Regulatory Impact Statement: Policy changes proposed as part of the Rewrite of Social Security Act 1964

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Social Development (the Ministry).

It provides an analysis of options to reduce the risk of inconsistency with human rights legislation and remove legislative barriers to frontline efficiency and modern service delivery in the six areas identified by Cabinet [CAB Min (13) 21/6 refers] as part of the rewrite of the Social Security Act 1964 (the Act).

The analysis and resulting policy proposals are limited to the aims and areas identified by Cabinet.

The Ministry has very little data on the individual circumstances of people who currently receive Supported Living Payment (SLP) on the grounds of being totally blind, or on the circumstances of people who currently do not qualify for a benefit but could potentially access SLP if the provisions for people who are totally blind were more widely available. That data limitation means that costs/savings identified for options for addressing the risk of advantageous provisions for people who are totally blind being found inconsistent with the New Zealand Bill of Rights Act 1990 (BoRA) are indicative rather than precise.

Implementation of some of the policy proposals involves costs, for example for changes to IT systems. The estimates of implementation costs used in the policy process are based on the current systems. However a Simplification Project currently under way in the Ministry aims to simplify and update systems so the actual costs are likely to be considerably lower. The Ministry will explore further ways of reducing these costs and look to fund the resulting reduced costs within baselines prior to the time of implementation, which will occur after legislation is passed in 2016.

The options set out in this RIS are not likely to impose additional costs on businesses, impair private property rights, restrict market competition, or reduce the incentives on businesses to innovate and invest, or override fundamental common law principles.

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25/5/15

[*Date*]

Executive summary

1 On 24 June 2013 [CAB Min (13) 21/6 refers], Cabinet agreed to the rewrite of the Social Security Act 1964 (the Act) and asked for advice, as part of the rewrite, on policy changes within six areas with the aim of removing legislative barriers to frontline efficiency and modern service delivery. Cabinet also asked for advice on reducing the risk that provisions in the Act may be found to be inconsistent with the New Zealand Bill of Rights Act 1990 (BoRA).

2 As it is desirable for a rewrite to be as policy neutral as possible the analysis included consideration of whether changes to the Act were required to achieve these aims, or whether alternatives, such as changes to administrative practice, would be sufficient to achieve the objectives without changing the Act.

Proposals to reduce the risk of inconsistency with BoRA

3 Part 1 of this RIS sets out proposals for reducing risk of inconsistency with the BoRA. As they were enacted before BoRA, some parts of the Act have never been subject to the formal vetting process for consistency that occurs before legislation is introduced to the House.

4 We identified two areas where there is risk of inconsistency being found in current provisions. A legislative change is proposed to remove an unused provision allowing the Ministry to require Emergency Benefit recipients to receive medical or other treatment.

5 The second area, where there is risk of inconsistency, is the advantageous provisions applying to people who are totally blind. It is proposed that the provisions remain in place while work is done to explore the opportunity to get better information on the additional costs of disability, existing mechanisms to meet these, and the responsibilities of government, individuals and others in meeting these costs. This work could potentially be done as part of the revised Disability Action Plan. Leaving the provisions in place would also preserve the largely policy neutral nature of the rewrite. The provisions are very long-standing (pre-dating the 1938 Social Security Act) and provide additional support to a disadvantaged group so there are some grounds for justification.

Proposals arising from the six policy areas

6 The six areas identified by Cabinet and the associated proposals discussed in this RIS are:

Policy area	Proposals	Found in this RIS
Considering the way that income is assessed and charged against benefits	• no proposals for changes to the Act which sets out the high level approach to income - changes may be considered in the context of the review of regulations (including those that set out the way income is assessed) that will take place towards the end of 2015	• N/A – no changes to the Act proposed, a separate RIS will be provided to support proposals, if there are any, for changes to be made through regulations.
Legislative support for the investment approach	• include support for the investment approach in the Purpose of the Act	• Part 2
Providing support for redirection of benefit payments and use of payment cards	• enable redirections to be applied to certain groups (eg social housing tenants) • no change is required to support use of payment cards	• Part 3

Changes to Orphan's Benefit and the Unsupported Child's Benefit	• merge Orphan's and Unsupported Child's benefits • name the merged benefit Supported Child's Benefit • create a Purpose statement for the part of the rewritten Act containing these provisions to make it clear the merged benefit is to be used to meet the child's needs	• Part 4
Aligning obligations and sanctions for the Emergency Benefit with other main benefits	• clarify that the 'analogous' rate of benefit that is used to determine the rate of Emergency Benefit must be that of a main benefit (not a rate of New Zealand Superannuation or Veteran's Pension) • rename the benefit • discretion to apply work or work preparation obligations and associated sanctions for people able to work • allow both parents in a split[1] custody situation to be eligible for Sole Parent Support	• Part 5
Removing requirements for notices to be delivered by letter	• no policy changes required o the Electronic Transactions Act 2002 (ETA) already enables certain transactions to be completed electronically. o modern drafting will incorporate the effect of the ETA to make it clear that the Act is permissive of modern communication technologies	• N/A – no policy change required.

7 Each option for the above policies (paragraph 4) was considered against the following criteria:

- Clarity – easier to read and understand, removes ambiguity
- Consistency – similar clients are treated the same
- Efficiency – improved efficiency by reducing administration and/or compliance costs
- Simplification – allows for simplified processes/fewer transactions and/or modern service delivery
- Removing legislative barriers to efficiency and modern service delivery now and in the future.

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1 Split custody is when parents with two or more children are living apart and each parent has the care of at least one of their children on a full-time basis. It is not the same as shared custody where each parent cares for their child or children for part of the time.

Overview

Context: Why a rewrite of the Social Security Act

1 On 24 June 2013 [CAB Min (13) 21/6 refers], Cabinet agreed to the rewrite of the Social Security Act 1964 (the Act) and asked for advice, as part of the rewrite, on policy changes within six areas with the aim of removing legislative barriers to frontline efficiency and modern service delivery. Cabinet also asked for advice on reducing the risk of provisions in the Act being found to be inconsistent with the BoRA.

2 In making that decision, Cabinet noted that the Act is, as a result of multiple amendments over time, piecemeal, disjointed and in places lacks coherency. Of the 491 sections in the Act, only 4 remain unchanged and one section of the Act has been amended 279 times. Section 69C of the Act currently has 20 subsections. In the course of considering a case[2] in the Supreme Court, Blanchard J described the Act as "resembling the tyre of an old and trusted bicycle" that had over the years "seen punctures and repairs to the point where there was now more patch than inner tube".

3 There have also been calls from the Opposition for a rewrite of the Act, with Hon Annette King in 2010 saying there should be a whole rewrite "rather than bringing in more amendments to legislation that was described as a dog's breakfast, incomprehensible, and a disgrace"[3].

4 The current state of the Act means that there is a risk of unintended consequences when further amendments are made to reflect policy changes. Amendments to the State Sector Act that took effect from July 2013 make the Chief Executive responsible for stewardship of legislation the Ministry administers. With the Act having been described for many years as the "worst statute on the books"[4] the Ministry has a clear responsibility to attend to this piece of legislation.

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2 Arbuthnot v Chief Executive of the Department of Work and Income [2007] NZSC 55

3 http://www.parliament.nz/en-nz/pb/debates/debates/daily/49HansD_20100817/volume-665-week-51-tuesday-17-august-2010

4 Law Commission President Sir Geoffrey Palmer and commissioner John Burrows were asked: What was your favourite worst statute on the book? Without pausing both instantly responded "Social Security Act" in unison. [reported in the Dominion Post on 14 September 2007]

Proposals

5 Policy proposals covered in this RIS are:

Proposals	Found in this RIS
• remove an unused provision allowing the Ministry to require Emergency Benefit recipients to receive medical or other treatment • no change to provisions for people who are totally blind, that may be found in breach of the NZBoRA, but will continue to operate lawfully, when re-enacted in the Act	• Part 1 – pages 8 - 15
• include support for the investment approach in the Purpose of the Act	• Part 2 – pages 16 - 19
• enable redirections to be applied to certain groups (eg social housing tenants) • no change is required to support use of payment cards	• Part 3 – pages 20 - 26
• merge Orphan's and Unsupported Child's benefits • name the merged benefit Supported Child's Benefit • create a Purpose statement for the part of the rewritten Act containing these provisions to make it clear the merged benefit is to be used to meet the child's needs	• Part 4 – pages 27 - 31
• rename Emergency Benefit "Exceptional Circumstances Benefit" • provide for discretion to apply work and work preparation obligations and associated sanctions to the re-named benefit • allow both parents in split care (but not shared care) situations to receive Sole Parent Support	• Part 5 – pages 32 -39

Consultation

6 The Cabinet paper and Minute recording the decision to proceed on the rewrite were published on the Ministry website[5] and contact details were provided for anyone wishing to make comments or provide input into the process. The plans for the rewrite and the publication of the papers was announced on 28 May 2014[6] and reported in the media. There were 11 contacts (including one organisation and six Ministry staff) made in response to the invitation to provide input. The views expressed, when relevant to the rewrite, were taken into consideration in the policy process.

7 An extended select committee process following introduction of the Rewrite Bill will provide further opportunity for public submissions to be made on the proposed changes to legislation.

8 As part of the Cabinet paper process, the Ministries of Health, Education, Justice, Business, Innovation and Employment, and Pacific Island Affairs; the Ministry for Women's Affairs, the Treasury, Te Puni Kokiri, Accident Compensation Corporation and State Services Commission were consulted and comments from these agencies

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5 Refer http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/social-security-act-rewrite/

6 Refer http://www.beehive.govt.nz/release/social-security-act-set-rewrite

incorporated into the paper. The Department of Prime Minister and Cabinet was informed.

9 Further details of consultation on specific subject areas, where this occurred, is covered in the relevant parts to this RIS.

Implementation

10 The proposals in this RIS form a package of proposals for implementation. IT, application forms, brochures and websites will be updated together to achieve the most cost-effective change process.

11 We will work with affected groups (eg Grandparents Raising Grandchildren in relation to the proposed merger and re-naming of Orphans Benefit and Unsupported Child's Benefit), to ensure that the people they represent are aware of the changes.

12 Individuals who are affected by the changes will be advised of the impact for them at the time the changes take effect – for example at the time of review for people with split care arrangements to be transferred from the Emergency Maintenance Allowance to Sole Parent Support.

