1) The sanctions in section 117 may be imposed on a beneficiary if the chief executive considers that the beneficiary has, without a good and sufficient reason,—
 - (a) in the case of a work-tested beneficiary, failed to comply with any of the work test obligations as set out in section 102; or
 - (b) in the case of a beneficiary granted an exemption from the work test, failed to attend an interview as required under section 105(5).
- (2) Before determining that a beneficiary has failed to comply with any work test obligation, the chief executive must review the beneficiary's job seeker agreement (if the beneficiary has one).
- (3) A beneficiary has a good and sufficient reason for not undertaking or completing an activity in the beneficiary's job seeker agreement if—
 - (a) doing so was dependent upon the provision by the department of any assistance specified in the person's job seeker agreement; and

- (b) that assistance was either not supplied, or not supplied to the extent, or in the manner, specified in the agreement.
- (4) A beneficiary who has 1 or more dependent children has a good and sufficient reason for not participating in or completing any job seeker development activity in his or her job seeker agreement if 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.
- (5) A full-time work-tested beneficiary who leaves, without good and sufficient reason, or is dismissed for misconduct from, part-time work or employment averaging less than 15 hours a week is treated as someone to whom subsection (1) applies.
- (6) A part-time work-tested beneficiary who leaves, without good and sufficient reason, or is dismissed for misconduct from, employment averaging less than 15 hours a week is treated as someone to whom subsection (1) applies.
- (7) Section 60H(6) and (7) applies to subsections (5) and (6), with all necessary modifications.

116 Failure to participate in activity under section 60HA

The sanctions in section 117 may be imposed on 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, failed to comply with a request under that section.

117 Sanctions that may be imposed for failures

- (1) The sanctions that the chief executive must apply in respect of failures under section 115 or section 116 are,—
 - (a) for a first failure, suspension of the person's benefit until the person complies;
 - (b) for a second failure (being a failure that occurs after the person has complied following a first failure), suspension of the person's benefit until the person complies;
 - (c) for a third failure (being a failure that occurs after the person has complied following a second failure), cancellation of the benefit.
- (2) A person whose benefit is cancelled under subsection (1)(c)—
 - (a) is not entitled to receive any benefit for 13 weeks from the date of cancellation; and
 - (b) if the person wishes to again become entitled to a benefit, must apply for the benefit and establish his or her eligibility for it.
- (3) Subsection (2) is subject to sections 120 and 121, and to sections 123 to 123B.

37 Calculation of failure rate

- (1) Section 119(1) of the principal Act is consequentially amended by omitting the expression “section 115 or section 116 or section 118”, and substituting the expression “section 117”.
- (2) Section 119(1) of the principal Act is consequentially amended by repealing paragraph (a), and substituting the following paragraph:
 - (a) may count applicable failures only while the same benefit has been continuously paid in respect of the beneficiary; but.
- (3) Section 119(2) of the principal Act is consequentially amended by omitting the words “any of sections 115, 116, and 118”, and substituting the expression “section 115 or section 116”.

38 New section 122 substituted

The principal Act is amended by repealing section 122, and substituting the following section:

122 Meaning of recompliance

In relation to a failure under section 115 or section 116, a person recomplies (for the purpose of section 117) if the person remedies the relevant failure or, if it is not possible to remedy the failure, the person undertakes to the satisfaction of the chief executive,—

- (a) in the case of a work-tested beneficiary, some other activity specified in the person’s job seeker agreement or, if there is no other activity specified, a job seeker development activity approved by the chief executive; or
- (b) in any other case, some other activity of the kind specified in section 60HA and approved by the chief executive.

39 Effect of ceasing to be subject to obligation to comply with section 60HA or work test

- (1) Section 123(1) of the principal Act is consequentially amended by omitting from paragraph (a) the expression “section 115 or section 116”, and substituting the expression “section 117”.
- (2) Section 123(1)(b) of the principal Act is amended by inserting, after subparagraph (i), the following subparagraph:
 - (ia) ceases to be a beneficiary who is required to comply with a request under section 60HA (other than because of the imposition of that suspension or 13-week period); or.
- (3) Section 123(1)(b)(ii) of the principal Act is amended by adding the words “or an exemption from complying with section 60HA”.

40 Effect of employment on non-entitlement period

- (1) Section 123A(1) of the principal Act is amended by omitting the expression “section 115 or section 116”, and substituting the expression “section 117”.
- (2) Section 123A(3) is repealed.

41 New sections 123B and 123C substituted

The principal Act is amended by repealing sections 123B and 123C, and substituting the following sections:

123B Effect of participation in certain activities on non-entitlement period

- (1) This section applies to a person who—
 - (a) is subject to a 13-week period of non-entitlement under section 60H or section 117; and
 - (b) is participating in 1 or more **approved activities**, which are any of the following approved by the chief executive for the purpose:
 - (i) job seeker development activities;
 - (ii) recognised community activities;
 - (iii) part-time work (in the case of a part-time work-tested beneficiary).
- (2) If a person to whom this section applies participates satisfactorily in the approved activity or activities for a continuous period of 6 weeks,—
 - (a) the remainder of the period of non-entitlement lapses; and
 - (b) if the person wishes to again become entitled to a benefit, the person must apply for the benefit and establish his or her eligibility for it.
- (3) Despite subsection (2)(b), if the person applies for a benefit, the chief executive must grant the person a benefit during the person’s satisfactory participation in the approved activity or activities.
- (4)) Payment of a benefit granted under subsection (3) is subject to the condition that the person is liable to repay the whole of any amount paid during the non-entitlement period if he or she fails to complete a continuous period of 6 weeks of satisfactory participation in an approved activity or activities, or fails to continue satisfactory participation until the end of the non-entitlement period (whichever is earlier).
- (5) No obligation to repay under subsection (4) arises if the reason for the person’s failure is that he or she—
 - (a) ceases to be a work-tested beneficiary or a beneficiary required to comply with a request under section 60HA; or
 - (b) obtains, under section 105, an exemption from the work test or an exemption from complying with section 60HA.

