

Regulatory Impact Statement

Welfare Reform – Proposals for Bill Two of Welfare Reform

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) accompanies a suite of five Cabinet papers on welfare reform.

Analysis in many parts of this RIS is informed by decisions previously made by the Government. Specifically:

- *Detailed Benefit Settings:* Cabinet previously decided to merge the current seven main benefits into three new benefits, and made some decisions on matters such as what the work availability expectations will be of those on the new benefits, and to introduce new assessment processes for those who are sick or disabled [CAB Min (11) 39/8]]. That makes analysis of the decision to establish those benefits outside the scope of this RIS, limiting focus to the detail of the new benefit settings.
- *Pre-employment Drug Testing:* The National Party's Welfare Obligations manifesto document committed that "if a person doesn't apply for a job because a potential employer asks them to take a drug test, or if they fail such a pre-employment drug test, their benefit will be cancelled... those who suffer from drug addiction will be offered help and support to deal with their addiction. If there is doubt about whether a person suffers an addiction or is a recreational drug user, a National Government would be guided by expert professional advice".
- *Social Obligations:* The National Party's confidence and supply agreement with the ACT Party included undertakings in this parliamentary term to address the Welfare Working Group's recommendations 27, 28 and 30.

The proposals in the Cabinet papers this RIS accompanies do not impose additional costs on business, impair private property rights, market competition, or the incentives on business to innovate and invest, nor override common law principles.

Further consequential work is being undertaken in a number of areas:

- decisions on transitional and consequential proposals on abatement and rate protection for a small group of beneficiaries will be the subject of further proposals to the Cabinet Social Policy Committee on 15 August 2012
- Detailed decisions on stopping benefits to beneficiaries with warrants to arrest in criminal proceedings will also be reported back to the Cabinet Social Policy Committee on 15 August 2012
- details of implementation of the drug testing policy are being developed by the Ministry of Social Development working with the Ministry of Health. This work will focus on details of the assessment process to distinguish between recreational and dependent drug users, and access to drug treatment services for drug dependent

beneficiaries. The Cabinet papers propose that further decisions on drug testing issues, and an approach for implementation, be made by a group of Joint Ministers comprising the Minister of Finance, Minister of Health and Minister for Social Development.

Key assumptions, dependencies, or uncertainties are discussed in Part Two of this RIS.

Further implementation and funding decisions will be taken in September.

Consequential changes to regulations will also be required to give effect to these decisions.

Chris Bunny

General Manager, Welfare Reform

Ministry of Social Development

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PART 1: BACKGROUND AND INTRODUCTION

- 1 This regulatory impact statement (RIS) accompanies a suite of five Cabinet papers that seek decisions to reform New Zealand's benefit system. Those five papers are:
 - *Welfare Reform Paper A: Overview*
 - *Welfare Reform Paper B: Design of the New Benefit Categories*
 - *Welfare Reform Paper C: Health and Disability*
 - *Welfare Reform Paper D: Pre-employment Drug Testing Requirements*
 - *Welfare Reform Paper E: Social Obligations for Parents*

- 2 Papers B to E contain proposals of a regulatory nature and are the subject of this RIS. The structure of this RIS is as follows:
 - This part provides an overall summary of the impacts, risks, and consultation, for the suite of five Cabinet papers
 - Part 2 provides regulatory analysis of the proposals in papers B and C
 - Part 3 provides regulatory analysis of proposals relating to pre-employment drug testing in paper D
 - Part 4 provides regulatory analysis of new social obligations for parents in paper E
 - Part 5 describes how these proposals will be implemented, monitored, and reviewed.

Impact of reforms

- 3 The impacts of the proposals in this suite of Cabinet papers are discussed in the paper "Welfare Reform Paper A: Overview". The cumulative effect of individual proposals, particularly those in papers B and C, and Cabinet's earlier decisions to merge main benefits into three new benefits, have a combined effect of making the benefit system much more work focused. It is anticipated that this will have a significant impact on the number of people receiving benefits over time.

- 4 Preliminary estimates by Treasury and the Ministry of Social Development (MSD), based on Budget and Economic Fiscal Update (BEFU) 2012 forecasts, of the impact of the entire welfare reform package (including prior decisions made by Cabinet) are that the package may result in:
 - a reduction in the number of benefit recipients of between 28,000 and 44,000 by 2016/17
 - savings of \$0.992 billion to \$1.609 billion over the four years to June 2017.

- 5 The ranges in these estimates reflect low and high-end scenarios based on a number of drivers, including timing of implementation and organisational changes, targeting of resources to support employment outcomes and economic conditions. These impacts are for the entire welfare reform package. The impact of welfare reforms depends on a range of benefit settings and how they interact together to influence behaviour. For this

reason the estimates above are not amenable to division for attribution to specific elements of reform policy.

- 6 The costs of these reforms are in the process of being finalised.

Risks

- 7 The proposals in the suite of five Cabinet papers this RIS accompanies constitute an ambitious and complex programme of welfare reform, delivered over the course of several years. While the gains could be significant, any programme of this magnitude comes with some risk.
- 8 The key risks that have been identified with this welfare reform package are:
- an economic slowdown, which could compromise Work and Income's ability to achieve results, and reduce the resources available to apply to active case management
 - operational risks such as glitches in IT systems or problems with the rollout of the changes at the front line, could create dissatisfaction with service delivery and undermine the effectiveness of the reforms.

Consultation

Departmental Consultation

- 9 The Treasury, the Ministry of Health, the Ministry of Education, the Ministry of Business, Innovation and Employment, the Ministry of Justice, the Ministry of Pacific Island Affairs, Te Puni Kōkiri, New Zealand Police, the Accident Compensation Corporation, Inland Revenue, the Department of Corrections, and the Ministry of Women's Affairs were consulted during the preparation of this suite of Cabinet papers. The Department of Prime Minister and Cabinet and the State Services Commission were informed. Agencies were provided with a draft of this RIS to comment on.
- 10 The Ministry of Health (MoH) raised concerns with the drug testing proposals in Paper D. Their major concern is that beneficiaries who fail drug tests will overstate their drug use to claim that they are drug dependent, thereby avoiding financial sanctions. This in turn will lead to unnecessary referrals to drug addiction services, putting pressure on scarce resources.
- 11 While the MSD accepts that some beneficiaries may overstate their drug use, it considers that the development of robust assessment practices will avoid this being a significant problem. MSD is working with the Ministry of Health on further developing these assessment practices.

Health and Disability Panel

- 12 As directed by Cabinet, MSD set up the Health and Disability Panel to provide specialist, expert advice on welfare reform changes for people who are sick or disabled. They were asked to advise on:
 - triage and entry into the benefit system
 - assessment processes and how to identify work ability.
- 13 The Panel of fourteen included representatives from professional and stakeholder groups, experience in disability support services, disability advocacy, general practice, occupational medicine, rehabilitation, physiotherapy, supported employment, and mental health and addictions.
- 14 The Panel first met in October 2011. They met four times, the last being on 17 April 2012. A smaller working group of Panel members also met on two further occasions.

Public Consultation

- 15 Decisions to merge existing main benefits into new benefits, to introduce pre-employment drug testing, and to introduce social obligations for beneficiary parents, were made following similar recommendations by the Welfare Working Group (WWG). The WWG was established by Cabinet to undertake an expansive and fundamental review of New Zealand's working age benefit system, with its primary task to identify how to reduce long-term welfare dependency.
- 16 As part of its review of the benefit system the WWG engaged in public consultation, including workshops and engagement with the public in April/May 2010 and in June 2010. In August 2010, the WWG published "Long-Term Benefit Dependency: The Issues" and in November 2010 it published "Reducing Long-Term Benefit Dependency: The Options". Public submissions were called for on the issues discussed in these documents, and was taken into account by the WWG in making its recommendations.
- 17 A number of elements of welfare reform were included in the National Party's 2011 election manifesto, including pre-employment drug testing. Social Obligations were agreed to in the National and Act Party Confidence and Supply Agreement.

PART TWO: BENEFIT SETTINGS

Background

- 18 In October 2011 Cabinet agreed to merge the seven existing main benefits into three new benefits, with the intention that this will increase the work focus of the benefit system [CAB Min (11) 39/8 refers]. Cabinet also agreed to more comprehensive work capacity assessment after 12-14 weeks on benefit, or earlier as appropriate. A regulatory impact statement was prepared to accompany the Cabinet paper which proposed this.
- 19 The new benefits are:
- Jobseeker Support: will cover people who would currently receive Unemployment Benefit, Sickness Benefit, DPB Women Alone, and Widow's Benefit and DPB Sole Parent whose children are older than 14 years of age or who do not have children
 - Sole Parent Support: will cover people who would currently receive DPB Sole Parent and Widow's Benefit, who have a dependent child younger than 14 years old
 - Supported Living Payment: will cover people who would currently receive Invalid's Benefit or DPB Care for Sick or Infirm
- 20 Papers B and C in the suite of five Cabinet papers this RIS accompanies contain a range of proposals consequential to the decision to merge the seven current main benefits into these three new benefits. These include the rules for how pre-benefit activity requirements are applied, what expectations to prepare for work will apply, which benefits will be subject to an annual reapplication requirement, and rules for when beneficiaries can be paid a benefit while overseas. Where possible, policy development of these proposals was guided by the following principles:
- eligibility for benefits should not extend wider than the current group of recipients
 - in general, people in the same benefit category should have the same rules
 - rules should generally align with the benefit that is most work-focused
 - rules should be simple for beneficiaries and the public to understand.
- 21 Because these decisions are consequential to the earlier Cabinet's decisions to merge current benefits into the three new benefits, they are not covered in this RIS. However, four policies that are not purely consequential to the establishment of the three new benefits are proposed that relate to benefit settings, the regulatory impact analysis of which is discussed below. These proposals relate to:
- the financial sanction that is applied to beneficiaries with work availability expectations who refuse an offer of suitable work
 - whether a person receiving the Supported Living Payment should be required to participate in work preparation activities
 - the use of contracted service case management
 - requirements to participate in assessments to determine work ability