Monitoring, evaluation and review

13 The Ministry's Statement of Intent 2014–2018[7] (the SoI) notes that as a government agency we need to clearly demonstrate the long-term cost-effectiveness and efficiency of the services we deliver. Sustainable financial management needs to underpin all of our work so that we can improve the quality of government spending to make a bigger difference. As the SoI states:

- Our Four-year Plan outlines how we intend to manage cost pressures through finding efficiencies and innovation and improving productivity, through projects such as Simplification.
- The Ministry will continue to regularly review the outcomes and results we seek to achieve, and how we assess our performance, to ensure they align with our evolving expectations.
- We are changing the way we manage the delivery of transactional services for financial assistance through the Simplification Project. Simplification aims to streamline the processes and systems for delivering transactional services, so the right people receive the right financial support at the right time. Simplification is about clearing away unnecessary and costly tasks and administration so more of the Ministry's effort can focus on improving outcomes for New Zealanders.
- Transactional services represent a significant portion of our activity and operating costs. By making these processes easier and reducing the time and effort required, we will release efficiencies and savings that will help the Ministry to manage cost pressures in future years, and allow a greater capacity to invest in outcomes.

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7 The Statement is published on the Ministry's website at http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/corporate/statement-of-intent/index.html

14 The policy changes proposed as part of the rewrite complement the Simplification Project by removing legislative obstacles to efficiency and modern service delivery.

15 The Section 7 reporting requirement on introduction of the Bill will be the test of whether the policy changes outlined in this RIS have fully addressed the risk of provisions being declared inconsistent with BoRA.

16 The approach to redirection of rent for social housing is part of a large broader package of change in relation to social housing that is being closely monitored.

17 The proposed changes to merge the Orphan's and Unsupported Child's benefits and re-name them are largely policy neutral.

- The change in policy to align the treatment of step parents across the new benefit category affects very small numbers, as the entitlement of current step-parent recipients is to be protected through grand-parenting provisions.

- The stronger signal in the legislation that the benefit is to be used for the child would be difficult and expensive[8] to measure. The changes are intended to contribute to the achievement of Better Public Service Results 2 and 3[9] to support vulnerable children. These Results are the subject of separate monitoring exercises.

18 Similarly, the impact of the proposed changes in the approach to work obligations for people receiving Emergency Benefit (and those with split care arrangements moving onto Sole Parent Support) will be monitored as part of Better Public Service Result 1 reducing long-term welfare dependence.

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8 It would require an initial exercise to baseline current attitudes, with follow-up research following the change to detect changes. The research design would need to take into account the fact that being the subject of research can in itself change attitudes and behaviour (known as the Hawthorne effect).

9 Result 2: Increase participation in early childhood education and Result 3: Increase infant immunisation rates and reduce the incidence of rheumatic fever

Part 1: Human Rights Issues

19 Prior to a Bill being introduced the responsible Minister is required to indicate that it complies with the rights and freedoms contained in the BoRA and Human Rights Act 1993 (HRA). Social security legislation is inherently discriminatory as it targets limited assistance to those who need it most - but that does not necessarily mean that it is inconsistent with BoRA. Legislation that discriminates on one or more of the prohibited grounds in section 21 of the HRA does not breach BoRA if it can be justified[10].

20 On the introduction of a government Bill that appears to be inconsistent with BoRA, the Attorney-General is required[11] to report to Parliament bringing the attention of Parliament to any provisions that appear to be inconsistent with the BoRA. A section 7 report brings any inconsistencies with BORA in the Bill to the attention of Parliament and the general public, and therefore allows the inconsistency to be debated. A Bill can still be passed into law with the inconsistency intact; despite the fact the Attorney-General has made a section 7 report.

21 There is always a possibility of complaints under Part 1A of the HRA. Part 1A refers to an act or omission on the part of the legislative, executive, or judicial branches of the Government, or by any person or body in the performance of any public function, power or duty conferred or imposed by or pursuant to law, that is inconsistent with section 19 of the BoRA (the right to freedom from discrimination on the grounds of discrimination in the HRA).

22 If a complaint is not resolved through the Human Rights Commission, proceedings can be brought before the Human Rights Review Tribunal. Where the Tribunal finds that an enactment is in breach of Part 1A of the HRA and not justified under section 5 of the BORA, it can grant a declaration of inconsistency (HRA s92J(1)).

23 A declaration of inconsistency does not affect the validity, application or enforcement of a provision in primary legislation[12]. The Minister responsible for the enactment is required to make a report to Parliament containing the government's response to the declaration (HRA 92K(2)). The Government, in its response, could decide to repeal or moderate the offending measure to achieve consistency. Alternatively the Government could maintain that the measure concerned is an important policy instrument and retain it without any change – in that case it would continue to operate and it would continue to be lawful.

24 If all domestic remedies have been exhausted, a complaint can also be taken to the United Nations Human Rights Committee (UN Committee) under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). If the UN Committee takes the view that the respondent state has breached the ICCPR, it will recommend remedial action required. In the past, the UN Committee has recommended specific remedies such as repealing offending legislation. While the views of the UN Committee are not legally binding, failure to take action in response may be reported to the UN General Assembly via the UN Secretary General as part of its annual report, a consequence that may affect a country's international reputation.

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[10] Section 5 New Zealand Bill of Rights Act 1990: Justified limitations states "Subject to section 4, the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

[11] Section 7 New Zealand Bill of Rights Act 1990

[12] Section 4 New Zealand Bill of Rights Act 1990

Status Quo and problem definition

25 Ministry officials have proactively worked through Human Rights issues identified in the current Act. Protection of human rights is fundamental to our democratic social system. In principle, a provision that appears to be inconsistent with BoRA should not continue in force. For any provision that appeared to be at risk of being found inconsistent, we have considered whether it continues to serve an important purpose, and whether continuation of the provision in the rewritten Act can be justified.

Requiring medical and other treatment

26 An unused provision in the Emergency Benefit sections in the Act gives the Ministry the ability to require a person receiving Emergency Benefit to receive medical or other treatment. That is inconsistent with the right to refuse medical treatment set out in section 11 of the BoRA.

27 The provision was introduced 77 years ago as part of the Social Security Act 1938. It was likely included as a residual power to address exceptional circumstances in an environment where there may not have been other more appropriate methods to deliver medical treatment. The provision is not, and has never been, used by the Ministry.

Preferential treatment for people who are totally blind

28 Some provisions in the Act give preferential treatment to people who are totally blind, compared to treatment of other people, including those with other forms of disability or health conditions.

- A totally blind person is granted Supported Living Payment (SLP) without having to establish that they are permanently[13] and severely limited in their capacity to work. All other people can only access SLP if they have established this.

- A totally blind person who regularly works 15 hours a week or more, including full time work, can still receive the SLP. Other people who are able to regularly work 15 hours a week or more are not eligible for SLP.

- The personal earnings[14] of a totally blind person on SLP are exempt from the benefit income test – so a blind person can still receive a full rate of benefit despite receiving high wages. Other people receiving SLP have only $20 of their personal earnings exempt from the income test. There is discretion for people with "severe disablement" to have all or part of any further personal earnings exempted. In exercising that discretion. Case managers take into account matters such as work-related costs when deciding whether to exempt any additional income and, if so, how much income should be exempt - the exemption is not automatic.

- An additional allowance of 25 percent of their average personal earnings can be paid to a totally blind person who is receiving SLP. There is a limit on the total income that can attract this allowance, known as the blind subsidy. From 1 April 2015, total income including the benefit, any additional assistance, earnings (before tax) and the subsidy cannot exceed $18,140.72 a year ($348.86 a week) in the case of a married person, or $20,417.28 a year ($392.64 a week) for a single person. There is no similar provision available for people with other forms of severe disability.

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[13] Permanent for this purpose is defined in regulations as being for two years or more (a person can also qualify if their condition is terminal and they are not expected to live for two years).

[14] Personal earnings means the wages or salary earned by the blind person themselves, it does not include any investment income or the income of a spouse/partner.

29 Benefit provisions for people who are blind date back to 1924 when an amendment was made to the Pensions Act, which made blind people the first disabled group in New Zealand to qualify for a pension. In order to encourage employment, an additional bonus amount to 25%, of any wages earned (known as the blind subsidy) was offered, provided that accumulated income from all sources did not exceed a set amount per year.

30 In 1958 a Social Security Amendment Act removed from the means test the personally earned income of those who received the Invalids Benefit on account of blindness. However, in line with other benefit entitlement provisions, earned income from a spouse was, and continues in the present day to be, taken into account in the assessment of the benefit.

31 Historical records indicate policies for the blind were developed to provide incentives for blind people to undertake employment and therefore enabling them to play a more active part in the community. The policy was developed at a time when there was considerable sympathy to the plight of blind people. The technology, workplace modifications and supports available for people with disabilities at the time were basic, so employment opportunities were severely restricted. Technology now means that it is easier for many blind people to participate in mainstream employment. Recent research suggests that they are not in fact the group of disabled people with the highest costs associated with their disability.

32 The Cost of Disability Final Report[15] identified resources that would be required by disabled people with physical, visual, hearing, mental health or intellectual impairments, and focussed on two broad ranges of need, characterised as 'high' and 'moderate' as summarised in Table 1 below. The research included only costs of accessing education, employment, health care and community based support services, but not costs incurred within those services. The costs represent additional resources disabled people need to access these services (eg transport and communication support). They show that people with physical and mental health impairments appear to have higher costs associated with living an ordinary life in the community than people with vision impairments.

Table 1: Total Weekly Costs by Impairment Type and Degree of Need

	Moderate needs	High needs
Physical impairment	$639	$2,284
Vision impairment	$353	$719
Hearing impairment	$204	$761
Intellectual impairment	$578	$2,568
Mental Health impairment	$714	$2,413

15 The Cost of Disability Final Report - DRC (Disability Resource Centre Auckland Inc.). This project was co-funded by the Ministry and the Health Research Council of New Zealand, and conducted by the Disability Resource Centre, in collaboration with the University of Auckland. Published in 2010.

33 There is an argument that the Government can make separate provision for different disadvantaged groups when providing social assistance. However, this argument is somewhat tenuous when the distinctions apply within one benefit group.

