

Departmental Disclosure Statement

Social Security Legislation Rewrite Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

Attention: Limits on scope of disclosure statement

This Bill is predominantly a technical revision or consolidation of existing legislation to improve clarity and navigability. Most of the Bill therefore does not change the effect of existing law. For ease of use, information provided in this disclosure statement about the content of this Bill is, unless otherwise indicated, limited to those provisions that involve a substantive change to the law. This includes changes to the law to introduce new policy or to address minor and technical changes as listed in Schedule 11 (Identified changes in legislation) of the Bill.

This disclosure statement was prepared by the Ministry of Social Development.

The Ministry of Social Development certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

1 March 2016

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Part One: General Policy Statement

Overview

This Bill:

- repeals and replaces the Social Security Act 1964 and the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990
- provides an improved legislative structure
- reduces the level of detail in primary legislation, to enhance clarity, coherency, and consistency.

A small number of policy changes are included to support service delivery.

Objective

All legislation should be accessible: available, navigable, and clear. Legislation is clear if it is suitably readable and easy to understand. However, the Social Security Act 1964 is over 50 years old. Since it was enacted, it has been regularly and intensively amended. This has made it increasingly piecemeal, awkward, disjointed, and incoherent.

The Bill aims to improve accessibility by setting out clearly the existing requirements for eligibility, obligations, sanctions, and rights to review and appeal decisions, and how assistance is delivered. It also shifts the residential care and disability support services provisions into a stand-alone Act so that they are easier to access by or for people requiring that care or those services.

Legislative features

Since the Social Security Act 1964 is very detailed, amendment Acts have been needed to implement even minor changes in policy, or to enable more efficient administrative practice.

This Bill updates the drafting style and language. The Bill's structure also groups provisions in ways that are clearer, more logical, and easier to follow.

The Bill also achieves greater consistency with other enactments with in terms of the level of detail that is included in primary legislation and delegated legislation. Significant policy, matters relating to human rights and freedoms, rights of appeal, provisions that vary common law, and provisions that confer economic rights (such as eligibility) are in primary legislation. Matters relating to detail and administration will be more appropriately located in delegated legislation to provide an appropriate degree of flexibility and responsiveness to changes in society.

Policy change

This Bill changes some policy. Most of the policy changes are to enable improvements to frontline practice, and to align with modern service delivery.

More support for investing in better long-term outcomes for people receiving or needing financial assistance through the social security system has been added to the principles section. This will ensure that decisions on how services are delivered are transparent.

The existing orphan's benefit and unsupported child's benefit are merged into the supported child's payment. This payment will continue to support children and young people who have no parental support.

The settings for sole parent support are changed so that single people paid the supported child payment for care of a child under the age of 14 can be paid a single rate of sole parent support and have that child taken into account when work obligations are set.

The emergency benefit will be renamed exceptional circumstances benefit, to reflect that it is for people who genuinely need assistance but who do not qualify for a statutory benefit. To improve consistency with other statutory benefits, the Bill introduces the discretion to apply work preparation, part-time work obligations, or full-time work obligations, and associated sanctions, to a person receiving the exceptional circumstances benefit, if MSD determines the person has capacity. This Bill also confirms that the maximum rate must not exceed that of the equivalent main benefit in each case, to clarify that higher rate of New Zealand Superannuation or Veteran's Pension must not be paid.

This Bill also introduces a new power to make regulations specifying groups of beneficiaries whose benefit instalment can (with, or without, good cause shown case-by-case) be redirected without their consent.

This Bill repeals the provision preventing both parents in split custody situations (where both parent's care for at least 1 child each, rather than sharing the same child's care between them) from receiving sole parent support. Instead, both parents will be eligible for sole parent support and subject to the obligations and sanctions of that benefit. This approach recognises that both parents in a split care situations are essentially sole parents.