PART TWO (A): Sanctions – cancellation of benefit and 13 week ineligibility for failing to accept an offer of suitable work

Effectiveness of obligations backed by sanctions in bringing about behavioural change

- 22 Many of the proposals in the welfare reform suite of Cabinet papers this RIS accompanies involve obligations backed by sanctions. This section of this RIS provides a general explanation of how sanctions support obligations, and how they work to influence behaviour.
- 23 Obligations and sanctions are an element of social assistance schemes worldwide and are a well established and proven part of the New Zealand benefit system.
- 24 Obligations make clear the expectations of benefit recipients and matching sanctions reinforce that there are consequences attached to failures without sufficient cause.
- 25 In most social assistance systems they range from the simplest obligation for a person to provide correct information on their circumstances (for example on income, employment, and relationship status), to more complex determinations (such as how actively and effectively a person is seeking paid employment).
- 26 Work search obligations are at the core of foundation benefits such as Unemployment Benefit, and have proven effectiveness in this context. For example extending part-time work availability expectations as part of the Future Focus reforms in 2010 led to increased movement into employment for sole parents affected by the change.
- 27 While social and parental obligations (rather than work search or training expectations) are new in the New Zealand context they have been used and evaluated in overseas jurisdictions. For example, social assistance provisions have been shown to be effective in increasing school attendance and retention (though not necessarily achievement) and in increasing immunisation take-up.
- 28 Behavioural responses and savings projections in this package of reforms are based on proven domestic and international experience that the great majority of clients comply with their obligations without the need for recourse to sanctions (just as the great majority of citizens obey the law without need to threaten prosecution).
- 29 Savings are primarily generated by clients complying with their obligations, for example by seeking and finding work, or by ensuring a child is participating in early childhood education (which in turn allows parents to pursue training, job preparation or job search).
- 30 Imposing sanctions is rare (as discussed below) and imposes costs (in terms of sanction processes, possible reviews and re-compliance activities). For these reasons the application of sanctions generally forms a minimal element of any savings model. Sanctions are, however, highly effective and efficient in their messaging and positive behavioural impact (which makes a significant contribution to positive outcomes and therefore savings).

How sanctions influence behaviour

- 31 Sanctions in social assistance systems influence behaviour in several ways.

1) *As clear signals that people naturally respond to and comply with*

32 In all settings, sanctions are most effective in passively reinforcing the importance of obligations. They are a clear signal that the obligation matters and failure to respond appropriately will be treated seriously (akin to a traffic light).

2) *As part of an escalating warning system*

33 As with traffic lights, most people comply with benefit obligations but a few will test whether the system is monitored and or whether the consequences of non-compliance are real.

34 In general people who fail to respond at first respond positively to the "threat" of a sanction and get back into compliance with obligations without a sanction ever needing to be imposed.

3) *When applied*

35 On the rare occasions when sanctions are applied, clients typically re-comply quickly.

36 Domestically and internationally the application of graduated sanctions, as exemplified in the New Zealand system, has a proven and positive effect on behaviour such as job search and on the fulfilment of social obligations where these are applied.

Refusals of offers of suitable work

37 In the year to the end of May 2012, 1,064 beneficiaries failed to accept an offer of suitable work that they were referred to. In most cases this resulted in a normal sanction under the graduated financial sanctions regime.

38 Currently, not accepting an offer of suitable work results in the same sanction as other failures to meet work availability expectations. This does not recognise the fact that refusing an offer of suitable work goes against a key purpose of the welfare system – to help people find paid employment. It also undermines the intent of other work availability expectations, for example a beneficiary who meets expectations to prepare a CV, attend an employment training course, and attend an interview can undo these efforts if they refuse an offer of work at the end of the process. Refusing an offer of suitable work may also increase the amount of time that someone spends on benefit.

39 The sanction for refusing an offer of suitable work is also out of step with the sanction that is applied to people who quit a job voluntarily or lose a job due to misconduct – these people are subject to a 13 week non-entitlement period.

Objectives

40 To recognise the enhanced seriousness of failing to accept an offer of suitable work, and align sanctions with consequences for those who quit a job voluntarily or are dismissed for misconduct.

Regulatory impact analysis

- 41 The option progressed was the cancellation of benefit followed by a 13 week non-entitlement period. This penalty aligns with the 13 week non-entitlement period that applies to those who quit a job voluntarily or are dismissed for misconduct. Beneficiaries with children would still have the 50% protection of their benefit.
- 42 During the 13 week period, people can apply for a 'provisional' benefit which is paid conditional on them participating in specific approved activities for six weeks. These activities can include undertaking employment, voluntary work, work experience or employment related training. During this period any failure to participate in these activities (e.g. not attending a course for a day) results in the immediate removal of the provisional benefit. The amount of provisional benefit paid previously can also be recovered from the beneficiary.
- 43 This approach would signal the relative importance of accepting offers of suitable work. The disadvantages of this option for beneficiaries are that it could increase hardship for people affected and potentially their children

PART TWO (B): Work preparation obligations where a person is receiving Supported Living Payment

Introduction and problem

- 44 People will receive Supporting Living Payment because:
 - they are permanently and severely restricted in their ability to regularly work for 15 hours or more due to sickness, injury, or disability, and this will last for at least two years, or
 - they are providing full-time care and attention to a person (other than their spouse or partner) at home who would otherwise need hospital, rest-home or residential care, or care of an equivalent kind.
- 45 Changes to benefit categories will not affect the eligibility for a benefit of these groups. Because of changes to existing requirements for employment planning and changes to benefit categories, there is a need to decide how work preparation expectations should apply to people receiving Supported Living Payment. This needs to find the right balance between:
 - recognising peoples' desire and potential to work, and sending a positive message about work
 - reassuring the most severely sick or disabled beneficiaries, for whom work is not a meaningful option, that they will not face unreasonable requirements.

Objective

- 46 An approach to work preparation expectations for people on the Supported Living Payment that sends a positive message about their prospects, but recognises the limited capacity of many receiving this benefit.

Regulatory impact analysis

47 The Social Security (Youth Support and Work Focus) Amendment Act strengthens requirements for parents on benefit who have children under 5 to prepare for work. It sends a strong message about work, even when people are not required to be available for work. These powers:

- set a base expectation that people take reasonable steps given their circumstances to prepare for work
- enable Work and Income to require them to undertake specific activities that will improve their work readiness, as follows:
 - participate in any work assessment specified by the Chief Executive
 - participate in any programme or seminar to increase skills or enhance motivation
 - participate in employment-related training or education
 - plan for employment
 - participate in work experience or work exploration
 - participate in any other activity specified by the Chief Executive, that he or she considers will increase the person's work readiness (excluding medical treatment).

48 Two options were considered for how work preparation expectations should apply to people on the Supported Living Payment.

Option 1 – work preparation expectations apply to all people on Supported Living Payment

49 This option would involve all Supported Living Payment recipients having a base expectation to take reasonable steps to prepare for work, and could be asked to participate in specific activities that would improve their work readiness.

50 This option provides a strong work focus, but may cause concern within the disability community, as a work focus is not appropriate for some people.

51 Additional exemptions would be needed so people with no or very low work capacity or no future prospect of work are not required to prepare for work. These would need to be permanent in some cases.

52 This option is not recommended. It does not align with the main purpose of Supported Living Payment for many recipients. It is not likely to be efficient, and would be administratively time-consuming to determine the exemptions needed.

Option 2 – enable Work and Income to direct people on Supported Living Payment to undertake activities to prepare for work, if satisfied they have some ability to work

53 This option is that if assessments indicate that the person has some ability to work now or in the future, Work and Income will be able to direct them to participate in a range of activities to improve their work readiness. Once a case manager has identified an activity and set a requirement for it to be completed, the person would face financial sanctions if they do not complete it without a good and sufficient reason.

- 54 Under this option, people will have access to the set of exemptions that recognise life-shocks - situations where it is not appropriate to ask someone to focus on preparing for work, such as a recent bereavement or leaving a situation of domestic violence.
- 55 If a person who has been asked to complete a work preparation activity experiences a worsening in their health condition, this would be a good and sufficient reason to have not met their obligations.
- 56 This option is preferred, because it recognises that for a proportion of people on this benefit, work will not be an appropriate option. At the same time, it supports Work and Income with the flexibility and levers to work with people receiving Supported Living Payment to prepare them for work if it is a realistic option. This is particularly important because of the significant numbers receiving this benefit, many of whom entered under previous assessment regimes that did not ask people for as much detailed information about what they can do.

PART TWO (C): Use of contracted case management

Introduction and problem

- 57 Contracted service providers will be a feature of the new service delivery model, but there is no legal authority to require beneficiaries to work with them.
- 58 Initial proposals for a new service model for health and disability, developed in consultation with the Health and Disability Panel, rely on using new approaches, such as contracted out case management in some areas (e.g. for people with mild to moderate mental health conditions and pain-related musculo-skeletal conditions), where third parties have expertise in working with particular groups.
- 59 Contracted case management may also be used for other groups, including those affected by implementation of new social obligations.

Objective

- 60 To make use of third party expertise in case managing particular groups of clients to improve outcomes, while ensuring appropriate safeguards are in place to protect beneficiaries' entitlements.

Regulatory impact analysis

- 61 The option of legislative amendment was considered against the status quo, which means beneficiaries could choose not to work with a contracted service provider.
- 62 Beneficiaries who do not meet obligations to attend and participate in assessments without good and sufficient reasons would face the existing graduated sanctions regime.
- 63 As the approach was developed, we considered whether any of the legislated provisions and powers currently administered by Work and Income needed to be delegated to service providers to enable them to fulfil their role, but concluded that this was not necessary. Instead, the service provider's role will be a service provided to Work and Income under a contractual relationship with MSD.

64 This means that Work and Income retain the administrative functions relating to financial assistance, including the decision about whether to grant assistance, decisions about what people's obligations are, and whether they are sanctioned.

PART TWO (D): Requirements for work assessments

Introduction and problem

65 The new health and disability service model depends on using a wider range of information about people, and greater use of contracted service providers. The health and disability model will be relevant for other groups of clients – e.g. sole parents may have health conditions or impairments that affect their ability to work.