- (6) If the person is still entitled to the benefit at the end of the period of satisfactory participation or non-entitlement (as the case may be), payment of the benefit is no longer subject to the condition in subsection (4).
- (7) Any amount the person is liable to repay under this section may be recovered by the chief executive under section 86(1A).

123C Application of Health and Safety in Employment Act 1992 and Human Rights Act 1993

- (1) In this section, **person A** is a person who, in accordance with his or her job seeker agreement, or under section 122 or section 123B, is doing work as part of a job seeker development activity or an activity in the community.
- (2) The Health and Safety in Employment Act 1992 and the Human Rights Act 1993 apply to person A and the person providing the work that person A is doing, as if person A were the employee of the person providing the work.
- (3) Except as provided in subsection (2), nothing in this Part creates or implies an employment relationship between person A and the person providing the work.

42 Regulations

Section 123D of the principal Act is amended by repealing paragraphs (b) and (c).

43 Consequential amendments relating to changes to Part 2 of principal Act

- (1) Section 12J(4) of the principal Act is consequentially amended by omitting the words “which relates to the general specification of organised activities”, and substituting the words “defining job seeker development activities”.
- (2) Section 80 of the principal Act is amended by—
 - (a) omitting from subsection (5)(a) the words “a community wage”, and substituting the words “an unemployment benefit”;
 - (b) repealing subsections (6) and (7);
 - (c) inserting in subsection (8)(b), after the words “was cancelled”, the words “or suspended”.
- (3) 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 sanction of suspension of 100% of a benefit under section 117.
- (4) Section 113 of the principal Act is consequentially amended by—
 - (a) omitting from subsection (1) the expression “sections 115 to 118”, and substituting the expression “section 117”;
 - (b) omitting the words “or reduce”, “or reducing”, and “or reduction” wherever they appear.

- (5) Section 120(1) of the principal Act is amended by omitting the expression “section 115 or section 116”, and substituting the expression “section 117”.
- (6) Section 120(2) of the principal Act is repealed.
- (7) Section 121 of the principal Act is amended by omitting the expression “section 115 or section 116”, and substituting the expression “section 117”.
- (8) The Social Security (Penalties for Unsatisfactory Participation) Regulations 1998 (SR 1998/269) are revoked.

44 Schedule 9 amended

- (1) The principal Act is amended by repealing the heading to Schedule 9, and substituting the following heading: “**Rates of unemployment benefits and sickness benefits**”.
- (2) Clause 1(aa) of Schedule 9 of the principal Act is amended by omitting the words “aged 18 or 19”, and substituting the words “under the age of 20”.
- (3) Clause 1(a) of Schedule 9 of the principal Act is amended by omitting the words “of or over the age of 18 years and”.
- (4) Clause 5 of Schedule 9 of the principal Act is amended by omitting the words “community wage”, and substituting the word “benefit”.

45 Consequential amendments to other enactments

The enactments specified in the Schedule are amended in the manner set out in that schedule.

Schedule Enactments amended

s 45

Child Support Act 1991 (1991 No 142)

Omit paragraph (c)(iii) of the definition of **social security benefit** in section 2(1) and substitute:

- (iii) an unemployment benefit:
- (iv) a sickness benefit:

Omit from section 30(3) the words “community wage”, and substitute the words “unemployment benefit”.

Repeal the definition of **gross married rate of community wage** in section 30(5).

Insert in section 30(5), in its appropriate alphabetical order:

gross married rate of unemployment benefit, in relation to any child support year, means the rate specified in clause (1)(h) of the Ninth Schedule of the Social Security Act 1964 and before any diminution based on income, in force on 1 January in the immediately preceding child support year, increased by the total amount of income tax deductions that would be required to make the rate a gross, rather than a net, rate (as determined in accordance with section NC 6(1D) of the Income Tax Act 1994)

Education Act 1989 (1989 No 80)

Omit from the definition of **benefit** in section 226A the words “a community wage under Part 2 of” and substitute the words “an unemployment benefit or a sickness benefit under”.

Omit from the definition of **benefit** in section 238B the words “a community wage under Part 2 of” and substitute the words “an unemployment benefit or a sickness benefit under”.

Income Tax Act 1994 (1994 No 164)

The item relating to the Income Tax Act 1994 was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

Social Security (Reciprocal Obligations: Exemptions and Deferrals) Regulations 1998 (SR 1998/270)

Omit from regulation 1 the words “Reciprocal Obligations: Exemptions and Deferrals” and substitute the words “Exemptions under Section 105”.

Insert in regulation 4(2), after paragraph (c):

- (ca) the person’s capacity for work is limited by sickness, injury, or disability; or
- (cb) the person is engaged in full-time study of a kind approved by the chief executive; or

Omit from regulation 6(2)(a) the words “organised activity” and substitute the words “job seeker development activity”.

Revoke regulation 7.

Eprint notes

1 *General*

This is an eprint of the Social Security Amendment Act 2001 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *About this eprint*

This eprint is not an official version of the legislation under section 18 of the Legislation Act 2012.

3 *Amendments incorporated in this eprint*

Social Security Act 2018 (2018 No 32): section 455(1)