34 Providing an automatic entitlement to totally blind people based on a historical perception that this group faces unique barriers, in light of evidence that other groups suffer similar or more severe barriers, does not appear to be a significant objective that would justify the different treatment of this group. The Ministry has concluded that there is a high risk that the provisions will be found to be inconsistent with BORA.

Objectives

35 Cabinet asked for proposals for changes to the Social Security Act 1964 in order to reduce the risk of provisions being found in breach of the BoRA when they are re-enacted as part of the rewritten Act. Provisions in breach of BoRA should not be continued in the rewrite unless there are overwhelming reasons for their continuation.

Options and impact analysis

Requiring medical and other treatment

36 No non legislative options were identified as the problem lies within the legislation.

Option 1: retaining the provision.

37 A Bill can still become and remain law despite an inconsistency identified in the Attorney-General's report.

38 The Attorney-General is likely to advise Parliament that the provision appears to be inconsistent with the BoRA.

39 No individual will be affected unless the power is used by the Ministry – if that happened the individual could lodge a complaint and would very likely have their complaint upheld.

40 The power has not been invoked by the Ministry, and the Ministry does not contemplate ever using it so it is not necessary to retain it.

Option 2: removing the provision

41 Removing the provision from the Act would eliminate the risk of it being found to be inconsistent with BoRA. As the provision is unused, removal of it will have no impact, apart from achieving greater consistency with the BoRA

42 Today, there are other, more appropriate, legislative vehicles[16] to support medical treatment being provided where a person does not have capacity to make decisions, or where they may constitute a threat to the public if not treated.

43 The Emergency Benefit has existing legislative provision allowing conditions of grant to be applied as appropriate. That provision can be used to require a person to comply with

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16 E.g. the Alcoholism and Drug Addiction Act 1966 provides for people who are diagnosed as alcoholic/drug addicted to undergo compulsory treatment under a court order at specially certified institutions; the Mental Health (Compulsory Assessment and Treatment) Act 1992 enables compulsory assessment and treatment where a person poses a serious risk of harm to themselves or others due to a mental disorder; the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 authorises provision of compulsory care and rehabilitation to a person with an intellectual disability who is charged with, or convicted of, an imprisonable offence.

reasonable conditions (for example a requirement to seek work, or attend training) that are not in breach of BoRA. The proposals set out in part 5 of this RIS do not include any proposal to change or remove that provision, which serves a useful purpose by allowing reasonable conditions to be set according to the individual circumstances of an applicant for Emergency Benefit.

Preferential treatment for people who are totally blind

44 Three broad options were identified in response to the risk:

- Continue the current settings
- Remove the discriminatory provisions
- Apply the provisions to all severely disabled people.

45 No non legislative options were identified, as the issue lies with the legislation.

46 Advantages and disadvantages of the three options are summarised in Table 2 below.

Table 2: Advantages and Disadvantages of Options

Option	Advantages	Disadvantages
Continue current settings	No-one would be adversely impacted. Will continue to be legal, even if inconsistent with human rights legislation, as provisions are protected by being set out in primary legislation. Assists a group of disabled people. Allows time to explore the opportunity for work to be included under the Disability Action Plan on additional costs of disability, existing mechanisms to meet these, and responsibilities of government, individuals and others in meeting them.	Preserves advantages for blind people over other disabled people with comparable barriers Likely to be declared inconsistent with BoRA. People with other forms of disability may complain to the Human Rights Commission (and have their complaints upheld). People who are not in financial need and may be working full time continue to receive SLP – which is not consistent with the purpose of the Act.
Remove discriminatory provisions	Clients in similar situations would be treated the same. All severely disabled people have the same policy settings – so would be more consistent with BoRA. Resources more tightly targeted to financial need. Work capacity of totally blind people assessed and an employment focus encouraged.	Some totally blind people lose eligibility (but current recipients could be protected by grand-parenting measures) People affected may lobby for public sympathy and present the policy change as reducing the welfare safety net, or a benefit cut.
Extend the provisions to all severely disabled people	All severely disabled people have the same policy settings – so would be more consistent with BoRA. Would be supported by many in the disability sector.	Benefit eligibility expanded to include more people who are not in financial need and may be working full time – which is contrary to the purpose of the Act. High cost, as more people get full rate benefit, including people who currently don't qualify.

47 The current provisions are an anomaly in a system that is focused primarily on assisting people into employment and providing financial support to people who are not able to support themselves through paid work. However they are a longstanding provision providing support to a group of severely disabled people.

48 Extending the provisions to other severely disabled people would also be costly as severely people who currently partly or fully support themselves through paid work would be able to also qualify SLP with no reduction in rate resulting from their employment income. A Statistics New Zealand analysis[17] of data from the 2006 Disability Survey found there were 109,300 working age disabled people with high support needs (13,500 people) or medium support needs (95,800 people) in employment. While these figures would include people who are totally blind, they give some indication of the likelihood of increased uptake of SLP that would result from extending the provisions to others.

49 Removing the provisions, in practice, would mean that all new applicants would be assessed for their capacity to work and encouraged to work to the extent that they are able as happens for all SLP clients. People who are totally blind, and expected to remain so for two years or more, would continue to qualify for SLP if their capacity to work regularly was assessed at less than 15 hours a week. Totally blind people working, or able to work, 15 hours or more a week would no longer qualify for the SLP, but would likely qualify for another benefit unless they are working full-time or earning more than the benefit cut-out points.

50 If this change was made clients would still have access to the $20 personal earnings exemption that all other people who qualify for SLP have. Total blindness is, under operational policy, likely to be regarded as severe disability based on the individual client circumstances. Case managers would be able to exercise their existing discretion to extend to affected clients the additional income exemption that is available to people with severe disability.

51 Removing the provisions would, over time, generate savings as some totally blind people newly applying for benefit will not be eligible for the SLP, others would be granted it at a reduced rate as their earnings will be taken into account. Under current settings these people would qualify for a full rate of SLP. However, the level of savings would be low – for example, if 13[18] fewer people qualified for SLP the benefit savings generated over the subsequent full year would be approximately $177,000[19]. This proposal is aimed at achieving a more equitable system and consistency with human rights legislation, rather than at generating savings.

52 Grand-parenting the entitlement for current recipients would minimise the impact so current beneficiaries would not have a reduction in their benefit income as a result of the change in policy. Continuing the provisions for current recipients would mean that any savings are delayed. However, savings involved for the proposed grand-parented group would be small due to the small numbers involved and the likelihood that most would continue to qualify for a full rate of SLP.

53 As at the end of October 2014, there were 1,075 totally blind people, including 217 people over 60 years of age, receiving SLP who would potentially be affected by a change in the policy. If the current recipients were not protected by grand-parenting

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17 Disability and the Labour Market in New Zealand in 2006, Statistics NZ

18 Representing 10 percent of new grants to blind people over a year.

19 Based on the difference in rate between SLP and other benefits using the rates paid to a single person 18 years of age or older.

provisions the Ministry would need to assess their capacity to work. Any blind person assessed as being able to work more than 15 hours a week would no longer be eligible for SLP and would need to test their eligibility for another benefit.

54 The Ministry's systems and processes are not well set up to record information on the earnings of totally blind people, as their earnings do not currently affect the rate of benefit they receive. Overall, people receiving the SLP have little other income, with only six percent[20] recorded as having income over the income threshold, and these are likely to be partners. If blind people have the same kind of earnings pattern, 86 current recipients would potentially have their benefit either reduced or cancelled as a result of removing the current provisions (if no grandparenting protection was provided).

55 A very small number of people claim the Blind Subsidy. A check carried out in February 2015 found only one person receiving it at a weekly rate of $19.23. A previous check in 2012 also found only one recipient at a similar rate. Because of the total income cut-out points, the subsidy is available only to people working minimal hours for low wages (eg a single person over 18 years of age paid at the adult minimum wage would no longer qualify for the subsidy when working 10 or more hours a week). The maximum subsidy available for a single person aged over 18 years works out at about $26.00 per week. Every dollar of other assistance paid (such as Disability Allowance or Accommodation Supplement) reduces the available subsidy by a dollar.

56 There is some risk attached to grand-parenting the provisions. For a number of reasons many totally blind people do not claim SLP – for example a person may prefer to not be a beneficiary, or may be unaware that they can claim the benefit while working. The removal of the advantageous provisions and associated publicity may lead to an increase in applications in the short-term as people become aware that they are entitled or seek to preserve entitlement by claiming the benefit and grand-parenting protection. Some of that risk, relating to increased awareness of the provisions, would also arise if the current provisions were retained and declared to be inconsistent with BoRA, as that finding would be likely to attract media comment.

Consultation

57 The published Cabinet paper and Minute recording the decision to proceed on the rewrite contained reference to the risk that the provisions for people who are totally blind could be found inconsistent with the BORA and recorded Cabinet's agreement to proposals being developed to mitigate such risks.

58 The Ministry consulted with the Ministry of Justice on the methodology used to identify whether an existing provision was likely to be inconsistent with the BORA.

59 No consultation was undertaken with the disability sector. From previous discussions with disability organisations, the Ministry is aware of divided views on the provisions for people who are totally blind – ranging from the view that the provisions should be removed to the view that all disabled people should have access to them.

60 The Minister for Social Development met with individuals from seven national Disabled People's Organisations (Disabled Persons Assembly NZ Inc.; People First NZ Inc.; Deaf Aotearoa NZ Inc.; Association of Blind Citizens of New Zealand; Balance New Zealand; Deafblind NZ Inc.; and Ngāti Kāpo o Aotearoa Inc) to inform her thinking about the provisions for totally blind people. She heard that blind people fought for these provisions to meet some of the additional costs of disability, that they incentivise work for people

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20 As at the end of January 2015.

who are totally blind, and that mechanisms to meet the additional costs of disability should be made available to all disabled people. Work was suggested, as part of the revised Disability Action Plan, to get better information about the additional costs of disabilities, existing mechanisms for meeting these costs and the responsibilities of government, individuals and others for meeting them.

Conclusions and recommendations

61 We concluded that the provision in the Emergency Benefit allowing the Ministry to require medical or other treatment is not needed and does not fit within the current welfare settings. We recommend it be removed.

62 The Ministry considers the current advantageous provisions that apply solely to people who are totally blind to be an anomaly in a system that is focused primarily on assisting people into employment and providing financial support to people who are not able to support themselves through paid work. The Ministry's preferred option to reduce the risk of the provisions being found in breach of the BORA is to:

- remove the provisions that apply only to people who are totally blind
- protect current recipients through grand-parenting provisions
- have the benefit system treat all new applicants who are totally blind the same way as it treats other severely disabled people.

