

Report to the House under section 92K(2)(a) of the Human Rights Act 1993

Issue

- 1 In 2017, the Government became aware of a Human Rights Review Tribunal (the Tribunal) claim regarding the interface between the accident compensation and welfare systems. This relates to how weekly accident compensation is treated, compared to other forms of income, in the welfare system.
- 2 Under existing legislation, there are limitations on receiving both weekly accident compensation and an income-tested benefit. These limitations are contained in the Social Security Act 2018 (formerly the Social Security Act 1964) and the Accident Compensation Act 2001. In particular they are that:
 - any weekly compensation is directly deducted from an income-tested benefit on a dollar-for-dollar basis
 - any benefit paid for a period for which a claim is later established is regarded as having been paid in respect of that entitlement and is payable from the Accident Compensation Corporation (ACC) to the Ministry of Social Development (MSD).
- 3 Other forms of income, such as from employment, are subject to an abatement regime under the welfare system.
- 4 The policy rationale for the direct deduction of weekly compensation from benefit is the 'one-benefit' principle. This principle proposes that people should only receive one form of Government-mandated income-replacement at any one time.
- 5 MSD conceded the complaint to the Tribunal because of the potential discriminatory effect of how weekly compensation is treated as opposed to other forms of income. MSD filed a memorandum in the Tribunal to this effect on 21 December 2018. The Government considered that the one-benefit principle and the treatment of accident compensation for benefit purposes is worth examining further under a human rights framework.
- 6 The Tribunal issued a declaration on 22 January 2019 that the operation of section 198 of the Social Security Act 2018 (formerly section 71A of the Social Security Act 1964) is inconsistent with the Human Rights Act 1993 (HRA). The Tribunal stated that:
 - the prohibited ground of discrimination at issue was discrimination on the grounds of employment status
 - the material disadvantage was in relation to the abatement of the person's income-tested benefit. This benefit abated at 100 percent of the payment received under their accident compensation entitlement
 - the key question was whether the discrimination was justified under section 5 of the Bill of Rights Act 1990. The justification for section 198 of the Social Security Act 2018 had been the "one-benefit" principle
 - the application of the "one-benefit" principle appeared misplaced because the weekly earnings-related compensation could not be characterised as a benefit and was instead compensation paid under a no-fault statutory scheme that replaces wages or other income
 - section 198 of the Social Security Act 2018 was inconsistent with the right to freedom from discrimination affirmed by section 19 of the New Zealand Bill of Rights Act 1990 because it discriminated against a person on the grounds of their employment status.

Government's response

- 7 The Government is committed to overhauling the welfare system to ensure it is accessible and fair for all New Zealanders. On 3 May 2019, the Government released the final WEAG report *Whakamana Tāngata: Restoring Dignity to Social Security in New Zealand* alongside a plan for the next steps of the welfare overhaul.

- 8 The Government is in the process of developing a three to five year plan in order to work toward a welfare overhaul that delivers a welfare system that is effective, enduring and ensures those who need access to MSD support are better off. The WEAG's final report is one input into the Government's welfare overhaul work programme.
- 9 As part of the welfare overhaul work programme, officials will be providing advice to the Government on the treatment of accident compensation in the welfare system, including potential changes to policy and legislation this year.

P.D



Hon Carmel Sepuloni
Minister for Social Development

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Date