The Bill also makes some minor and technical changes where the current wording does not well support the policy intention, including correcting previous drafting errors or omissions and removing redundant provisions.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Policy changes proposed as part of the Social Security Act 1964 Rewrite, MSD, 2015. Additional Policy changes proposed as part of the Social Security Act 1964 Rewrite, MSD, 2016.</p> <p>Both RISs are accessible at http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/ and can also be found and downloaded at http://www.treasury.govt.nz/publications/informationreleases/ris</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>The Regulatory Impact Analysis Team (RIAT) has reviewed the RISs prepared by MSD and associated supporting material, and considers that the information and analysis summarised in both RISs meet the quality assurance criteria.</p> <p>Additional comments include:</p> <p><i>Policy changes proposed as part of the Social Security Act 1964 Rewrite</i></p> <p>“The Regulatory Impact Analysis Team (RIAT) has reviewed the RIS prepared by the Ministry of Social Development and associated supporting material, and considers that the information and analysis summarised in the RIS meets the quality assurance criteria.</p> <p>Although the conclusion in the RIS as regards the treatment of people who are totally blind is not in line with the proposal in the Cabinet paper, the RIS contains sufficient evidence and analysis to enable an informed decision to be made on this, as on other aspects of the proposed rewrite at this stage. RIAT notes that further consideration will be given to this point in the context of the revised Disability Action Plan”</p> <p><i>Additional Policy changes proposed as part of the Social Security Act 1964 Rewrite</i></p> <p>We note that both of the issues discussed in this RIS were also considered in a RIS presented to SOC in June 2015 (SOC Min (15)12/1 refers). The Ministry's identification of the problem being addressed and its analysis of the likely impacts of each option are almost identical to when they were last considered. Consultation with the disability sector has been limited, meaning that the stakeholder reaction to removing provisions giving advantageous treatment to totally blind people cannot be fully anticipated.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>This information (including limitations) is set out in the RISs for the rewrite of the Social Security Act 1964 and is available on the MSD website at http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/</p> <p>See <i>Policy changes proposed as part of the Social Security Act 1964 Rewrite</i> pages 34-38.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
<p>The level of effective compliance or non-compliance is unaffected by the changes in this Bill and is inherent in all social assistance administration.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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MSD, including their legal team, has scanned international obligations and identified only one area to be managed.

New Zealand has Reciprocal Agreements with 10 countries. Agreements help former residents of one country access certain benefits and pensions under the other countries social security system. Two such agreements, with the Republic of Ireland and the Hellenic Republic (Greece), include provisions on Orphan's Benefit.

As noted in Part 1, the eligibility criteria for Orphan's Benefit is being changed to exclude step-parents. Step-parents covered by these reciprocal agreements will continue to receive Orphans Benefit until they are amended.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