63 The Cabinet paper recommends that the provisions be retained to allow time for the process to identify new actions for inclusion in work to be undertaken under the revised Disability Action Plan. There is the opportunity for work to be done on the additional costs of disability, existing mechanisms for meeting these costs, and the responsibilities of government, individuals and others in meeting them. A more comprehensive policy and consultation process could then be undertaken before any change is made to these long-standing provisions and retaining the provisions in the rewrite would preserve the largely policy neutral nature of the rewrite.

Implementation plan

64 No implementation plan is required as no change to policy is proposed.

Part 2: Supporting the investment approach

Status quo and problem definition

65 Cabinet asked officials to consider policy change to provide legislative support for the investment approach.

66 The investment approach applies a long-term liability perspective to the cost of the benefit system. It takes a systematic approach to investing in support and services for clients where they will make the biggest difference to improve client outcomes and the overall liability. This relatively new approach to welfare is not well supported in the current wording of the Act.

67 At the heart of the investment approach are several key building blocks:

- clear, coherent goals and accountability measures set by Government
    - for example; the Better Public Services target to *reducing the number of people receiving benefits to 220,000 by June 2018*
- the use of an actuarial valuation helps us identify clients who we should focus on based on how long they might stay on a benefit - it gives us useful information to guide how we work
- flexibility to direct funding towards these groups - programmes and services better matched to the clients that need the most support
- an openness to trial new approaches and see what works best, and let go of what isn't working
- monitoring and evaluation to understand how we are tracking against our goals
- investment in approaches that are proven to be effective in improving client outcomes and reducing long term benefit receipt

68 The investment approach is currently used to focus investment in employment and work readiness services and supports. The Ministry grants employment and work readiness assistance on a discretionary case-by-case basis in line with the investment approach under a Ministerial Welfare Programme established and approved under section 124(1)(d) of the Act called the Employment and Work Readiness Assistance Programme (the Programme). The Programme was established to provide an overarching legal framework for employment and work readiness assistance funding, following the decision to move funding for a number of programmes into a multi-category appropriation (MCA).

69 Under the MCA the overall level of funding can be used more flexibly than was possible with the previous separate and distinct appropriations. Some of the programmes now funded under the MCA originated as discretionary funding initiatives in the New Zealand Employment Service, others as Ministerial Welfare Programmes in the Income Support Service prior to the amalgamation of these services into the Department of Work and Income in October 1998 and subsequently into the Ministry of Social Development in 2001. There was some clustering of programmes during this process of departmental restructuring but it did not achieve a coherent approach. The establishment of the MCA and the Programme applies the more strategic and systematic investment approach to employment and work readiness assistance.

70 Section 5(1) of the Interpretation Act 1999 requires the meaning of an enactment to be ascertained from its text and in light of its purpose. The Supreme Court has observed[21]

Even if the meaning of the text may appear plain in isolation of purpose, that meaning should always be cross checked against purpose in order to observe the dual requirements of s 5. In determining purpose the court must obviously have regard to both the immediate and the general legislative context. Of relevance too may be the social, commercial or other objective of the enactment.

71 A broad range[22] of highly discretionary assistance is provided through Ministerial Welfare programmes established under section 124(1)(d) of the Act. The Programme provides the Chief Executive of the Ministry with a broad discretion to grant (or decline to grant) employment and work readiness assistance. In the absence of detailed eligibility criteria it is likely that the Act's principles will have a greater role to play in assisting the courts to define the boundaries of how the discretion must be exercised.

72 The overall purpose statement in the Act refers to financial and other support to help people support themselves and their families, to help people find and retain work and to alleviate hardship. It refers to services to encourage and help "young persons" to move to education, training, and employment. It does not refer to services for a broader age group, or to targeting those at risk of adverse outcomes. Targeting on the basis of what services are available in particular localities, or effective for particular groups, does not appear to be contemplated in the wording of the purpose statement in the Act. Targeting support in the context of trials, in order to find out what works for particular at-risk groups, also has no support in the Act's purpose statement.

73 The lack of a supporting statement in the overall purpose statement means that there is a risk that the courts could interpret the provisions in the light of what is currently there – for example concluding that only young people should be supported in this way.

74 Employment and work readiness assistance differs from income support that is the primary focus of the Act:

- The labour market is highly dynamic, and any assistance needs to be flexible and capable of rapid and frequent change considering industry issues, regional issues, the needs of particular employers or institutions, skills shortages, economic conditions etc. This contrasts with income support that uses nationally consistent criteria to provide standardised support across New Zealand.

- Employment assistance is tailored not only to the individual circumstances of a client and the needs of their communities, but also to those of other third parties such as service providers, employers, and training institutions. This contrasts with income support that applies nationally consistent criteria and standard rates of assistance.

- Employment assistance is designed to achieve an employment outcome specific to individuals, compared to income support that aims to assist people with their day-to-day living costs.

- Employment assistance usually (but not always) involves payments to third parties, such as service providers, employers, and training institutions, by a variety of

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21 Commerce Commission v Fonterra Co-operative Group Ltd [2007] 3 NZLR 767.

22 Examples are: Special Needs Grants, Temporary Accommodation Assistance provided following the Canterbury Earthquake, Childcare Assistance, Domestic Violence and Witness Protection (Relocation), and Assistance to Live Organ Donors.

methods including grants and under contract. In comparison income support is generally paid to the individual.

Options and impact analysis

75 We considered three different approaches to providing better legislative support for the investment approach. The approaches are not mutually exclusive, any of them could be introduced on their own, or in combination with one or two of the others:

- Providing high level support by amending the purpose statement in the Act, so that well founded funding decisions under the current Programme, and possible future initiatives using the investment approach, would have better legislative support in the event of a legal challenge
- Expanding the range of initiatives under the investment approach
- Legislating aspects of the investment approach to improve transparency and accountability.

Status Quo

76 The Ministry considered whether the current purpose statement in the Programme was sufficient to support the investment approach. While it does go some way to support decision-making within the Programme, a statement in the Act itself would improve the legislative support for the investment approach – so that both the immediate and general context is clearly supportive.

77 The rewrite of the Act provides an opportunity to embed the principles of the investment approach into the Act, in order to provide legislative support for decisions to proactively invest in target groups. If the purpose statement is not broadened, there is a risk that the courts may conclude that the parameters of the Programme should be interpreted narrowly and make decisions to limit the potential for flexibility that the establishment of the MCA was intended to provide.

Option 1: new wording in the purpose statement

78 While the Programme itself has a purpose statement, having a high level statement in the Act would provide greater support for targeting within the Programme and in other initiatives prompted by the investment approach – for example trials to ascertain what approach works best for particular target groups.

79 Reflecting the investment approach in the purpose statement would have no impact on clients, service providers or case managers as it would simply reflect current practice. It may assist review and appeal bodies to determine any challenge to funding decisions. The objectives of the approach would be more clearly prescribed by law, and therefore provide a better framework for justifying any prima facie discrimination if a challenge was made on human rights grounds.

80 The alternative of having a purpose statement in the section of the Act that contains the provisions allowing Ministerial Welfare Programmes to be established would be a helpful measure, but would not address the lack of a supporting statement in the overall purpose statement in the Act. The existing risk would not be fully addressed.

Option 2: expanding initiatives

81 A key feature of the investment approach is openness to trialling new approaches. Trials allow us to test new ways of working with different client groups. The valuation provides a starting point identifying areas of concern for us to focus on.

82 A number of additional initiatives are being contemplated under the investment approach (for example working more closely with non beneficiaries, particularly people who have recently left the benefit system). These initiatives could be supported by legislative changes as part of the rewrite.

83 Some of the proposed initiatives would require considerable policy work, have fiscal implications and may also pre-empt the results of current trials. Prescribing new investment approach programmes in the Act would also run counter to the need for flexibility in the approach and would make the rewrite less policy neutral.

Option 3: legislating aspects of the investment approach

84 Accountability arrangements for the investment approach include annual valuations, transparent reporting on performance in managing the future liability, the Work and Income Board, and Treasury's external monitoring role. Some or all of these aspects could be set down in legislation to increase transparency and accountability.

85 On the other hand, embedding the mechanics of the investment approach would reduce flexibility and could very quickly date the Act. The valuation can, without any statutory imperative, be published and has been every year since 2011. The Board is advisory only. It cannot act on behalf of the Minister or Chief Executive of the Ministry, nor does it have financial management or reporting responsibilities.

86 Legislating for the mechanics of the approach would potentially limit the opportunities to modify them in future – for example having the valuation published more or less frequently than annually, or changing the number, term of appointment or skill requirements for membership of the Board – as these details would likely be required in legislative provisions. There is no need to legislate for the arrangements that have been set in place around the implementation of the investment approach.

Conclusions and recommendations

87 We concluded that a high level statement in the Act's overall purpose statement is desirable. This would provide better legislative support for the current practice of using the investment approach to make targeted funding decisions under the Programme. The statement would also support future initiatives, including trials, using the investment approach to better target discretionary funding to improve outcomes and reduce the risk of long term benefit dependency.

88 Any amendment to reflect the objectives of the investment approach would need to endure the test of time, so setting out the principles of the approach rather than the current "brand", is favoured. That will support evolving practice as we gain experience and collect information about what works best to achieve positive outcomes for particular at risk groups.

89 We concluded that it was neither necessary nor desirable to introduce new initiatives in the rewrite of the Act. Legislating for the mechanics of the investment approach would make it more difficult to adjust them if experience with the approach shows they can be improved. We are still learning as we implement the investment approach and experience could identify adjustments to the mechanics that would improve practice.

90 The possibility of drafting purpose statements for each part of the Act is also being considered as part of the modern drafting of the provisions.

Part 3: Proposal: Create regulation-making powers to specify circumstances where benefit redirection applies

Status quo and problem definition: Redirection of benefit payments

91 Redirection is the process of paying part or all of a client's benefit directly to another person or organisation, instead of the client. Redirections are a useful tool for assisting clients to budget within their benefit income, to improve financial literacy, and to reduce the need for hardship assistance. It is a mandatory component of money management for the Youth Service.