66 Current legislation limits Work and Income to asking beneficiaries for information that shows whether they are eligible for a benefit. It may be clear that someone is eligible for a benefit, but not clear what their work obligations should be, or how they could best be assisted into work.

Objective

67 Assessments for beneficiaries whose work ability is affected by ill health or because they are disabled are designed to:

- get a better understanding of the person's work ability and what they can do
- identify the support or services they need to get into work.

Regulatory impact analysis

68 Assessments of work ability are needed to support informed decisions about what reasonable work expectations are, and on how best to assist them into work or to prepare for work. The option of legislative amendment to require people to attend and participate in work ability assessments was considered against the status quo – which means beneficiaries could choose not to participate in assessments that go beyond assessing whether they are eligible for a benefit.

69 Under this option beneficiaries who do not meet obligations to attend and participate in assessments without good and sufficient reasons would face the existing graduated sanctions regime.

70 The Ministry of Social Development considered whether legislation should describe the type of assessments that could be required in detail. This would risk being locked into using specific processes or limit the information that Work and Income could ask for. This would limit flexibility to adapt these processes as evaluation or research provides more evidence about what works. This is why the preferred option establishes a broad and generic approach to assessment requirements.

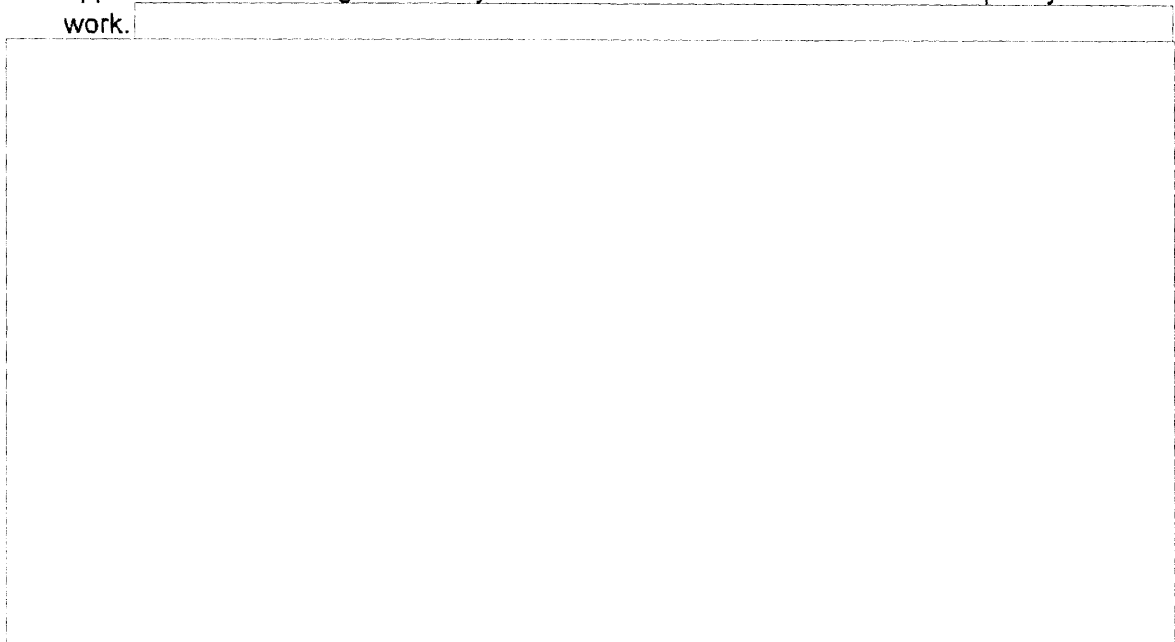
71 There is a significant range of evidence on the role of assessments of work capacity on benefit receipt and supporting people who are sick or disabled into work, including:

- Fadyl J., and McPherson, K., et al, "Factors contributing to work-ability for injured workers: literature review and comparison with available measures", *Disability and Rehabilitation*, 2010; 32(14): pp. 1173–1183.
- DEEWR (2008) *Job Capacity Assessment Review: Summary paper*. Canberra
- Harrington, M. (2010) *An Independent Review of the Work Capability Assessment*. DWP, London.
- OECD (2010) *Sickness, Disability and Work: Breaking the Barriers. A synthesis of findings across OECD countries*. Paris.
- OECD (April 2007) *New Ways Of Addressing Partial Work Capacity: OECD Thematic Review On Sickness, Disability And Work. Issues Paper and Progress Report*. Paris
- Waddell, G., AK Burton & CJ Main (2003) *Screening to Identify People at Risk of Long-term Incapacity for Work: A conceptual and scientific review*. London.

72 There is also significant evidence about the benefits of work for health and well-being, which suggests that there are benefits from connecting people to work if they are able, for example:

- OECD (2009) *Sickness, Disability and Work: Keeping on Track in the Economic Downturn, High-Level Forum*. Stockholm, p.7
- Waddell, G and Burton AK (2006) *Is work good for your health and well-being?*, TSO. London
- Dame Carol Black (2008), *Working for a healthier tomorrow*, TSO. London

73 Work assessment will be a more costly intervention than other processes such as self assessment and structured interviews. It is only necessary if earlier, less intensive approaches have not given clarity about what someone can do or the help they need to work.



PART THREE: PRE EMPLOYMENT DRUG TESTING

Introduction and problem

Background

- 75 Currently when Work and Income consider referring a beneficiary to a job, if that job has a pre-employment drug test and the person indicates that they would not be able to pass the test, they generally are not required to apply for the job.
- 76 This is primarily because referring beneficiaries to jobs who then fail drug tests damages Work and Income's reputation with employers, as failed drug tests are an additional cost to them. The prospect of beneficiaries failing pre-employment drug tests may reduce the likelihood that employers will list jobs with Work and Income in future.
- 77 This policy effectively allows beneficiaries to avoid applying for jobs that they would otherwise be suitable for by claiming they would not be able to pass a pre-employment drug test.
- 78 This significantly limits the employment opportunities that Work and Income can refer beneficiaries to - currently around 40% of the jobs listed with Work and Income are subject to pre-employment drug testing.
- 79 While Work and Income do not capture information on the number of beneficiaries who are not referred to jobs because they indicate they are not able to pass a drug test - data from the 2007/08 New Zealand Alcohol and Drug Survey suggests that between 10% and 20% of beneficiaries use drugs (excluding alcohol) at least once per week. This compares to 4.6% - 6.3% for non-beneficiaries.
- 80 The 10% - 20% figure is an approximation of prevalence rates based on data collected for the benefit categories below.

Data from the New Zealand Alcohol and Drug Survey on prevalence rates by benefit type

Frequency of use	Benefit type	Lower confidence interval	Point estimate	Upper confidence interval
At least once per week	UB	7.8%	13.0%	20.8%
	DPB	8.5%	12.4%	17.6%
	SB and IB	13.5%	17.8%	23.0%

- 81 In its *Welfare Obligations* manifesto document the National Party committed to make the following changes:

"if a person doesn't apply for a job because a potential employer asks them to take a drug test, or if they fail such a pre-employment drug test, their benefit will be cancelled... those who suffer from drug addiction will be offered help and support to deal with their addiction. If there is doubt about whether a person suffers an addiction or is a recreational drug user, a National Government would be guided by expert professional advice"

Problem

- 82 Implementing this manifesto commitment gives rise to a number of technical issues, specifically:

- how beneficiaries who fail to undertake or pass a pre-employment drug test will be sanctioned?
- how beneficiaries will re-comply with this requirement once they have been sanctioned?
- who will pay for the different drug tests involved?

Objectives

Sanctions for failing to undertake or pass a pre-employment drug test

- 83 The objective is to determine a clear and simple sanction and re-compliance process for those who fail a pre-employment drug test or fail to undertake a pre-employment drug test (e.g. by not applying for a drug tested job or refusing to take the drug test).

Re-compliance

- 84 The objective is to allow for re-compliance activities that take into account the unique issues associated with drug use, while aligning as much as possible with the sanctions for work obligations by directly addressing drug use.

Payment for drug tests

- 85 The objective is to put the cost of pre-employment drug tests on the most appropriate party in each case, while addressing the incentive effects associated with making different parties responsible for these costs.

Regulatory impact analysis

Sanctions for failing to undertake or pass a drug test

- 86 When identifying the appropriate sanction to apply to people who fail to undertake or pass a pre-employment drug test, two options were considered.

Option 1 - Failure results in benefit cancellation

- 87 This option would involve the automatic cancellation of benefit for anyone who fails to undertake or pass a pre-employment drug test.
- 88 The advantage of this approach is that it would send a strong message to beneficiaries about the importance of being able to pass pre-employment drug tests.
- 89 The disadvantage is that it could impose significant financial hardship on people who would lose access to benefit immediately without the opportunity to re-comply. This approach would treat people with drug-related failures more punitively than people who fail other work obligations, who are subject to a graduated system of sanctions.

Option 2 - Failure results in graduated sanction

- 90 Current sanctions for people who fail to meet a work obligation are graduated and involve a 50% reduction in benefit for a first failure, a 100% suspension of benefit for a second failure and cancellation of benefit for a third failure. These failures are counted over a rolling 12 month period. A maximum of a 50% reduction of benefit is applied for anyone with dependent children.

- 91 Where someone has their benefit cancelled they are not able to apply for a benefit for up to 13 weeks. During this time they can apply for a 'provisional' benefit which is paid conditional on them participating in specific approved activities for six weeks. These activities include undertaking employment, voluntary work, work experience or employment related training. During this period any failure to participate in these activities (e.g. not attending a course for a day) results in the immediate removal of provisional benefit. The amount of provisional benefit paid previously can also be recovered from the beneficiary.
- 92 Treating drug related failures in the same way as other work obligation failures means the regime is relatively simple to understand and administer. It sends a strong message about the need to be able to pass a pre-employment drug test, while retaining an element of fairness, as it allows recompilance activities to be undertaken to lift a sanction. This is the preferred option.

