

Departmental Disclosure Statement

Social Security (Commencement of Benefits) Amendment Bill

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.

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.

5/10/2015.

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Part One: General Policy Statement

This Bill amends the Social Security Act 1964 to correct, with retrospective effect to 3 June 1998, an error in the legislation that does not give effect to the policy intent that a benefit commences on the day after a stand down period ends as opposed to the day on which the stand down period ends.

It also provides that certain people are protected from the effect of the retrospective amendment, including those who apply for a review of decision of their commencement date before the Bill comes into force or (in the case of a benefit that commenced on or after 20 May 2014) within 6 weeks after the Bill comes into force.

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
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Relevant international treaties

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

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
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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
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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?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
Internal estimates on the potential financial Crown costs of not correcting the error has been provided to Cabinet.	

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

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?

The Bill does not impact on New Zealand's international obligations.

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?

The Bill applies generally to the New Zealand public and does not impact on the principles of the Treaty of Waitangi.

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?

NO

The Bill does not impact on the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990.

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)?

NO

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?

NO

Formal public consultation was undertaken on the core proposal (correcting the legislative error) through the Social Security (Extension of Young Persons Services and Remedial Matters) Amendment Bill at the Social Services Select Committee.

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?

NO

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
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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
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>Provisions in the Bill have retrospective effect, which could be seen as contentious, as generally legislation should operate prospectively not retrospectively. However, in this case the retrospective provisions can be justified to ensure:</p> <ul style="list-style-type: none">• the Government policy intent is upheld• practice and understanding that has been previously applied by the Ministry of Social Development is validated• financial costs to the Crown that were not anticipated are avoided. <p>The amendment to section 80BA to correct the commencement date of a benefit so that a benefit commences on the day after a stand down period ends will be retrospective to 3 June 1998, in order to validate the Ministry of Social Development's previous practice and decisions. Certain decisions of the Ministry of Social Development and the Social Security Appeal Authority are protected from retrospective validation. Also see the special provision noted in 4.9.</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

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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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
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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?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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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?	YES
<p>To acknowledge that the Ministry of Social Development's operational practice should have been amended when the error was discovered on 20 May 2014, clients whose benefits were commenced on or after 20 May 2014 may apply for a review of decision of that commencement date in the 6 weeks after the legislative correction is made and the retrospective amendment will not apply to their decisions. This timeframe balances the legal interests of clients compromised by the decision not to amend practice with the operational impact and financial cost of this provision. The retrospective amendment will also not apply to clients who file a review of decision before the legislative correction is made of the commencement of their benefits at any time on or after 3 June 1998.</p>	