92 Research in the UK[23] found that direct payment of benefits to third parties can have positive benefits:

- assisting people on low incomes to avoid creditor sanctions such as disconnection and eviction
- increasing access to affordable finance for low income individuals
- providing an important service to people with mental health or addiction problems
- assisting people on low incomes to avoid accruing debt.

and some negative outcomes:

- leaving low income households with insufficient finances to meet essential expenses,
- acting as a disincentive for beneficiaries to enter or remain in employment.

93 The current legislative provisions for redirection are fairly restrictive. For a benefit to be redirected (with or without the clients consent) there has to be 'good cause' in regard to the client's circumstances and redirection must be used to pay the client's lawful debts or other liabilities or be for the benefit of his or her partner or any dependent children. Good cause is taken to mean that there is something about the client's circumstances that overrides the provision in section 84 of the Act that benefits are "inalienable" – that is, the benefit must be paid to or on behalf of the beneficiary.

94 Redirections are typically put in place to meet essential costs. As shown in chart 1 below, the most common redirections are for accommodation.

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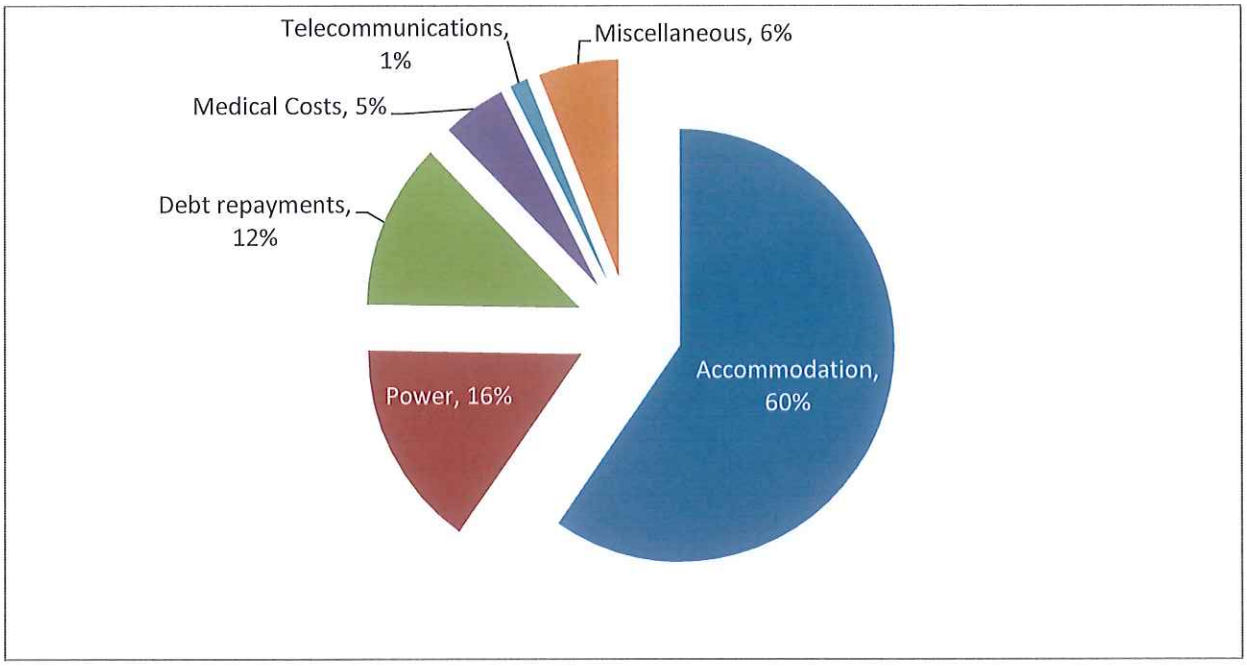
23 Farrell, C., Brown, R., O'Connor, W. (2005) Perspectives of Social Fund Loans and Third Party Deductions – A Qualitative Study of Recipients, United Kingdom

Chart 1: Snapshot of redirections of benefits by category[24]



95 The Ministry has a longstanding practice of making benefit redirections to pay social housing rent to Housing New Zealand (HNZ). From 2014 that practice has been extended to Community Housing Providers. It is based on the assumption that the stringent assessment of housing need that is applied before allocation of social housing is sufficient to determine that the client has "good cause".

96 There are around 46,000[25] benefit redirections to HNZ, accounting for the majority of accommodation-related redirections and almost half (42 per cent) of all redirections of benefit. This group comprises some 80 to 85 per cent of beneficiaries tenanted in HNZ properties.

97 From 9 February 2015 a change was made to simplify the administration of this process by removing the step of obtaining a written application for redirection from the beneficiary before a redirection of benefit is arranged to pay for social housing rent. Payment of social housing rent assists clients to ensure security of tenure, minimise potential for debt from rent arrears and assist social housing providers to receive their rent in a timely manner. Administration costs for providers and the Ministry are reduced by not having to provide for completion of the form in the redirection process.

98 A Ministerial Direction has been in place since 18 March 2015 to guide case managers in their exercise of discretion. The Direction clarifies circumstances that are to be considered in assessing good cause. It does not, and cannot, override the legislative requirement for case managers to consider the individual circumstances of the client in exercising the discretion for each individual.

99 The Ministry cannot, under the current legislative settings, identify specific circumstances where a client should have redirection – instead, frontline staff must take into account the

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24 Debt repayment includes loans, hire purchases, accounts, lay-bys and any other payments being made to cover a debt. Miscellaneous includes childcare, medical alarms, school costs, insurance and other miscellaneous costs.

25 This includes around 4,000 redirections that are couples both paying a portion of rent or two or more primary tenants paying redirection for the same house.

overall circumstances of each individual and consider whether that individual meets the threshold of good cause in order to apply their discretion to granting or declining a benefit redirection.

100 Having to individually consider and justify each redirection for HNZ tenants is not productive use of frontline staff time when the comprehensive assessment process to establish need for social housing has already occurred. The consideration of individual circumstances inevitably results in the conclusion that redirection of benefit to pay rent is justified for each social housing tenant. As an indication of the number of transactions involved, our records show that from 9 February up to the week ending 20 March a total of 764 clients entered into social housing (or transferred to a new property). Of these clients 605 (79%) are beneficiaries with a benefit redirection in place or in process of being put in place.

101 While social housing tenants form the largest identifiable group where a streamlined process offers greater efficiency, it is likely that there are, and will in future be, other circumstances that can be identified that would merit moving to a similar process.

Objectives

102 Cabinet asked officials to consider changes to remove legislative barriers to frontline efficiency and modern service delivery, including support for redirection of benefit payments. We considered options to enable more efficient and effective use of redirection while retaining the underlying principle that the benefit is paid to or on account of the beneficiary. We considered whether each option would remove barriers to improve clarity, consistency and efficiency, support simplification and modern service delivery.

Options and impact analysis

103 Increased use of redirection can be achieved by:

- allowing redirection whenever a client requests it (without good cause required)
- strengthening the ability to redirect without the client's consent (by enabling specific circumstances to be identified for redirection)
- extending money management to wider groups.

Option 1: allowing redirection where the client requests it

104 Section 82(3) of the Act could be amended to allow any beneficiary who asks for a redirection to receive it (without having to meet good cause). Discretion would still be required to allow a case manager to refuse the redirection where it would be uneconomic or impractical to do so.

Table 4: Advantages and disadvantages of allowing redirection on request (good cause not required)

Advantages	Disadvantages
Free to clients	If benefit is reduced – eg wages earned and benefit abated – redirection may not cover the amount owed
Client cannot withdraw money before the bill is paid (unlike direct deductions through banks) so greater certainty for creditors	Client can change their mind and alter or cancel a voluntary redirection at any time – could result in frequent requests for changes
Supports clients to take steps to manage their commitments	People who already manage their payments through banks or other services could switch to the free Ministry service
Simpler process - case managers would not have to consider each case in detail	Demand could escalate (refer para below), increasing administrative costs
	Could result in more financial abuse and pressure on vulnerable clients to have their benefit payment redirected
	May reduce the incentive for a person to leave benefit as new payment arrangements would be needed.

105 Approximately 1,000,000 clients could request a redirection. Of this group approximately 650,000 receive New Zealand Superannuation (including non-qualifying spouses). Many superannuitants would have no interest in redirecting their NZS payments (for example, they may have freehold homes, be still working, and have existing payment arrangements through banks etc). Nonetheless, this approach would leave a considerable risk of high demand for redirections.

106 It could be argued that the Ministry would be replicating services offered by banks and utility companies. However, bank administration and penalty fees can be very onerous for the Ministry's clients.[26]

107 There are also some practical issues that could increase under this option:

- it is not efficient use of administrative resources to set up redirection arrangements for clients who are only likely to be on benefit for a short period
- the Ministry must consider how much a client will have left after redirections of benefit. For some the benefit payment is already reduced by required deductions[27], for example to pay court fines, or child support, so there is little scope for redirection
- A manual process is currently required to reinstate redirection when a benefit has stopped and then is resumed. If that process is overlooked, and/or the payment is not

[26] Penalty fees include unarranged overdrafts (account out of order fees), rejected payments on deposit accounts (dishonour fees), exceeding credit limit (over limit fees) and late payment fees.

[27] Deductions cannot exceed more than 40% of a client's net earnings.

caught up from arrears due, misunderstandings and distress can arise for both clients and creditors who expect the bills to have been paid

- It requires clients to tell us when a redirection should stop (eg rent paid and the person moves out) otherwise the benefit continues to be redirected and the client has to take steps to recover their money.

108 Removing the threshold of good cause entirely was a further extension of this option that was briefly identified and immediately discounted. It would give the Ministry a broad power to redirect with or without the client's consent. It would give case managers wide reaching powers to control benefit payments with little in the way of checks and balances. That would run counter to the principle that benefit money belongs to beneficiaries who are free to make their own spending decisions, and generally are in the best position to decide what they and their families need.

Option 2: strengthening the ability to redirect without the client's consent (enable situations to be identified)

109 The administrative work to establish a redirection would reduce if certain circumstances where compulsory redirection is appropriate could be identified in advance. These circumstances could be spelled out in the Act. Alternatively, a regulation-making power could be introduced in the Act to enable such specific circumstances to be identified in regulations.

110 Unlike voluntary redirection, clients would not be able to opt out of the redirection so suppliers would have assurance that their costs will be met.

111 The Ministry has identified one circumstance – social housing tenants who are beneficiaries - where we are confident that the circumstance is justifiable and that increased efficiency would result from redirections being enabled.