How beneficiaries recompile following a failure to undertake or pass a pre-employment drug test

- 93 In the benefit system, when people fail to meet an obligation, the activity they need to complete to have a sanction lifted must be the same or a similar activity to the activity they previously failed.
- 94 Completing the same activity is not practical for people who fail to undertake or pass a pre-employment drug test because certain drugs can remain detectable in a person's system for up to one or two weeks and cannabis can remain detectable for up to 30 days where it has been used frequently. Where people fail pre-employment drug tests, employers will not necessarily want to give them another chance to pass one, and may not be prepared to wait until the drugs have left their system in order to test them again.
- 95 There are few options in terms of activities that someone who fails to undertake or pass a drug test could be asked to complete that would directly address the reason they failed, other than taking and passing another drug test.
- 96 Activities such as attending a drug education seminar, reviewing information on the effects of drugs, and applying for another job that is not drug tested were considered as alternative recompilance activities, but none of these activities directly address recreational drug use. Only requiring someone to take and pass a drug test to recompile will provide an indication that the person is now able to fully meet their work availability expectations.

First failure and sanction

- 97 Determining appropriate recompilance activities involves a trade-off between the need for these activities to incentivise a change in behaviour and the need to be fair in the types of activities that people are required to complete at each stage.
- 98 Given the level of intrusion and cost involved in requiring someone to take and pass a drug test as a recompilance activity, MSD consider that before someone is required to take and pass a drug test, there should be an opportunity for them to agree to stop using drugs without having to pass a drug test.
- 99 This will essentially function as a warning with beneficiaries advised about what will be required if they fail again.

Second failure and sanction

- 100 Where people fail to undertake or pass a pre-employment drug test twice in a 12 month period, MSD consider that it would be appropriate to require people to re-comply by taking and passing a drug test. This is complicated by the fact that, as noted previously, drugs can remain in a person's system for up to 30 days where cannabis has been used frequently.
- 101 It would not be reasonable to sanction someone (by suspending 100% of their benefit, or 50% if they have a child), and then require a re-compliance activity to lift the sanction that they are unable to complete because the drugs they used previously may still be in their system for up to 30 days.
- 102 Three options were considered for requiring people to take and pass a drug test in response to a second failure, while giving people access to benefit while they wait to take a test.

Option 1 – access to provisional benefit while waiting to take a test

- 103 This option would see people who fail twice sanctioned and required to take and pass a drug test to get their sanction lifted, but provided with access to a conditional 'provisional' benefit for up to 30 days while they wait to take a drug test. If the person passes the test they would be considered to have re-complied and resume receiving a normal benefit.
- 104 If they do not provide a 'clean' test within 30 days, they would no longer receive a provisional benefit and a debt would be created for the provisional benefit they have received.
- 105 The strengths of this approach are that it allows people who are able, to take and pass a drug test if they are given time to let the drugs leave their system, while still being able to access financial support while they wait to take a test. It also avoids changing or complicating the sanctions system.
- 106 The drawback of this approach is that it would see people who fail a test to re-comply potentially accumulate significant amounts of debt - someone who has received a provisional benefit for 30 days before failing to provide a clean drug test could accrue a debt in excess of \$600 which would be recovered in small weekly instalments.

Option 2 – providing an extended notice period for a drug related failure

- 107 When people fail to meet a work obligation, they are given a five day 'notice period' before a sanction is imposed. This period provides them with time to indicate if they have a good and sufficient reason for failing that means they should not be sanctioned.
- 108 This option would extend this notice period for drug related failures to 30 days to provide an opportunity for people to provide a clean drug test before a sanction is applied.
- 109 People who take and pass a drug test during this period would avoid being sanctioned, while those who do not would be sanctioned until they take and pass a drug test.

- 110 The strengths of this approach are that it allows people who are able to take and pass a drug test if they are given time to let the drugs leave their system, to do this before a sanction is imposed.
- 111 The drawbacks of this approach are that it treats the notice period for drug related failures differently from all other failures (other failures have a five day period while drug test related failures would have a 30 day period). It would also effectively change the rationale for having a notice period from providing time to advise of good and sufficient reasons for a failure, to providing enough time to allow people to recompile before a sanction is imposed. This argument could see the notice period for all sanctions extended, not just those for drug related failures.
- 112 This could impact on the effectiveness of sanctions. One of the elements that ensures that a sanctions regime is effective is that sanctions are imposed reasonably quickly so that people can see a direct link between their actions (or inactions) and the sanction.
- 113 This option would also introduce complexity into the sanctions system (as different notice periods would apply to different failures) and require significant changes to IT systems (as automated systems to apply sanctions including the five day notice period would need to be changed).

Option 3 – allowing people to agree to provide a clean drug test within 30 days to recompile following a second failure

- 114 This option is different to the previous two in that instead of the recompile activity being to take and pass a drug test, this option involves a recompile activity where people agree to take and pass a drug test within 30 days to lift their sanction.
- 115 These people are then provided with a normal benefit and have 30 days to provide a clean drug test to Work and Income. If they fail to provide a clean drug test within 30 days, this is treated as a third failure.
- 116 People who accumulate a third failure would have their benefit cancelled. Where someone has their benefit cancelled they are not able to apply for a benefit for up to 13 weeks. During this time they can apply for a 'provisional' benefit which is paid conditional on them participating in specific approved activities for six weeks. These activities include undertaking employment, voluntary work, work experience or employment related training. During this period any failure to participate in these activities (e.g. not attending a course for a day) results in the immediate removal of provisional benefit. The amount of provisional benefit paid previously can also be recovered from the beneficiary.
- 117 This approach allows people who are able to take and pass a drug test if they are given time to let the drugs leave their system, to do this while still being able to access full benefit. It also avoids complicating the sanctions system and has the least cost/implications from an IT perspective (as it does not require changes to systems for applying sanctions). For these reasons this is the preferred option.

Further failures

- 118 In line with the graduated sanctions regime, where someone accumulates three failures, and then has additional failures within a 12 month period, each of these failures is treated as a third failure resulting in cancellation of benefit and a 13 week non-entitlement period as outlined above.

Who will pay for drug tests?

- 119 In order to introduce a requirement for beneficiaries to undertake and pass pre-employment drug tests, consideration had to be given to whether this requirement would be linked to drug tests conducted by employers, or based on drug tests to be conducted by Work and Income.
- 120 Using specific drug tests conducted by Work and Income would be costly and either result in duplication (with Work and Income and employers drug testing people for the same jobs) or employers passing their responsibility for drug testing onto Work and Income. This would have significant statutory implications as it would require Work and Income to be given the power to drug test beneficiaries.
- 121 MSD considered that the requirement should be linked to tests conducted by employers as part of their normal recruitment processes. This reduces the cost of the proposal and directly links the requirement to undertake and pass pre-employment drug tests to specific jobs where these drug tests are used.
- 122 Using drug tests conducted by employers requires changes to legislation to allow employers to share the results of these drug tests with Work and Income. This information sharing is essential to the effectiveness of the policy as Work and Income cannot sanction someone for failing a pre-employment drug test if they are not provided with information by an employer to show this has occurred. Changes to allow this information sharing are included in the discussion of information sharing changes described in Part Five of this RIS and in Cabinet paper A: Overview.

Cost of failed drug tests

- 123 Part of the current rationale for not sending people who would fail a pre-employment drug test to drug tested jobs, is that doing this will inconvenience employers by imposing additional costs on them in the form of failed drug tests. This may discourage employers from considering beneficiaries for other jobs.
- 124 The change from this policy means that some beneficiaries will be sent to jobs where they do fail a pre-employment drug test. To prevent this from discouraging employers from considering beneficiaries for jobs, consideration was given to whether employers should be reimbursed for the cost of a failed drug test where Work and Income refer someone to a drug tested job and they fail the pre-employment drug test.
- 125 MSD consider that this is desirable as part of the planned policy as it will help Work and Income to maintain a good relationship with employers. This is critical for its role of helping people into work, and encouraging employers to list drug tested jobs with Work and Income.
- 126 It is estimated that the cost of reimbursing these tests could be \$0.6m - \$1.2m per year once the policy is fully implemented.

Recovering cost of reimbursed tests from clients

- 127 This raises a question about who should pay for the cost of reimbursing these tests.
- 128 While the cost of reimbursing these tests could be funded by government, this would not link the responsibility a beneficiary has to make sure they pass a pre-employment drug test with a responsibility to pay for it if they do not. It would also require additional funding as noted above.

- 129 MSD consider that it would be appropriate for the cost of failed pre-employment drug tests to be sought from the beneficiaries involved, where an employer has sought to be reimbursed for these.
- 130 This would mean that where Work and Income refers a beneficiary to a job and the employer provides information to show that they failed the pre-employment drug test, Work and Income would reimburse the employer for their costs and create a debt for that amount which will be recovered from the beneficiary in small weekly instalments.
- 131 This is estimated to cost government \$0.1m - \$0.2m per year once the policy is fully implemented. This is the residual cost of providing what is effectively recoverable assistance to beneficiaries which is paid back over time.

Drug test to avoid cancellation of benefit

- 132 Consideration was also given to how people who have to take and pass a drug test within 30 days to avoid a sanction will pay for this test. While these tests could be funded by government (at an estimated cost of \$0.1m - \$0.2m per year), this would create an incentive for people to repeatedly 'try their luck' at taking a test rather than arranging a single test at the appropriate time. Requiring people to pay for their own test also creates an incentive for them to make sure that they pass.
- 133 Many beneficiaries may find it difficult to pay for the cost of a drug test given their income. It is important to ensure that a lack of money does not prevent people from taking and passing a drug test to avoid having their benefit cancelled.
- 134 To prevent this we developed an option where if someone indicates that they want to take a drug test, Work and Income will pay the testing provider for the test and create a debt for that amount which will be recovered from the beneficiary in small weekly instalments.
- 135 This approach makes beneficiaries responsible for the cost of their tests while ensuring that a lack of money does not prevent people taking a drug test.
- 136 This is estimated to cost up to \$50,000 per year once the policy is fully implemented. This is the residual cost of providing what is effectively recoverable assistance to beneficiaries, which is paid back over time.