No separate formal steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi, as the provisions of the Bill apply generally to the New Zealand public. Access to benefits and other assistance is in line with the third article of the Treaty of Waitangi which confers the same rights and duties of citizenship for Māori as other people.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by Crown Law is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <http://www.justice.govt.nz/policy/constitutional-law-andhuman-rights/human-rights/bill-of-rights> “.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>The Bill enables applicants for Supported Living Payment (on the grounds of caring for a person who requires full-time care and attention) to appeal a decision to decline their application on medical grounds to a Medical Appeal Board (instead of the Social Security Appeals Authority). This is appropriate since the Medical Appeal Board is best placed to consider the issues involved, given its specialist knowledge. It is also consistent with the approach taken to all other appeals on medical grounds (see <i>section 375(1)(b)</i> and <i>row 11 of the table in section 390 Right of appeal on medical grounds</i>).</p> <p>The Bill also contains minor amendments to provide flexibility in terms of where Benefits Review Committee (BRC) hearings can be held. The BRC provides an informal setting for clients to review decisions made by MSD before appealing (if the issue remains unresolved) to the Social Security Appeals Authority. The current Act requires a BRC to be convened where the decision was made, which sometimes causes issues (for example when clients have moved to a different part of the country since the decision was made). The Bill allows the hearing to take place with the office the client is currently working with (see <i>Section 372 Benefits review committee</i> and <i>Clause 2(a) of Schedule 7 Membership</i>).</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice (MOJ) were consulted on these provisions and provided the following feedback:</p> <p><i>“A tribunal is a judicial body that operates independently of the Executive. Consequently, the Social Security Appeal Authority (SSAA) is a tribunal. Members are appointed by the Governor-General. Its decisions are binding on MSD and are appealable to the High Court on a question of law with subsequent appeals possible to the Court of Appeal and the Supreme Court.</i></p> <p><i>The Benefits Review Committees and the Medical Appeal Board are internal review bodies rather than tribunals because they are not independent of the Executive. Two of the three BRC members are MSD employees. All members can be dismissed by the Minister. Their decisions can be appealed to the Authority. All of the members of the Board are appointed by the Chief Executive and can be dismissed by the Chief Executive. Their decisions bind the Chief Executive and some but not all of their decisions can be appealed to the Authority.</i></p> <p><i>MOJ supports the proposal to allow appeals to the SSAA against Board decisions to decline Supported Living Payment applications for natural justice reasons”.</i></p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Specific consultation was undertaken regarding the creation of a single Sole Parent Support for carers of children for whom Orphan's and Unsupported Child's Benefit is paid.</p> <p>Information on the external consultation is in the <i>Additional Policy changes proposed as part of the Social Security Act 1964 Rewrite</i> RIS which is accessible at http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/ and can also be found and downloaded at http://www.treasury.govt.nz/publications/informationreleases/ris</p> <p>On 28 May 2014, the former Minister for Social Development issued a media release on the intention to rewrite the Act. MSD also that day published on its website the Cabinet paper and CAB Min (13) 21/6. A dedicated email address was set up so members of the public could contact the MSD with any queries.</p> <p>Since 2014, MSD has been running specific targeted engagement including:</p> <ul style="list-style-type: none"> • the National Beneficiaries Advocates Consultative Group (NBACG). The group provided advice on fixes and clarifications to the Act and were kept informed about legislative design and new policy initiatives (as stated in the Cabinet Minute). Rewrite Team officials also attend the group's quarterly meetings with MSD. A sub-group of the NBACG reviewed the Rewrite Bill • the Chair of the Social Security Appeal Authority • The Crown experts in legislation: the Law Commission, Crown Law, a sub-group of the Legislative Design and Advice Committee and the Parliamentary Counsel Office • Grandparents Raising Grandchildren Trust. 	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>Regular feedback was provided on operational design and development from officials within MSD, particularly Service Delivery (who are responsible for service delivery to youth, working age and senior beneficiaries, students and social housing).</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>This Bill includes a number of minor and technical amendments to align with policy and practice and to correct previous drafting errors or omissions. Some of these amendments have retrospective effect to ensure that MSD's practice is lawful from the point at which the drafting error occurred. No clients will be adversely affected by these changes.</p> <p>More detailed information is included in Appendix Three.</p>	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
<p>The Bill does not make any substantive changes in relation to offences.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
<p>The Bill does not make any substantive changes to the Social Security Appeal Authority provisions. There are minor and technical changes as discussed in section 3.4 above. The Bill re-structures all the existing review and appeal provisions into a new part: <i>Part 7 Reviews and appeals</i>.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>There are no new Henry VIII clauses as a result of the rewrite.</p> <p><i>Clause 432 Orders in Council: mandatory annual CPI adjustment of rates of certain benefits</i> has been consequentially amended due to the Legislation Act 2012.</p> <p>Section 47B(2) (annual confirmable instruments) and Schedule 2 (confirmable instruments) of the Legislation Act 2012 do not include mandatory annual CPI adjustment of rates orders made under section 432 because the making of these orders is required by law.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>Achieving the appropriate balance between primary and delegated legislation is an integral part of the design of this Bill. Following the LAC guidelines and the principles agreed by Cabinet [CAB Min (13) 21/6 refers] a shift in the balance between primary and delegated legislation has resulted, with some of the detail from the Act moving to regulations.</p> <p>Decisions on which provisions (and which parts of the provisions) should be shifted to regulations and other delegated legislation were based on the following key principles:</p> <ul style="list-style-type: none"> • creating consistency where there are existing regulations and the need for a standard approach to what is included in regulations (for example, exemptions from various policies, overseas absence, and supplementary assistance) • removing unnecessary detail from the primary legislation (such as administration, procedures, and the mechanics of implementing a policy) • the need for some provisions to be flexible and responsive to changes in policy, processes, and terminology (for example, immigration, health, and education). <p>The empowering provisions to allow delegated legislation to be made will come into effect earlier than the rest of the new legislation, on the day after Royal assent. This lets the required regulations, rules and Ministerial directions to be made and come into effect at the same time as the new Act.</p> <p>The current Act confers power to the Minister to issue Directions to the Chief Executive and establish and approve welfare programmes. The Bill re-enacts these powers. In general, under the Legislation Act 2012 directions and welfare programmes will be disallowable instruments which are not legislative instruments.</p>	

New regulation making powers in the Bill include:

- *Section 400 Regulations: residential requirement* – allows regulations to provide detail on when a person meets the residential requirement; or must be treated as if they satisfy the requirements; or is not required to comply with residential requirements.
- *Section 401 Regulations: income exemption* (the purpose of which is in *clause 9 of Schedule 3 (exclusion of amounts, items, payments, or income from specified source, declared not to be income)*) – puts all “income exemptions” in one place.
- *Section 402 Regulations: accommodation supplement* – allows regulations to include definitions; asset requirements; base rates; formula for assessing base rates; income charging; and rounding rules relating to Accommodation Supplement.
- *Section 406 Regulations: funeral grants* – allows regulations to set out various categories; sets conditions for receipt; prescribes rates; and periods of payment for funeral grants.
- *Section 410 Regulations: specific obligations, work-test obligations, and deferrals of, or exemptions from, specified obligations* – allows regulations to set out detail around drug testing; deferral of work obligations; exemptions from various obligations; and the process around exemptions.
- *Section 412 Regulations: factors affecting benefits: insurance recovery* – allows regulations to make grants repayable if a specified insurance payment is received; to provide certain insurance payments reduce costs to a person; are charged as income against the benefit; are a debt to the Crown; and are recoverable.
- *Section 413 Regulations: factors affecting benefits: overseas pensions* – moves direct deductions provisions to regulations alongside other provisions relating to the administration of the overseas pension policy. Direct deductions allow MSD to reduce a person’s New Zealand pension by the amount of qualifying overseas pension.
- *Section 419 Regulations: exemptions from, and calculations of, stand-down* – moves detail of circumstances when an exemption to a stand-down is applied from primary legislation. This regulation-making power allows regulation to identify the circumstances and classes of clients who are not subject to the stand-down period.

Each of these regulation-making powers satisfies at least one of the following criteria:

- Matters of detail for which it is not appropriate to utilise parliamentary time
- Unforeseen matters that may be required to implement and administer the Act
- Flexibility in how the Act is applied and matters that may need to be frequently changed.

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO

Appendix Three: Further Information Relating to Part Four

Retrospective effect - question 4.3

Does this Bill affect rights, freedoms, or impose obligations, retrospectively?

This Bill includes a number of minor and technical amendments to align with policy and practice and to correct previous drafting errors or omissions. Some of these amendments have retrospective effect to ensure that MSD's practice is lawful from the point at which the drafting error occurred. No clients will be adversely affected by these changes.

Backdating of payments when entirely to the benefit of the client

- Changes are made for sole parents with a youngest dependent child aged over 14 years who have lost the support of their spouses or partners due to imprisonment, ensuring they can:
 - receive the sole parent rate of Jobseeker Support rather than half of the married rate (see *clauses 1(e) and (f) and 6 of Part 1 (jobseeker support) of Schedule 4 (rates of benefits)*).
 - have their benefit backdated for up to 28 days from the date of application as is provided to sole parents receiving Sole Parent Support¹ (see *Section 296(2)(d)*).

Before welfare reform changes in July 2013 this was set out in the Act but a drafting omission inadvertently did not preserve that policy setting. It was never intended that these parents be treated differently. MSD's practice has been to continue to apply the previous settings in line with the policy intent. The Rewrite Bill will validate the rate paid to these clients since July 2013 (see *Schedule 1 clause 9 Jobseeker support: validation of payments when spouse's or partner's regular support lost due to sentence of imprisonment, etc*).

- Certain clients are permitted to take up full-time temporary employment and continue to receive a benefit (as long as the income does not fully abate the rate). Due to a drafting omission sole parents receiving Jobseeker Support were unintentionally omitted from the list of affected clients when grandparenting provisions were made for the 2013 welfare reforms. MSD's practice has been to treat sole parents receiving Jobseeker Support the same way as other clients, in line with the policy intent. The Rewrite Bill will validate the rate paid to these clients since July 2013 (see *Schedule 1 clause 10 Jobseeker support: validation of eligibility if temporarily engaging in fulltime employment with income less than would fully abate benefit*).

Validating matters that were generally understood and intended to be lawful

- Since 2013 Youth Service clients have been able to report a change in circumstances to their service provider (instead of MSD). A drafting error in 2015 had the effect that changes could be reported to any type of service provider. This was never the intention and practice has not changed. No client has been affected by this error (see *Schedule 1 clause 45 Young persons' service providers: actions between 15 July 2013 and changeover*).
- Accommodation Supplement provides assistance for people with high accommodation costs. Rates are based on their costs, the area they live in (with set maxima), their family make-up and income. A wording change in the provision that defines accommodation supplement areas had the unintended consequence of requiring MSD to amend the areas whenever the Government Statistician made a change to the definition of geographic areas. That impact was highlighted by a Social Security Appeal Authority decision. This

¹ Eligibility to Sole Parent Support ends when the youngest dependent child turns 14 years of age. These clients are automatically transferred to Jobseeker Support.

approach is unsuitable as the Government Statistician does not consider accommodation costs in the way boundaries are drawn. MSD had understood that accommodation supplement areas would only be changed after a thorough review including factors such as median rentals. Retrospective amendments allow the original intent to be kept. There will be no change to clients' current levels of accommodation supplement. The Bill ensures clients who have a different rate as a result of an appeal are protected by grandparenting provisions (see *Schedule 1 clause 53 Areas for purposes of accommodation supplement*).