112 Compulsory redirection for social housing tenants is appropriate to ensure security of tenure, minimise potential for debt from rent arrears and assist social housing providers to receive their rent in a timely manner. It would also reduce administration costs for providers and the Ministry (no consent form required).

113 At this stage we have not identified any other situations that should automatically lead to grant of redirection. Having regulation-making powers, rather than provisions set out in the Act itself, will future proof the legislation by allowing for work to be done to identify circumstances where compulsory redirection is appropriate. Regulations could then be put in place without the need to amend the Act.

114 There is a risk that the ability to identify circumstances for mandatory redirection could cause other suppliers of goods and services to demand similar treatment, e.g. private landlords, gardeners, counsellors, power companies. However, the regulation-making powers are unlikely to lead to wide ranging new redirections in response to lobbying from these groups. If regulations are found to be inconsistent with BoRA they cannot, unlike provisions in primary legislation, continue to operate. Identification of any new circumstance would need to be carefully considered to ensure that the compulsory redirection of benefit for that circumstance was justifiable.

115 We are confident that the approach in the case of social housing is justifiable. While there can never be absolute certainty in BoRA cases because judgments about what is justified may shift over time as societal attitudes change, we have confidence in our advice on BoRA compatibility, in part because the Ministry and our legal representatives have been successful in defending policies that have been the subject of complaints.

116 Further assurance that there would not be extensive use of the proposed powers to provide for redirection through regulations is provided by the requirement for regulations to be approved by Cabinet. Regulations are also examined by the Regulations Review Committee which can also hear complaints about regulations.

Option 3: Extend Youth Money Management to others

117 A proposal to extend the Youth Service to a somewhat older group is being considered in a separate policy exercise relating to the National Party's pre-election manifesto statement on welfare. Amending legislation is likely to be introduced, and possibly passed, before the introduction of the rewrite Bill. To avoid duplication of policy work, this option was not pursued in the work relating to the rewrite.

Conclusions and recommendation

118 Administrative efficiencies can be achieved by introducing and using a regulation-making power to the Act to enable specific circumstances to be identified where redirection of benefit is indicated (Option 2). Regulations to support redirection for social housing rental are proposed as the first such regulations to be drafted using this power. We consider that the approach is justifiable for this particular circumstance.

119 Table 5 below provides a summary of the advantages and disadvantages for the specific circumstance of social housing.:

Table 5: Advantages and disadvantages of mandatory redirection for social housing beneficiaries

Advantages	Disadvantages
• increases security of tenure for social housing tenants who are already in last resort housing	• overrides the requirement to consider each individual's overall circumstances
• minimising the potential for debt from unpaid and overdue rent and ensuring rent redirections are adjusted appropriately as Income Related Rents[28] change	• counter to the principle that individuals are best placed to independently manage their own finances
• ensures social housing providers receive Income Related Rent in a timely manner and will be able to build reduced risk into their business and operating models	• other accommodation providers may lobby to be treated the same (but their tenants will not have been allocated housing according to the rigorous social housing assessment process)
• supports streamlined administration for social housing providers and the Ministry	• reduces the client's ability to prioritise among essential costs when there is not enough money to pay all their commitments
• prioritises an essential cost for payment	• slightly increases the Ministry transactional (banking) costs as all social housing clients will have a redirection in place
• avoids double assessment – the assessment for social housing is sufficient to establish good cause for redirection	

28 Income Related Rent is the amount of rent that social housing clients must pay. Social housing providers are paid for the difference between the value of the Income Related Rent and the market rent rate for the property. This payment is called the Income Related Rent Subsidy.

Implementation Plan

120 New regulations to cover redirection of benefit for social housing rental will be drafted alongside the updating and redrafting of other regulations that will be required as part of the rewrite process.

121 An implementation plan to ensure operational guidance, brochures and forms etc are updated will be developed at the time approval for social housing client redirection Regulations is sought (expected to be in March 2016).

122 There should be little other implementation required due to the current processes already in place for social housing clients.

Part 4: A review of Orphan's and Unsupported Child's benefit

Status quo and problem definition

123 Orphan's Benefit (OB) and Unsupported Child's Benefit (UCB) are payments made to people caring for children that are not their own. These benefits are paid to around 9,000 caregivers looking after approximately 13,000 children whose parents cannot care for them. People who claim the OB or UCB cannot also collect the Family Tax Credit for that child. Rates of OB/UCB are set somewhat higher than the rates of Family Tax Credit paid for children of the same age. The higher rates recognise the fact that the OB/UCB carer has taken on long-term responsibility for a child who is not their own.

124 Recent welfare reforms reduced the number of benefit categories. No consideration was given at that time to possible changes to the OB and UCB. There is little rationale for OB being a separate category considering it is paid to fewer than 400 caregivers and the policy and administrative settings are virtually the same as UCB – including an identical rate structure for both benefits so that the same amount is paid to support OB and UCB children of the same age.

125 The current names of the two benefits are not accurate:

- Not all of the children supported through OB are in fact orphans, as OB can be paid to the caregiver of a child whose parents are dead, cannot be found, or have a serious long-term disablement and so cannot care for the child.
- There may be considerable support given by the wider family/whanau to a child whose carer receives the "unsupported" child's benefit.

126 Most payments made are for UCB (97 percent), and in the majority of cases involve a family member, such as a grandparent. A significant number of the children supported by UCB have come to the attention of Child, Youth and Family and around half of the caregivers receive a main benefit.

127 An inconsistency in policy relating to step-parents came about in 1990[29] when a restructure of OB separated UCB into a separate benefit category and, for that group, included step-parents as being legally responsible for their step-child. The principle applies equally to OB but was only applied to UCB. Consequently UCB cannot be paid to a step-parent or to a carer when a step-parent is available to care; but step-parents can receive OB. The introduction of UCB was in response to the growth in claims for OB that had arisen after eligibility had been extended in 1986 to children where neither parent was "prepared to maintain, or can reasonably be compelled to maintain"[30] them. The establishment of the UCB appears to have been a mechanism to tighten the eligibility criteria for the group that had become eligible for the OB in 1986.

128 Section 31 of the Act requires that the OB/UCB is used for the benefit of the child. From time to time case managers have expressed concerns about care of children supported by these benefits. While case managers are advised to refer care and protection issues to our Child Youth and Family service, there is little legislative support for case managers to discuss with the carers issues that fall below the threshold requiring such referral.

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29 Social Security Amendment (No 2) 1990

30 Social Security Amendment 1986 (1986 No. 39)

129 Welfare reforms introduced new social obligations. Social obligations apply to people receiving a main benefit. Beneficiaries with children are required to ensure that their children are enrolled with primary health care providers, have core health checks and that they take all reasonable steps to enrol children aged 3-4 in, and to ensure the children attend, an early childhood education programme Beneficiaries are sanctioned by having their benefit reduced if they fail to meet the social obligations, but those with dependent children retain at least half of the benefit rate as well as the Family Tax Credit in order to support their children.

130 The social obligations apply to beneficiaries with dependent children (including any OB or UCB children in their care) but do not extend to the non-beneficiary carers of children supported by OB and UCB. The social obligations relating to children also do not apply to the Family Tax Credit.

Objectives

131 Options developed aim to simplify the Act, make it easier to understand, and to contribute to frontline efficiency and modern service delivery. As OB and UCB are paid to meet the needs of a particularly vulnerable group of children, who do not have the support of their parents, we also considered whether legislative changes were desirable to support the achievement of good outcomes for the children.

Options and impact analysis

132 Options considered included legislative changes to change the benefit structure by merging the two benefits, to align policy parameters so that step parents are treated more consistently and improving messaging on the obligations of carers to attend to the health and education of the children. The options around each of the issues, structure, eligibility and social obligations are discussed below.

133 No non-legislative solutions were identified to address the problems, as the problems identified lie in the legislation itself.

Benefit structure

Option 1: retaining the two benefits (status quo)

134 Retaining and renaming the two existing benefit categories would make it clearer what the benefits were for, but would not achieve greater efficiency. It would not simplify the benefit system by reducing the number of benefit categories. It is hard to justify a separate benefit category for the small numbers of clients (fewer than 400) receiving OB, when UCB has almost identical eligibility criteria.

135 In the one substantive area where policy is not identical, it is difficult to justify retaining the policy of treating step parents differently – so they qualify for the OB and not UCB.

Option 2: merging the benefits

136 Merging the benefits would reduce the number of benefit types, further simplifying the benefit system. We considered merging the two benefits under one of the two current names. However neither of the current names appeared to be a good fit.

137 A proposed name for the merged benefit of Supported Child's Payment would provide a more positive focus and clarify the purpose of the benefit – to assist the financial support of a child being cared for by someone other than their parents.

Aligning eligibility

138 The current inconsistency over how step-parents are treated results from an oversight. Retaining the current separate policies is not favoured because of:

- inconsistency – a step-parent could get the OB/UCB/merged benefit if they were looking after a child whose parents have passed away or cannot be found or are disabled to the extent they cannot care for the child, but not if they are looking after a child who had experienced a family breakdown
- inefficiency – staff would continue to have to apply different rules about step parents to two very similar benefits (or within one benefit if the benefits are merged) with largely identical policies
- difficulty in understanding or explaining why there is a distinction between the two benefits.

Option 3: step parents eligible for UCB

139 Eligibility could be aligned by widening eligibility to all step-parents for UCB or the equivalent in a new merged payment. That would be a fair, transparent option. However, widening the eligibility to include step-parents would increase fiscal costs and mean that the state would be paying a group of people to care for children they are legally responsible for, which is counter to the principle that parents should support children they are legally responsible for. Step parents, like other parents, can include a dependent child in their own benefit and access the Working for Families Tax Credits.

Option 4: step parents excluded from OB, with current recipients protected

140 Aligning eligibility by excluding step parents from both benefits (or the equivalent under a new merged benefit) would uphold the principle that the state does not take over the legal responsibilities of others.

141 Since 2011 only 5 step-parents have been granted OB. Prior to 2011, systems did not record whether an applicant was a step-parent. To prevent any current recipients losing eligibility due to the policy change, and to avoid the administrative costs of investigating the status of people granted OB prior to 2011 grand-parenting the eligibility of current recipients is recommended. Investigating the recipients, no matter how sensitively done, would also very likely cause distress for some of the people contacted. Given there are less than 400 Orphan's Benefit caregivers in total, the number of step-parents who will be covered by grand-parenting measures will be very low.