Potential impact of pre-employment drug testing policy

- 137 Based on an assumption that between 40% and 45%² of jobs listed with Work and Income could be drug tested and data from the *2007/08 New Zealand Alcohol and Drug Survey* suggesting that between 10% and 20% of beneficiaries use drugs (excluding alcohol) at least once per week, MSD and MoH have estimated that once this policy is fully implemented, it may result in:
- 2,900 – 5,800 beneficiaries being sanctioned for a first failure over a 12 month period
 - 1,000 – 1,900 beneficiaries being sanctioned for a second failure over a 12 month period

² This takes into account an assumption that some employers who currently drug test but do not seek employees from Work and Income may list jobs with Work and Income as a result of this policy.

- 500 – 1,100 beneficiaries being sanctioned for a third failure over a 12 month period.

138 These estimates have been used to inform the potential costs given for reimbursing employers for the cost of pre-employment drug tests (\$0.1m - \$0.2m per year) and helping beneficiaries to pay for the cost of a drug test during the 30 day period to avoid having their benefit cancelled (up to \$50,000 per year).

Risks

139 Introducing a requirement for beneficiaries with work obligations to undertake and pass pre-employment drug tests has the potential to change the behaviour of beneficiaries. While this change in behaviour may be beneficial (stopping recreational drug use, obtaining employment), there is a risk that the policy may have unintended impacts on behaviour as well.

140 To identify potential risks views were sought from Work and Income, and the Ministry of Health.

Overstating drug use

141 A potentially significant risk associated with the proposed changes is that recreational drug users facing the requirement to undertake and pass pre-employment drug tests, and a sanction if they fail, will claim to be dependent on drugs and overstate their drug use in an assessment so they can avoid being referred to drug tested jobs.

142 The greatest costs related to this policy will arise from an increase in demand for drug treatment and assessment services. This increase in demand will be driven by people who are identified as being dependent as a result of the policy, but may also be driven by:

- some recreational drug users overstating their drug use in which case they may be referred to drug treatment that they do not need
- some drug users who do need treatment overstating their drug use in a way that means they end up receiving drug treatment that is more intensive than they require
- people who are referred to assessments in response to their drug use being identified as having undiagnosed alcohol problems which results in referrals to treatment for this.

143 Two cost estimates have been developed based around the extent to which people overstate. These estimates are:

- \$1.4m - \$2.7m in the first year based on 580 – 1,160 people being identified as dependent and attending treatment
- \$5m - \$10.1m in the first year based on the same numbers of dependent people being identified and 10% of people who are estimated to be sanctioned responding by overstating their drug use and voluntarily attending treatment following an assessment (people will not be required to seek treatment).

144

145 It may be possible to mitigate this risk to some extent by developing an assessment process to distinguish between recreational and dependent drug users that is as robust

as possible. The drug and alcohol assessment process employed in the health system is not designed to detect overstatement, though clinicians may be able to identify people who overstate where they have the appropriate background information.

- 146 Developing an effective process will require further work and consultation with experts in the field. Even a well designed assessment tool will not be perfect as there is no objective test for drug-dependence and clinical assessments are therefore significantly reliant on an honest person-to-person discussion to determine whether or not someone is dependent.
- 147 Further work on an assessment process will be undertaken jointly by MSD and the Ministry of Health. This will include work on:
 - when and how the process will be initiated
 - the measure of dependency that will be used
 - when and how different types of medical professionals could be involved in the process
 - how the cost of assessments should be funded
 - how this process links into the proposed approach in Paper C for working with people who are either sick or disabled.

Other risks raised by the Ministry of Health

- 148 In addition to overstatement, the Ministry of Health have also raised on number of other potential risks related to the policy.
- 149 The Ministry of Health have commented that recreational users are not a distinct group and that some people who do not meet the clinical definition of dependence will still require support to manage/reduce their drug use.
- 150 MSD considers that there is scope as part of the implementation of the proposed policy to consider how the policy may be applied in a way that takes account of people in this situation – for example giving people in this situation an opportunity to access support services before referring them to drug tested jobs.
- 151 The Ministry of Health also expressed a concern about the potential for drug users to be sanctioned and the possible negative social impacts that could flow from this. It commented that many people's relationship with drugs can be stronger than their relationship with family members, and that a loss in income for these people could result in family violence, and continued spending on drugs at the expense of family members.
- 152 While all financial sanctions have the potential to impose hardship on those affected, MSD considers that the focus of this policy on recreational users rather than those who are dependent on drugs means that sanctions will not be applied to people who are dependent on drugs to such an extent that the withdrawal of financial assistance would result in them harming family members.
- 153 The Ministry of Health have commented that the policy may result in a 'substitution effect' where some people substitute detectable drugs like cannabis for drugs that are not detectable for as long, such as alcohol or amphetamine-type substances, but which may be more harmful. Some people may also substitute for drugs that are not detected by testing, such as synthetic cannabinoids and other new substances.

- 154 While this is a possible risk, MSD is not aware of any evidence that shows this is a significant issue currently. As part of the policy process MSD consulted with a large workplace drug testing provider who commented that in their experience, people who use harder drugs tend to use drugs like cannabis as well.
- 155 The Ministry of Health have also noted that while the policy may drive an increase in demand for drug treatment, there are a range of barriers to people getting into and remaining in treatment including peer pressure, fear of the police, a lack of local treatment services, and the cost of treatment including transport and child care costs.
- 156 The above barriers can be further considered as part of joint work between MSD and MoH to identify options to improve access to drug treatment services for beneficiaries. This will include work on:
- options to improve the availability of drug treatment services for beneficiaries
 - options to expand the types of different treatment options available
 - other support that could be provided to people who are drug dependent.

Human rights considerations

- 157 Proposals to require beneficiaries to undertake pre-employment drug tests, and requiring beneficiaries to take and pass a drug test to avoid having their benefit cancelled, are potentially inconsistent with the right to be secure against unreasonable search and seizure and the right to refuse medical treatment.
- 158 Officials at MSD consider this is justified, as it is reasonable to have an expectation that people receiving a work-tested benefit not engage in illegal behaviours which limit their ability to secure paid employment. The extent to which beneficiaries are required to undertake and pass drug tests will be limited to instances where these are required for specific jobs. Requiring beneficiaries to take a drug test to avoid having their benefit cancelled following a failure, broadly aligns with the way other failures are treated within the benefit system, where beneficiaries are expected to undertake the same or a similar activity following a failure.
- 159 Reimbursing employers for the costs of failed drug tests and then recovering the cost of these tests from beneficiaries is potentially discrimination on the grounds of employment status on the basis that people who are beneficiaries will have to pay for failed tests when someone who fails and is not a beneficiary may not have to pay.
- 160 Reimbursing employers for failed drug tests encourages employers to interview beneficiaries and potentially expands the range of jobs listed with Work and Income. This discrimination can be justified on the basis that recovering the cost of failed tests from beneficiaries provides an incentive for people to make sure that they can pass these tests. People will be able to avoid incurring these costs by opting not to apply for a job if they think they will fail a drug test (in which case they will be sanctioned without incurring the additional cost of a failed test).

PART FOUR: SOCIAL OBLIGATIONS FOR PARENTS

PART FOUR (A): Obligation – Social Obligations for Parents (General)

Introduction and problem

Beneficiary children and child education and health initiatives

161 Children from lower socio-economic groups, and in particular benefit-supported households, are at higher risk of experiencing a range of negative social outcomes or a failure to achieve positive development milestones. The benefits of interventions in these areas are greatest for those who are most disadvantaged in the first place.

National Party manifesto and Government announcements

162 The National Party manifesto committed to a number of policies that are intended to improve education and health outcomes for New Zealand children:

- increasing child enrolment at birth with a GP or WellChild service (Health Policy)
- increasing participating in Early Childhood Education (ECE Policy)
- increasing regular attendance at school and improving truancy services (Schools Policy).

163 The Prime Minister's Results for New Zealanders identified a number of Key Result Areas that could be supported by social obligations in the benefit system, including:

- reducing long-term welfare dependency
- increasing participation in ECE, particularly for Maori and Pacific children
- increasing infant immunisation rates and reducing the incidence of rheumatic fever
- increasing the proportion of 18 year olds with NCEA level 2 or equivalent.

164 The National and ACT Confidence and Supply Agreement agreed to implement, as per Welfare Working Group recommendations, a parenting obligation for beneficiaries to ensure that children:

- attend school as legally required
- participate in approved ECE from three years of age
- complete the 12 free WellChild health checks.

165 The benefit system provides an opportunity to influence child education and health outcomes because, by its nature, it supports lower socio-economic groups and Maori and Pacific populations, who are over-represented in the welfare system.

Problem

166 The participation data on WellChild, ECE and primary health care show a significant and persistent gap for families in poor communities, compared to others. These populations are particularly hard-to-reach families that require different engagement methods.

167 There are currently no obligations in the welfare system addressing social outcomes such as improving child education and health.

168 There would be a cost to establish benefit obligations that relate to social outcomes, so compliance testing would need to be targeted to ensure that the obligations provide value – socially and fiscally.

Objective

169 The objective is to use benefit settings available to reinforce social objectives that are important to all New Zealanders.

Regulatory impact analysis: Options to establish social obligations³ for beneficiary parents with dependent children

Who should social obligations apply to?

170 Options considered how to utilise a social obligation in the benefit system and who to apply an obligation to. The options were:

- applying a universal obligation for all beneficiaries with dependent children
- applying a targeted obligation for beneficiaries, if a risk profile indicates that their dependent children could be vulnerable.

171 In both options:

- the obligation would include an 'all reasonable steps' stipulation to acknowledge that there are situations or issues outside the beneficiaries' control that can impact on their ability to meet an obligations (eg, there is a waiting list at their local Primary Health Organisation)
- the obligation would be applied to primary clients and their spouses or partners (if any) as although some people are not biologically or legally linked to the children included in their benefit, they should have a level of responsibility towards children in their home
- a definition of "dependent children" was used which includes children who are being financially supported. This definition includes Orphan's Benefit and Unsupported Child Benefit, but does not include Foster Care Allowance, as this payment does not have a minimum care duration attached to receipt and is administered by Child Youth and Family, not Work and Income (ie, recipients could not be identified)
- the intent is to improve outcomes for vulnerable children. The obvious target population are those beneficiary parents who are identified as having the most vulnerable children in the system. This would also align with other current work on vulnerable children.