Social obligations

Option 5: apply social obligations to OB/UCB

142 Applying the social obligations that relate to children to non-beneficiary as well as beneficiary OB and UCB carers would provide a strong signal that the children supported by these benefits should be enrolled with health providers and attend pre-school at pre-school age. However, OB and UCB, like the Family Tax Credit, is paid to support a child. The OB/UCB replaces the tax credit which is not reduced when a parent fails to meet a social obligation. These settings recognise that it is not appropriate to reduce the amount intended for support of a child – essentially the child's income - in order to sanction a carer for not meeting a social obligation in respect of that child.

143 Applying the social obligations without allowing for sanctions to also apply would introduce an inconsistency in the approach to these obligations. There would also be practical difficulties in applying the social obligations and sanctions within the OB/UCB

settings given that these obligations and sanctions already apply to carers who are beneficiaries –their main benefit rate can be halved if they fail to meet the obligations in respect of the OB/UCB child. A complicated regime would be required to target the non-beneficiary carers and avoid doubly penalising the beneficiary carers.

144 It is not clear that extending the social obligations – with or without sanctions - to non-beneficiary carers, who support themselves but claim OB/UCB to meet the needs of a child who is not their own, would not create more problems than it would resolve. This option did not rate well against the criteria of clarity, efficiency and simplification.

Option 6: a stronger signal promoting the best interests of the child

145 As part of the rewrite of the Act, we are looking at having separate purpose statements for each of the various parts of the Act to improve clarity and ease of understanding.

146 The current wording in the Act that states that OB/UCB must be used for the benefit of the child[31]. That message could be strengthened and elevated into a specific purpose statement for the OB/UCB benefit provisions. That would provide a stronger signal to non-beneficiary carers without compromising the current framework around social obligations and related sanctions for beneficiaries.

147 While few carers are likely to read the purpose statement in the Act, that statement would provide legislative support for case managers to convey the message that OB/UCB children, like other children supported through the benefit system, should be enrolled with health providers and attend pre-school at pre-school age. Publicity material at the time the legislation is introduced and passed could also reinforce this message.

Impact if no change is made

148 If no change is made the opportunity to modernise and further simplify the benefit system would be missed. The current inconsistent treatment of step parents within two virtually identical benefit groups would continue as would the current outdated and inaccurate names of the two benefits. A separate benefit category would continue for a very small group. The opportunity to support case managers to convey a more consistent message around the best interests of the child, including social obligations, would be missed.

Consultation

149 Ministry staff and the National Beneficiary Advocates Consultancy Group were consulted over a possible replacement name for UCB. The recommended name of Supported Child's Benefit received broad support.

Conclusions and recommendations

150 The Ministry supports a combination of options 2, 4 and 6 – that is merging the two benefits and aligning policy by excluding step-parents from eligibility, with grand-parenting protection for step parents currently receiving OB. The Ministry also proposes a purpose statement for the merged benefit to emphasise that the financial assistance is to be used for the benefit of the child.

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31 Section 31 States that the OB/UCB *shall be applied toward the maintenance or education of the child or otherwise for his benefit.*

Implementation plan

151 Grand-parenting entitlement for current step-parent recipients will minimise the need for transitional arrangements. Existing procedures used for UCB to identify new applicants who are step-parents will be applied to the merged benefit.

152 Application forms and information pamphlets are available online and can be downloaded for printing. The online versions of the forms will be revised so that they can be updated at the time the change of name takes effect. Stocks of hard copies of this material will be run down and reprinting delayed to minimise transitional costs.

153 New Zealand's reciprocal agreements with the Republic of Ireland and the Hellenic Republic (Greece) include OB. These agreements help former residents in one country access certain benefits and pension in the other. There are currently no people receiving this assistance. A savings clause will be proposed, to continue reciprocal obligations and entitlements.

Part 5: Aligning how obligations and sanctions apply to Emergency Benefit

Status quo and problem definition

154 Emergency Benefit enables support to be provided to people who do not fit the eligibility criteria for other statutory benefits, but are in hardship and genuinely need financial support. This benefit is discretionary by design to accommodate the range of different circumstances of people who are not eligible for other statutory benefits.

155 As at 30 January 2015 there were 7,049 current EB, including 4,456 recipients who were 65 years of age or older.

156 There are no default work or work preparation obligations set for EB. Where such obligations are considered appropriate, they must be added manually by frontline staff as conditions of grant. In addition, the legislation does not provide for any sanctions for failure to meet obligations:

- if an obligation set as a condition of grant is not met, the benefit must be cancelled
- to mirror a sanction a case manager can then re-grant the benefit at a lower rate with re-compliance requirements set as new conditions of grant
- to mirror re-compliance procedures requires cancellation and re-grant of the benefit at full rate, with obligations re-set as conditions of grant.

157 Because this is an onerous manual process, such conditions are rarely applied or enforced. This is out of step with recent reforms and how partners of main EB clients are treated (the legislation setting out obligations and sanctions for spouses includes spouses of people receiving EB and there is an automated system to apply conditions for partners). As at 30 January 2015 there were 2,077 married/partnered people receiving EB, of whom 200 were working age[32] recipients.

158 EB was not looked at as part of the recent welfare reforms (2012-2013) that aim for a consistent work focus across the benefit system. As such there has been little focus on this group in terms of recognising and supporting people's work potential. Currently, clients receiving EB are not streamed into active case management services. Having one benefit group almost entirely excluded from active case management means that some people who potentially could move into work are not supported to do so. Work on achieving the Government's targets for reduced benefit numbers will not be optimal as long as the work capacity of people on the EB is not considered.

159 The use of the word "emergency" creates the impression that EB is only payable in an emergency event such as following a natural disaster. In fact, EB is paid in a diverse range of circumstances, and in some cases payments continue over an extended period (particularly given the 10 year qualification period for New Zealand Superannuation).

160 Currently parents whose relationship ends and who each become responsible for care of at least one child (known as "split care") are treated in an arbitrary way by the benefit system. Only one of the parents can qualify for Sole Parent Support (SPS), unless there is a Court order for day to day parenting orders involving split care[33]. If both parents

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[32] "working age" is defined as aged 18 – 64 years of age.

[33] Section 20C: Sole parent support: split custody.

require a benefit the first to apply receives SPS. If both parents apply at the same time the Ministry must determine who the principal caregiver of the children was immediately before they separated. This can be problematic.

161 The parent who cannot receive SPS can be granted Jobseeker Support at the sole parent rate, equivalent to the rate of SPS. If the parent cannot meet the obligations of Jobseeker Support, they are granted Emergency Maintenance Allowance (EMA), an administrative sub-category of EB for sole parents analogous to SPS.

162 This approach is a logical one for shared care situations (where the former partners share the care of the child or children from the relationship and benefit settings require that one parent must be identified as the primary carer). In the shared care situation the policy signals strongly that the shared care arrangements should be made so as to ensure that at least one parent is available for full-time work.

163 In the split care situation, where both parents have at least one dependent child in their care, the settings have little logic. In practice both parents are able to receive the same level of benefit support but the work testing approach for sole parents may not be well applied for the parent receiving EMA. As described above, work testing is not well supported in the EB provisions in the legislation.

Objectives

164 The main objective is to ensure that clients who are in similar circumstances are treated the same. In particular that work obligations are applied appropriately across the benefit system. In addition, we considered whether options would improve clarity, consistency, and efficiency.

Options and impact analysis

The name of the benefit

165 Ideas for a replacement name were canvassed in Ministry, a survey for front-line staff and the National Beneficiary Advocates Consultancy Group. The suggestions were:

- Special Circumstances Payment
- Special Situation Support
- Exceptional Circumstances Benefit/Support
- Extraordinary Circumstances Payment
- Interim payment support
- Miscellaneous support payment
- Non-qualifying Assistance
- Non-Qualified Payment
- Hardship Benefit
- Independent Living Benefit
- Standby Assistance/Benefit
- Replacement Assistance

166 There are some arguments in favour of retaining the current name. It signals that the benefit is outside the statutory entitlement approach for benefits and supports the discretionary approach to granting it. The current name has also been in place since 1938 and so is familiar to people who interact with the benefit system.

167 On the other hand, the rewrite of the Act is an opportunity to update and improve the name of the benefit so its purpose is clear, and to avoid confusion with the Emergency assistance provided when a civil defence emergency is declared.

Options for applying obligations and sanctions to Emergency Benefit

168 The options considered are summarised in Table 5 below, and each option further discussed below the table.

169 Option 1 or 2 could be undertaken separately or in conjunction with Option 3 and/or 4.

Table 6: Advantages and disadvantages of options for Emergency Benefit

Option	Advantages	Disadvantages
Status quo – no change	No cost Obligations can continue to be mirrored through conditions of grant Maintains the current discretion not to apply conditions where the clients individual circumstances mean they cannot meet conditions	Relies on manual processes and consideration of clients individual circumstances, so does not deliver on efficiency or simplification Continues the potential inconsistent treatment of clients in similar circumstances Difficult to monitor and enforce conditions of grant as there is no system support Sanctions for failing to meet conditions of grant can only be mirrored by stopping the benefit and re-granted at a lower rate, which is not efficient or transparent. Obligations and sanctions continue to be not consistently applied.
Option 1: Default work obligations	Signals all clients are expected to work if they can – expands on recent welfare reforms Aligns work obligations across all working age benefits (consistency) Processes to apply obligations and sanctions would be streamlined and automated	Blunt instrument which captures clients who clearly cannot meet work obligations, so discretion still required to deactivate obligations (lacks flexibility required for this diverse group) Would require new rules to guide the exercise of discretion where the default work obligations are not appropriate (such as a new set of exemptions) which would add complexity to the administration of this benefit IT system changes required to ensure policy is implemented as intended - estimated $1.5 million to adjust current systems.