Option 1 - Universal obligation that applies to all beneficiaries

172 This option would create a reciprocal obligation in the benefit system that applies to all primary beneficiaries (and their spouse or partner, if any) if they have one or more dependent children in their home. However, only a portion of all beneficiaries who have the obligation would be targeted for compliance testing

³ The term 'social obligations' is a generic terms used to describe the range of potential obligations for beneficiaries with dependent children that involve child education and child health.

- 173 The advantage of applying the obligation universally is that it provides a clear and consistent message across the board. There would be no need to actively compel most, but applying the obligation universally will create a quantum of voluntary compliance.
- 174 There is no apparent disadvantage in applying the obligation universally. Any situations where it is not possible or appropriate for a beneficiary to meet the obligation can be considered as part of the "all reasonable steps" or as a "good and sufficient reason" for not meeting an obligation.
- 175 On balance this option is simple legislatively – and because the majority are expected to comply it can be operationally focussed on families with children identified as being the most vulnerable. As such, this option is recommended.

Option 2 – Targeted obligation that applies to some beneficiaries with vulnerable children

- 176 This option would create a reciprocal obligation in the benefit system that can be activated for all primary beneficiaries (and their spouse or partner, if any) if risk profiling indicated that the dependent child or children in their family could be vulnerable. All beneficiaries who have this obligation applied to them would be tested for compliance.
- 177 As a measure, child vulnerability can only be identified as a risk continuum and compliance testing would be focused on those at the high risk end, who have been identified as the most vulnerable.
- 178 The only advantage of only applying the obligation to a specific group is that it would allow the policy to be scaled up or down, according to current priorities and the resources available.
- 179 The disadvantage of only applying the obligation to a specific target group is that it would not create any voluntary compliance. Only selecting a specific group will mean that the parents of other children, who have been identified as vulnerable but who are not showing at the high risk end of the continuum, will not be activated with an obligation, even though the child may well benefit from the education and health interventions.
- 180 This option was discarded at an early stage.

PART FOUR (B): Obligation – Dependent children attending early childhood education (ECE) from age 3, until they start school

Introduction and problem

Beneficiary children in ECE

- 181 Domestic and international studies show clear benefits for children (particularly children from low income families) participating in quality ECE from three years of age. The greatest benefits for most children are from starting centre-based ECE at age three, and participating for 15-20 hours a week. Participation in ECE has been linked to:
- improved social skills and fewer behavioural problems among children
 - reduced risk of subsequent failure in the schooling system
 - alleviation of stress in family homes

- improved parenting and lower levels of child abuse and injury⁴.

182 New Zealand has reasonably high ECE participation rates compared to other OECD countries. Approximately 90 per cent of all three year olds and 95 per cent of all four year olds attend some ECE. However evidence suggests that children of beneficiary parents are likely to have lower ECE participation rates:

- low participation in ECE is well documented among Maori, Pacific and low socio-economic status families (Maori – 89.4 per cent, Pacific – 85.3 per cent. children entering low decile schools – 89.1 per cent), and these families feature prominently in the benefit system.
- the Childcare Survey 2009 found that in the week before the survey, around 60 per cent of Unemployment Benefit recipients and 40 per cent of DPB recipients had a child attending ECE (this survey included children under the age of three and ECE participation is considerably lower among this age group).

Problem

183 In early childhood, children are dependent on the decisions that their parents make.

184 Increased participation in ECE among children of beneficiary families will:

- improve child outcomes
- increase the likelihood of improved educational outcomes and therefore reducing the likelihood of the child cycling on to benefit as an adult
- enable greater support for vulnerable families by providing an additional contact point for referral to services and peer support for parents
- facilitate beneficiary parents' ability to prepare for and move into work by ensuring quality childcare arrangements are in place

185 There is currently no requirement for beneficiary parents to ensure that their children are enrolled in ECE, but the Government's confidence and supply agreement with the ACT party agreed to introduce such a requirement. The main problem with introducing such a requirement is determining the appropriate level of engagement in ECE, as the Confidence and Supply agreement was silent on this.

Objectives

186 The objective is to use benefit settings to promote participation in ECE to improve child outcomes among beneficiary children.

Regulatory impact analysis: Options to ensure beneficiary parents have children enrolled in and attending ECE

187 Aside from the status quo, which would not meet the policy objective, only one clear option was available for consideration in terms of participating in ECE. That is to ensure that beneficiary parents have their children enrolled in and attending ECE from the age of three through introducing reciprocal obligations for people with dependent children on benefit.

⁴ Mitchell, Wylie et al., (2008). *Outcomes of Early Childhood Education, Literature Review: Report to the Ministry of Education.*

188 There were three main options considered in terms of how this would be achieved, which were that the level of engagement required would be:

1. any level of engagement in ECE as long as it is sustained and regular
2. setting a minimum number of hours of participation that would be required
3. setting a target number of hours of participation.

Option 1 – Allowing any level of engagement in ECE as long as it is sustained and regular

189 This option would mean that no minimum hours of attendance would be required for children and provided that the child is attending for at least some time on a sustained and regular basis, the obligation would be met.

190 The advantage of this option is that it would reduce the likelihood of the cost and supply of ECE being a barrier to participation among beneficiary families.

191 The disadvantages of this option are:

- it is likely that children in the most vulnerable beneficiary families, who are most likely to benefit from higher hours of attendance in ECE, would only attend for the bare minimum required for their parent to meet their obligation
- it does not set a clear and transparent expectation for parents
- considerable work would be required to define "sustained and regular attendance" in a way that it could be operationalised and would likely result in a complex and difficult to administer description based on hour, day or week measurements which would vary according to types of services.

Option 2 – Setting a minimum number of hours of participation that would be required

192 This option would require that parents have their children attend ECE for a minimum number of hours per week for parents to be able to meet their obligation.

193 Evidence indicates that 15 to 20 hours is the most appropriate level to set a minimum hours requirement to achieve the best outcomes for children, particularly children from low income families. Setting a target any lower than 15 hours would be an arbitrary decision that would trend against international research findings.

194 A minimum number of 15 hours would:

- set a clear expectation that would enable easy assessment of compliance
- would ensure that children were attending for the number of hours that is likely to provide the greatest benefits
- broadly align with 20 Hours ECE policy which provides 20 Hours of ECE per week in participating ECE services, for children aged three years and over, where fees cannot be charged for those hours
- facilitate the parent's ability to prepare for and move into work, by ensuring that quality childcare arrangements are already in place
- improve the likelihood of better education outcomes and staying off benefit from a future liability perspective.

195 The disadvantages of a minimum hours requirement include:

- supply of ECE cannot be guaranteed

- there is likely to be additional cost for parents that may be a barrier to their child attending 15 hours because:
 - a. 20 Hours ECE is not available to all children (96% of services offer 20 Hours ECE and the Childcare Survey 2009 indicated that only 82% of all three to five year olds accessed 20 Hours ECE
 - b. 20 Hours ECE is available for only six hours per day and a number of services charge additional fees, or charge sessionally, meaning there is an additional cost to parents
 - c. the alternative mechanism to assist with costs of ECE is the Childcare Subsidy, which only provides a partial payment up to \$3.91 per hour and where the parent is not in training or employment this subsidy is only available for up to nine hours
- a firm minimum hours target would mean that a number of beneficiaries may not be able to comply with their obligation and potentially through no fault of their own ie where a 20 Hours ECE place is not available

Option 3– Setting a target number of hours of expected participation

- 196 A target number of hours of expected ECE participation would mean that wherever possible parents would have their children enrolled in ECE for at least 15 hours per week but will enable flexibility where they face barriers to compliance.
- 197 A minimum target for hours will send a clear message about expected levels of ECE participation but parents will be able to make arrangements to attend ECE for fewer hours where, cost, travel or supply is an issue for them.
- 198 The advantages of this option are the same as those outlined in paragraph 197 above with the added advantage that parents can negotiate to have their child attend lesser hours where they have taken all reasonable steps to comply.
- 199 Some licensed or certified ECE services have different philosophies to teacher-led centre-based services, for example play centres and certificated playgroups where children may only attend a few hours a week. These services will be particularly helpful in situations where parents cannot access ECE for a higher number of hours per week due to cost or availability of places.
- 200 The disadvantage of this option is that unlike the firm minimum hours requirement outlined in option two, some vulnerable children will attend ECE for lesser hours than would be optimal for these children
- 201 On balance, option three is considered the best option because:
- a clear and measurable base expectation is set for the obligation
 - there is sufficient flexibility for parents to make alternative arrangements where travel, cost or supply is a barrier to their child's attendance
 - the majority of children will likely end up attending ECE for around 15 hours per week
 - parents will still benefit from having childcare arrangements in place in terms of facilitating their work preparation and movement into work.

PART FOUR (C): Obligation – Dependent children enrolled in and attending school from age six

Introduction and problem

Beneficiary children and school attendance

- 202 All parents are legally required to have their children enrolled in, and attending school from the age of six, although most children start school at age five. Conviction and fines under the Education Act 1989 are an option for non-compliance but prosecution is rare.
- 203 Failure in school is strongly associated with lower lifetime earnings, increased unemployment, earlier pregnancy and a range of negative social and financial outcomes that drive intergenerational cycles of disadvantage. Patterns of persistent non-attendance:
- increase the likelihood of low achievement, early drop-out and alienation from the schooling system⁵
 - can be linked to juvenile offending⁶
 - can indicate behavioural or family problems.
- 204 There is no data available to show how many truants or unexplained absences are related to children of beneficiaries. However, international studies on welfare penalties or incentives to encourage parents to make sure their children stay in school found they are effective in extending school duration. School duration improves lifetime earnings meaning that children benefit from remaining in education even if they don't gain formal qualifications.

Problem

- 205 A significant proportion of people on benefit have low levels of educational qualifications and leave school early, with approximately 35% of beneficiaries having no educational qualifications. Patterns of absenteeism can contribute to lower attainment in school.
- 206 Children are dependent on their parents until age 16, and parents are legally responsible to ensure their children attend school.
- 207 Although mechanisms are in place to prosecute for non-attendance, the level of prosecution is low and disengagement and alienation from the schooling system will may well occur before prosecution level is met.
- 208 Early intervention through the benefit system would reinforce mechanisms already in place in the education system and act as an early intervention to minimise disruption caused by continual absence over longer periods of time. This would decrease the likelihood that these children will disengage from the system before action is taken and increase the likelihood that they stay at school longer and remain off benefit as an adult.

⁵ Ministry of Education, (2006). *Attendance, Absence, and Truancy in New Zealand Schools*. Ministry of Education (2007). *Truancy from School*.

⁶ Ministry of Justice, (2002). *Youth Offending Strategy: Report of the Ministerial Taskforce on Youth Offending*.

- 209 The Government's confidence and supply agreement with the ACT party requires that benefit payments be made contingent on dependent children attending school. The problem is that no such link between benefit payments and school attendance currently exists.

Objectives

- 210 The objective is to promote regular school attendance among children with parents on a benefit to help prevent patterns of absenteeism becoming established that may impact on engagement with the education system and eventual outcomes.

Regulatory impact analysis: Options to ensure beneficiary parents have children enrolled in and attending school

- 211 Aside from the status quo, which would not meet the policy objective there is only one option to consider. This is whether to place an obligation requiring that beneficiary parents ensure their child is attending school over and above the legal requirement, and mechanisms for prosecution that are already in place in the education system.
- 212 Information sharing would provide two-way benefit to both MSD and Ministry of Education (MoE) Truancy services as MoE will be able to use up-to-date MSD address information to locate absentees, where they are children of beneficiaries.

PART FOUR (D): Obligation – dependent children are enrolled in primary health care

Introduction and problem

Beneficiary children in primary health care

- 213 There is evidence to suggest that beneficiary families with dependent children are not fully utilising the free and subsidised primary health care⁷ available to them.
- 214 Participation data on WellChild, ECE and primary health care show a significant and persistent gap for Maori and Pacific families in poor communities, compared to others.⁸ For example, analysis reports that only 66 per cent of Maori children aged 0 – 4 visited a GP in the previous year compared to 85 per cent of non-Maori.⁹
- 215 Sixty six per cent of families receiving Work and Income's Integrated Service Response (ISR)¹⁰ enter the service with their children enrolled in primary health care (this rises to 79 per cent by time of exit from ISR).

Problem

- 216 There is currently no requirement on beneficiary parents to have their children enrolled in primary health care, as enrolment in a primary health care is voluntary.

⁷ Health care that is provided by a health care professional such as a Primary Health Organisation, Integrated Family Health Centre (IFHC) or General Practitioner (GP).

⁸ Cabinet Paper, *Addressing the drivers of crime: June 2011 Report back*.

⁹ *Who is vulnerable or hard-to-reach in the provision of maternity, WellChild and early parenting support services? Addressing the Drivers of Crime: Maternity and Early Parenting Support*, Ministry of Justice, June 2010.

¹⁰ ISR is long-term family-focused holistic case-management for families with high and complex needs.

- 217 In childhood, particularly early childhood, children are dependent on their parents – the decisions their parents make and the actions they take. Children are unable, or unlikely, to access primary health care themselves.
- 218 Regular use of primary health care is important in improving child health outcomes. The benefits of enrolment include cheaper doctors' visits and reduced prescription costs.

Objectives

- 219 The objective is to use benefit settings available to ensure that beneficiary children are enrolled in primary health care.

Regulatory impact analysis: Options to ensure beneficiary parents have their children enrolled in primary health care

- 220 Other than the status quo, which would not meet the policy objective, the only option considered was to attach a benefit obligation to compel beneficiaries with dependent children on a benefit to have dependent children enrolled in primary health care.

PART FOUR (E): Obligation – Dependent children under five complete core WellChild checks

Introduction and problem

- 221 There is limited data available on which families access WellChild services¹¹, but work is underway to improve data collection and reporting.¹² If WellChild coverage follows the same trend as primary health care coverage as identified for ISR recipients, engagement could be increased.
- 222 The Growing Up in New Zealand project shows that, in the first nine months of life, almost 91 per cent of children in the study received all their WellChild checks and only 0.2 per cent had not received any of their WellChild checks.

Problem

- 223 There is no requirement on beneficiary parents to ensure their children participate in WellChild checks, as participation is voluntary. Young children are dependent on their parents and can not attend WellChild checks themselves.

Objectives

- 224 The objective is to use benefit settings to promote participation in the WellChild programme.

Regulatory impact analysis: Options to ensure beneficiary parents have children enrolled in the WellChild programme and attending core WellChild checks

- 225 Other than the status quo, which would not meet the policy objective, the only option considered was to attach a benefit obligation to compel beneficiaries with dependent

¹¹ WellChild is a screening, education and support service offered to all New Zealand children and their family from birth to five years, to assist families to improve and protect their children's health.

¹² *Who is vulnerable or hard-to-reach in the provision of maternity, WellChild and early parenting support services? Addressing the Drivers of Crime: Maternity and Early Parenting Support*, Ministry of Justice, June 2010

children to require them to ensure that their children are attending their core WellChild checks.

- 226 There was some consideration of about whether beneficiary children should attend all 12 WellChild checks or just the eight core WellChild checks (which include the B4 school check). However, as not all New Zealand children receive the 12 checks (the number of checks varying depending on the child) it was considered reasonable to only require attendance at the eight core WellChild checks.

PART FOUR (F): Obligations – encouraging parents to comply with social obligations

Introduction and problem

- 227 There are currently no social obligations in the welfare system – and therefore no status quo in terms of encouraging people to comply with this type of obligation.

Problem

- 228 The new set of social obligations will need a corresponding compliance regime to ensure that people meet the obligations and are aware of the consequences of not doing so.

Objectives

- 229 To encourage beneficiaries with dependent children to comply with the obligations and ensure that there is a consequence for non-compliance.

Regulatory impact analysis: Options to ensure compliance with social obligations

- 230 Selecting an appropriate sanction regime for non-compliance with social obligations based on societal norms is complex. Not everyone shares the same social expectations. Clients from dysfunctional homes or inter-generational welfare-dependency; they may have different 'norms', may have been isolated and lack knowledge, or may not see the value of the obligations.

- 231 Officials considered a range of issues when developing the options below.

- whether non-compliance justifies an instant or a graduated response
- whether the response should be financial or non-financial
- whether the obligations should have a intervention response from a specialist organisation
- the simplicity of the sanctions system and the corresponding impact on effectiveness
- the compliance costs for clients, Work and Income and other agencies/organisations.

Option 1 – Financial sanction

- 232 This option would utilise the existing graduated sanctions regime for any failure of a social obligation. This option treated social obligations the same as work-related obligations.

233 Evidence shows financial sanctions, in general, are effective for work-related obligations. There is little evidence currently available on sanctions for social obligations that are attached to benefit receipt in the manner proposed. Evidence in relation to sanctions for work obligations shows that:

- for many people, the threat of sanctions is as effective as the imposition of a sanction.
- more severe sanctions increase job search behaviour, but individual circumstances must be taken into account when implementing sanctions (eg limited education and health problems).
- small benefit sanctions coupled with additional threats of more severe punishment and closer monitoring/counselling have a positive effect on the job search behaviour of welfare recipients.¹³

234 The advantages of this option are that it would be simple to administer, easy for clients to understand and compliance testing could be targeted at a larger group if a low cost sanction option was available.

235 The disadvantages of this option for beneficiaries are that it could increase hardship for people affected and potentially their children. This option also provides limited consideration for the circumstances of vulnerable and disadvantaged families who may have vulnerable children. Targeted clients are likely to come from dysfunctional homes or have chaotic lives and may need time to understand the obligations and make arrangements to meet them.

Option 2 - Intervention before financial sanctions

236 This option would also utilise the existing graduated sanctions regime for any failure of a social obligation, but any failure would trigger a staged phase of client intervention to encourage them to meet their obligations before a financial sanction is imposed. The option would also include the ability to refer vulnerable clients to further ongoing case management support.

237 In this option social obligations are considered as important as work-related obligations, but consideration is given to the circumstances of the vulnerable and disadvantaged families likely to be tested for compliance.

238 As noted above, evidence shows financial sanctions, in general, are effective for work related obligations – but there is little evidence available on sanctions for social obligations.

239 The advantages of this option are that it is relatively simple to administer, relatively easy for clients to understand and the staged contact approach may improve wider parental behaviour and child outcomes. It also, ultimately, utilises the graduated financial sanction regime which has proved to be effective in creating compliance. Clients from vulnerable or dysfunctional families are given time to understand the obligations and make arrangements to meet them.

240 The disadvantages of the option are that it can still, ultimately, increase hardship and could impact on child poverty. However, this is mitigated because of the staged phases

¹³ *Future Focus Evidence Brief: Sanction regimes*. Centre for Social Research and Evaluation, MSD. Feb 2012.

of client intervention before a financial sanction is imposed and the ability to refer clients to case management support.

- 241 This option is recommended because it would provide a balance between support and sanction by having a support-based front end to encourage and assist people to comply, while still retaining, ultimately, the ability to enforce compliance through financial sanctions.

Option 3 – Non-financial sanctions

- 242 This option would respond to a failure of a social obligation with a non-financial intervention. Interventions considered were compulsory money management and intensive case management. This option treated social obligations as a completely different type of requirement to work-related obligations.
- 243 The advantages of this option were that the interventions would not increase hardship or impact on child poverty and some interventions considered (eg, intensive case management) may improve child outcomes.
- 244 The disadvantages would be the high cost, as this is a resource intensive response. This would mean that only a very small proportion of the population could be worked with. It would also be difficult to administer for couples and there is no evidence that using a non-financial intervention as a sanction would be effective. It would also only encourage, not require compliance.
- 245 This option is not recommended as it requires a significant financial investment and does not provide a lever to require compliance.