Option 2: discretion to apply work obligations or work preparation (including associated sanctions)	Signals to clients that they are expected to work if they can – expands on recent reforms No need to replicate complex systems of deferrals/exemptions as there is no default work obligations Reflects that most clients receiving this benefit are in non-standard situations and cannot meet work or work preparation Processes to apply obligations and sanctions would be streamlined – would no longer require cancellations and re-grants, so more likely to be actioned - and could be automated.	Requires operational guidance as the default is no work obligations IT system changes could support implementation – but estimated to be $506,000 – so depending on funding availability may remain reliant on (a simpler) manual system until the system is replaced or upgraded in the future.
Option 3: introduce hardship provisions for Sole Parent Support (and possibly also Supported Living Payment)	Hardship criteria would remain, so no change expected in numbers claiming a benefit. Obligations and sanctions would automatically apply.	Numbers who would transfer too low to justify the cost of systems changes.
Option 4: Sole parent support eligibility for both parents in split care situations	Removes the inefficient process whereby one parent is granted Sole Parent Support and the other Emergency Maintenance Allowance (with exactly the same settings) Signals to clients they are expected to work if they can (subject to the age of the youngest dependent child in their care). Ensures children receive the appropriate financial support No system changes required as utilises the existing obligations structure in Sole Parent Support. Consistent application of appropriate work obligations and sanctions as processes supported by existing systems.	Removes hardship test so may encourage more benefit applications. However, the impact of this would be negligible as very few clients do not meet the hardship test[34] Could result in some clients arranging their circumstances to receive a benefit.

[34] In 2014 only 3 Emergency Maintenance Allowance applications were declined due to not meeting the hardship test.

Status Quo

170 EB clients will continue to be treated inconsistently with both clients on other main benefits and partners, whose obligations to work or prepare for work and sanctions for failing to meet obligations are set out in the legislation.[35]

171 Without a change to the current legislative settings a sanction for failure to meet work obligations is not automatic. Case managers would continue to be able to achieve the effect of a sanction only by cancelling and re-granting the benefit – and may choose not to do that because of the extra work involved. That is inefficient, as well as being out of step with the work focus of the recent welfare reforms. It is inconsistent with the principle that people in similar circumstances should be treated the same.

Option 1: default work obligations

172 Under this option work obligations for EB would be automated. This would mean leaving all clients on EB and making system changes to allocate work obligations aligned to the analogous benefit as the default. This could[36] cost up to $1.5 million. Rules would need to be set to ensure clients over the age of 65 (non-working age) are not be subject to default work obligations in line with current practice.

173 This option would treat EB clients the same as other clients – it would create more consistency within the benefit system. This option would also enable the graduated sanctions regime to be applied to the EB clients, where they fail without good and sufficient reason to meet their obligations.

174 However most clients receiving EB are in non-standard circumstances and would not be able to meet the work obligations of the analogous benefit. Most of these circumstances are not covered by an exemption or deferral (which is why they were placed on EB in the first place). There would still need to be discretion to not impose obligations (as is currently the case through condition of grant).

175 A desk based review of working-age EB client records found approximately 500 clients who might have part-time work obligations and 450 clients who might have work preparation obligations. Some of these clients, on further investigation, are likely to qualify for an exemption[37]. Clients who can meet full-time work obligations are able to receive Jobseeker Support on grounds of hardship under Section 88C of the Act.

176 That analysis suggests that less than 10 per cent of clients on EB would be able to meet work or work preparation obligations due to their circumstances (including age and caring responsibilities). Having default work obligations so that case managers would need to apply discretion in each case (for around 90 per cent of clients) where a person will not be able to meet their obligations would create additional work for case managers. This option failed to meet the efficiency criteria.

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35 Note Supported Living Payment is not a work-tested benefit.

36 Based on changes being made to the current system to achieve a fully automated system supporting work obligations and sanctions for this group. However a Simplification Project is currently under way and is looking at improvements to the current system that could reduce the cost. Alternatives to a fully automated system could also be explored.

37 Based on a desk-based review of working age client records and the reason the benefit was granted.

Option 2: discretion to set work obligations

177 Under this option, there would be discretion for work or work preparation obligations, including the ability to apply the associated sanctions, to be applied to a client receiving EB. The obligations would be applied at the discretion of the Chief Executive, where it is determined that they have the capacity to seek, undertake or be available for work, or if not to prepare for work. Work obligations would be set according to the client's individual circumstances. For example, if the client was a sole parent with a six year old child they would be expected to look for and be available for part-time work, unless there were other circumstances that made that inappropriate.

178 This would recognise that clients receiving an EB are diverse and may be less suited to a standardised approach (as in Option 1), by retaining the flexibility to take individual circumstances into account. This would allow case managers to focus on those clients who could be expected to work and to treat them the same as other clients who have the same characteristics (for example insufficient residency). This would improve consistency by ensuring that those clients who can work are supported to do so.

179 The default position would be no obligations to look for or prepare for work, as a large number of clients would not be able to meet work obligations. This is considered more practical and efficient than Option 1.

180 Changing the current IT system to support obligations and sanctions and associated processes to make this policy operate efficiently, is estimated to cost $506,000. However, even if IT systems are not changed, the manual process for case managers would be simpler under this option. Having the legal discretion to apply the obligations and sanctions will mean case managers will be able to simply reduce the benefit rate if the obligation is not met and restore the rate on compliance, without the cancellation and re-grant process that is the work-around required with the current legislative settings.

Option 3: introduce hardship provisions to Sole Parent Support and Supported Living Payment

181 A further option we considered was to create two new hardship categories aligned to SPS and SLP (A sub-option was to create just the SPS Hardship benefit.)

182 Hardship categories would allow those clients with insufficient residency to receive a statutory benefit and the associated obligations and sanctions. This would enable more consistent treatment of these clients and in particular reflect the increased work focus for sole parents that were introduced during welfare reforms. We already have similar categories in Jobseeker Support Hardship, Youth Payment Hardship and Young Parent Payment Hardship designed for people with insufficient residency but meet all the other criteria. (We also have Jobseeker Support Student Hardship designed for students during their study break).

183 These new benefit categories would be similar to SPS and SLP – with obligations and sanctions, re-compliance, forms and so on automated as for others on the benefits.

184 Generally a person needs to have permanent residency or New Zealand citizenship to receive assistance and to have lived in New Zealand continuously for at least two years at any one time (or has lived in New Zealand 10 years, including 5 years after attaining the age of 50 to qualify for New Zealand Superannuation). People who do not meet the residency criteria for a benefit (or do not qualify for an existing hardship benefit) may be granted EB.

185 Of the two potential hardship categories that we could introduce, only SPS has work obligations. As at November 2014 there were 328 sole parents receiving EB or EMA where the reason for grant is insufficient residency where the analogous benefit would be

SPS. Of these clients, 202 have children under age of five and should be expected to prepare for work, 126 clients have children between the ages of 5-13 and should be expected to be available for and take reasonable steps to find part-time work.

186 As at November 2014 there were 46 EB clients with insufficient residency who would otherwise be eligible for SLP. This benefit does not have work obligations. However, these clients could benefit from being treated the same as the rest of our SLP clients, for example being able to access any trials the Ministry implements for this group as part of the investment approach.

187 Although this would provide greater transparency, and eligibility conditions including the hardship test would be unchanged, this change could attract more attention to the availability of benefit for persons without sufficient residency.

188 The cost of adding two hardship categories based on current systems is estimated at approximately $1.9 million ($1.7 million for just adding SPS hardship). Considering the cost of introducing two new categories and the small numbers of clients who would migrate onto the new hardship categories for the benefits, this option was not considered a cost effective approach to ensuring work obligations are set appropriately for EB clients.

Option 4: allowing both parents in split care situations to receive Sole Parent Support

189 Currently over half (54%) of the clients receiving EMA do so because they have split care arrangements. Split care arises where parents are living apart and each parent has full care of at least one child of the relationship.[38] Under section 20C of the Act, only one of the parents who are in a split care arrangement for their children is entitled[39] to SPS in respect of the children. There is one exception to this - if the custody arrangement has the recognition, authority or approval of the Family Court then both parents can qualify.

190 In situations of split custody, the parent not entitled to SPS may be eligible for EB (in the form of EMA). At the end of January 2015, there were 617 clients receiving EMA for split care reasons with children under 14. Those with children over 14 can claim Jobseeker Support.

- 60 per cent have children between the ages of 5-13 years and could be expected to be available for and take reasonable steps to find part-time work
- Around 40 per cent with younger children could be expected to prepare for work.

191 Allowing both parents to receive SPS would have the effect of automatically aligning the work obligations (and associated sanctions) for sole parents in split care situations with those of other sole parents. This would not require any system changes as the infrastructure is already in place. It would ensure both parents are treated equitability in terms of their expectations to look for or prepare for work, and also with other sole parents.

192 Because EB can be paid in split care situations the original rationale for having split care provisions (to discourage parents from arranging their child care situation to maximise benefit entitlement) is largely circumvented. The current process is also administratively burdensome with little net effect for clients other than the name of the benefit they

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38 Note if the parent in a split care situation re-partners, the children in that parent's care are treated as dependent children for benefit purposes if the couple (parent and new partner) are on benefit – the restriction only applies to Sole Parent Support.

39 This is the case even if both parents would otherwise qualify for Sole Parent Support.

receive and the hardship test.[40] The current dual-approach in split care situations is not equitable – the first parent to claim SPS tends to continue to receive it while the other parent cannot.

Conclusions and recommendations

Name of the benefit

193 It is recommended that EB be renamed "Exceptional Circumstances Benefit" to improve clarity as that name more clearly describes the purpose of the benefit.

Aligning work obligations for Emergency Benefit

194 The preferred option is a combination of Option 2 and Option 4.

195 Option 2 ensures that EB clients can be treated the same as people receiving other main benefits, but retains the flexibility to take account of individual circumstances when setting work obligations based on the person's capacity to work. It is the most efficient approach to ensure that support for meeting work and work preparation obligations goes to people who are able to meet them.

196 Option 4 is also recommended as this change would address the current anomaly where only one parent in split care situations can receive SPS, and the other EMA at the same rate and conditions as SPS (where they are not eligible for another benefit and in hardship). This would remove a complex manual process to grant an EMA as a work-around for current section 20C which prevents SPS from being paid to two parents in a split care situation. That would improve the administration of the benefit system and make it more equitable for parents in split care situations.

Implementation plan

197 As with other parts of the Rewrite programme, case manager guidance and printed material will be updated at the time the legislation is passed.

198 Transitioning split care clients from EB to SPS will occur at the time of annual review (or earlier review if circumstances change), to spread the work required over a reasonable timeframe.

[40] Even then assets can be disregarded for the hardship test under exceptional circumstances.