Option 4 – Incentives for meeting social obligations

- 246 In this option financial incentives would be used to encourage compliance with social obligations. Overseas evidence¹⁴ indicates that incentives can shift the perception and experience of mandatory activities (from obligatory to participatory).
- 247 The new payments for young people in phase one of welfare reform legislation use incentives to encourage young people to comply with their social obligations (education, budgeting and parenting). These incentives are considered particularly appropriate for newly independent young people.
- 248 This option is not recommended as it means a significant financial investment and it is not considered appropriate to financially incentivise older parents to meet accepted social norms.

Human rights considerations

- 249 The social obligation proposals for participation in ECE, enrolment with a GP or PHO, WellChild checks, and regular schooling may raise issues of discrimination on grounds of employment status and family status as it is likely to have a disproportionate effect on people on benefit with children. Officials feel this is a justified limitation because children from lower socio-economic groups, and in particular benefit-supported households, are

¹⁴ *Responsibility and Changing Behaviour: the state of knowledge and its implications for public policy*, The United Kingdom Prime Minister's Strategy Unit, 2004 publication.

at higher risk of experiencing a range of negative social outcomes or to fail to achieve development milestones. This can translate to poorer lifetime outcomes across a range of health, education and economic development indicators and to the intergenerational transmission of disadvantage – reducing social mobility and limiting opportunity. Child maltreatment and neglect is particularly sensitive to parental income (where lack of resources limits ability to meet children’s basic needs). By requiring beneficiaries to formally undertake requirements around child health, the benefit system provides an opportunity to influence child outcomes.

PART FIVE: IMPLEMENTATION, MONITORING AND REVIEW

Implementation

250 "Welfare Reform Paper A: Overview" provides detail of how welfare reforms will be implemented by Work and Income (see part B of that paper, "Implementing Welfare Reform").

251 These changes will result in Work and Income actively working with many more beneficiaries and with more complex issues than currently, requiring Work and Income becoming more sophisticated in choosing who they work with, and how.

252 Work and Income will transition to this in three stages:

- Stage 1: New Youth Service from August 2012. This implements changes agreed to in an earlier Cabinet paper (and given effect to in the Social Security (Youth Support and Work Focus) Amendment Act). It is an important first step for Work and Income in adapting to the new, more active approach that welfare reforms in this suite of Cabinet papers will give rise to.
- Stage 2: Greater work expectations from October 2012. These decisions were also made in an earlier Cabinet paper (and given effect to in the Social Security (Youth Support and Work Focus) Amendment Act), which agreed to implement some new work availability expectations in line with those of the new benefit categories discussed in paper B in this suite nine months before they are introduced. This will give Work and Income an opportunity to adjust to this element of reforms before the other detailed settings of the new benefits are introduced. Stage 2 introduces two new services that will be used Jobseeker Support beneficiaries.
- Stage 3: Extending work obligations, implementing the final changes to benefit categories, introducing pre-employment drug testing, new health and disability assessments, and Social Obligations. These changes take effect from July 2013. This stage of reforms introduces the new benefits, and will significantly increase the work focus of the benefit system. A new service delivery model is being developed by Work and Income, which the Minister for Social Development will report back to Cabinet on [redacted].

253 The reforms proposed in the suite of five Cabinet papers that this RIS accompanies will be implemented from July 2013. A Bill to amend the Social Security Act 1964 to give effect to these changes will be introduced by the end of September this year to allow for parliamentary and select committee processes to be completed in time. The proposed legislative timetable is:

- First reading and referral to Select Committee – 27 September 2012
- Select committee consideration – 27 September 2012 – end February 2013
- Select Committee report back – 28 February 2013
- Bill passed through remaining stages – March 2013.

IT changes

255 The changes proposed in these papers will require a major redesign of Work and Income's IT systems. A programme team has been established to make these changes and has in place a robust and transparent programme management framework, based on standard industry practice. It involves a phased system of changes with clear milestones. MSD is confident that all necessary changes can be made well in advance of the 15 July 2013 implementation of these changes, provided no late changes to policies are made.

Information Sharing

256 Several of the proposals in the suite of Cabinet papers will require access to new information that the MSD does not currently have access to. If the Privacy (Information Sharing) Bill is passed before legislation to implement these reforms, Orders in Council pursuant to the provisions in that Bill will be used. If the Bill is not passed by that time, welfare reform legislation to give effect to the proposals in this suite of Cabinet papers will be used.

Monitoring, evaluation and review

Monitoring welfare reforms

257 MSD will use a combination of monitoring and evaluation to track trends and assess the impacts of the welfare reform policy changes.

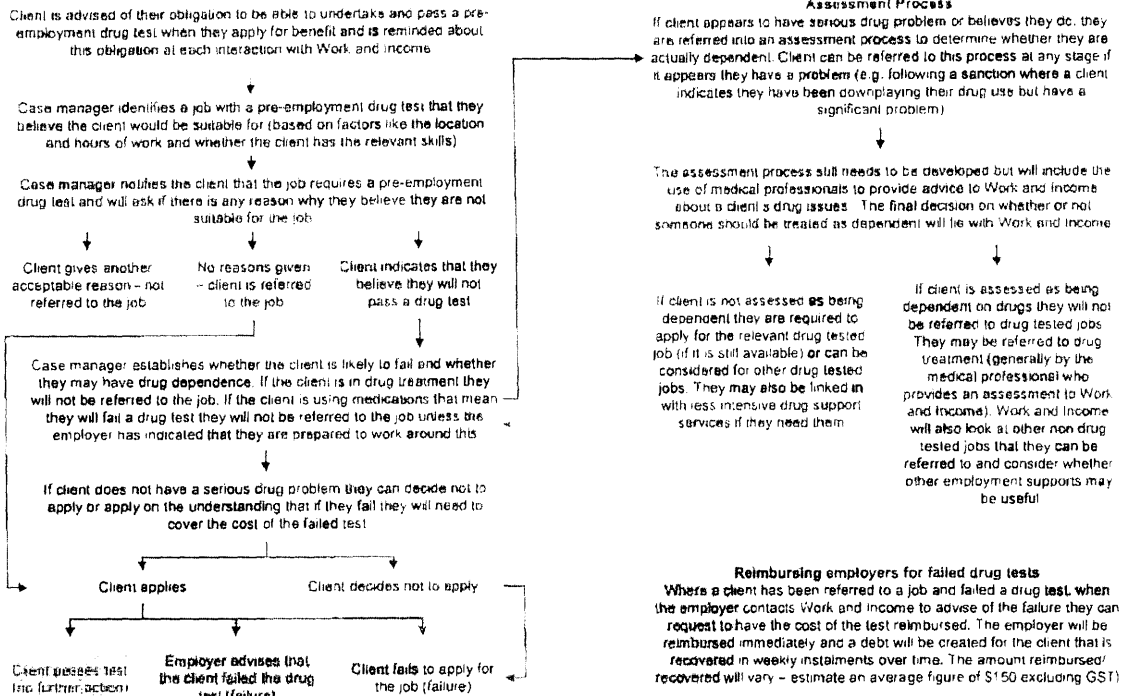
258 Monitoring reports will provide detailed information about the numbers and characteristics of clients engaging with and leaving the benefit system. They will also provide timely indications of trends that warrant deeper understanding through analysis and evaluation.

259 Regular reports will be produced for the Minister of Social Development that track the number and characteristics of beneficiaries, including:

- flows on and off benefits, and between benefit categories
- number of clients with work expectations and the types sanctions imposed
- how clients are tracking against their social obligations
- partners with work obligations.

260 Information from both monitoring and evaluation will take time to flow through, and initial results will become available in the first half of 2013. Further detail on monitoring and evaluation are included in Cabinet Paper A: Welfare Reform Overview.

APPENDIX - PROCESS APPLYING PRE-EMPLOYMENT DRUG TEST REQUIREMENTS TO BENEFICIARIES



1

**First Failure
Grade one sanction applied
50% reduction of benefit***

The client fails their obligations immediately and if they do not make a verbal commitment within 5 days to stop using drugs, a 50% sanction will be applied. The time that someone is sanctioned depends on how quickly they make the verbal commitment. The client receives a warning that if they fail their drug test related work obligation again they must provide a clean drug test within 30 days or their benefit will be cancelled.

Client will not be referred to other drug tested jobs for 30 days to allow time for any drugs to leave their system. During this time they may still be referred to other non drug-tested jobs

2

**Second Failure
Grade two sanction applied
100% suspension of benefit**

The client fails their obligations immediately and if they do not make a verbal commitment within 5 days to stop using drugs and provide a clean drug to Work and Income test within 30 days, a 100% sanction will be applied. The time that someone is sanctioned depends on how quickly they make the verbal commitment.

Client has 30 days to provide a clean drug test. Work and Income will help them by arranging to pay for one test – a debt will be created for the cost of the test and recovered from the client in weekly instalments. The date for the test will be decided by the client but Work and Income will direct clients to information about how long drugs remain detectable so they can choose an appropriate date

* All sanctionable failures are subject to a five day notice period before a sanction is applied. Clients with children will never have their benefit reduced by more than 50%

3

**Grade three sanction applied
Cancellation of benefit with a 13 week non-entitlement period**

Client has their benefit cancelled and cannot reapply for the benefit for up to 13 weeks. During this time they can apply for a 'provisional' benefit which is paid conditional on them participating in specific approved activities, usually for six weeks. These activities include undertaking employment, voluntary work, work experience or employment related training.

During this period any failure to participate in these activities (e.g. not attending for a day) results in the immediate removal of provisional benefit. The amount of provisional benefit paid previously can also be recovered from the beneficiary.

Once someone has completed their approved activities, or once 13 weeks have passed, they can reapply for the benefit. When they do this they will need to go through the full application process including undertaking any required pre-benefit activities

If client fails to undertake or pass another drug test or fails to meet another obligation within a 12 month period this is immediately treated as a third failure