

Report



MINISTRY OF SOCIAL
DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

Date: 4 March 2022

Security Level: In Confidence

To: Minister for Social Development and Employment

Resetting the foundations of the welfare system: Updated timeframes and scope

Purpose of the report

- 1 You are asked to agree to a revised timeline, scope, and engagement approach for the Welfare Overhaul Bill (the Bill) to amend the Social Security Act 2018 (the Act).

Executive summary

- 2 You have indicated your preference to extend the timeframe for introducing and passing the Bill in 2024 rather than in 2023. The proposed timeline is attached at **Appendix One**.
- 3 The extended timeframe provides an opportunity to broaden the scope of the Bill and strengthen the overall narrative of the Bill as the foundational piece of the welfare overhaul work programme.
- 4 You are asked to indicate your preferred option for the scope of the Bill under an extended timeline:
 - Option One: Continue with the current scope, but extend the targeted engagement currently underway or include an additional round of targeted engagement in late 2022 to help inform the development of the policies; or
 - Option Two: Broaden the scope of the Bill to include Option One but with a wider focus for employment services and supports and how the Treaty proposals could be given effect, as well as any work that may flow-on from the Māori values workstream; or
 - Option Three: Broaden the scope to include Option Two and the reviews of work obligations and sanctions, s 9(2)(f)(iv) [REDACTED]
- 5 We are currently engaging with targeted partners and stakeholders on the review of the purposes and principles of the Act and development of Tiriti o Waitangi / Treaty of Waitangi provisions for the Act. There will be an expectation from some groups that this work progresses rapidly following the conclusion of our targeted engagement process. To meet these expectations, current targeted engagement can be reframed as an initial step in a more thorough process. We can also commit to keeping stakeholders informed at certain intervals throughout the process.

- 6 There is also an opportunity to release a public discussion document in late 2022 if you prefer Options Two or Three. Public consultation would provide an opportunity to meet with targeted stakeholders again to discuss the preferred options, and for the public to comment on the preferred options. We are working on providing you with further advice in early April on options we could explore that would give effect to the values framework for the welfare system proposed by Ngā Mātanga Māori. This could also be included as part of the public consultation process. Final proposals can then be thoroughly informed by stakeholder feedback, which will strengthen the Bill.
- 7 Option Three has significant financial implications. However, as a package, it also provides the strongest narrative and signal for change. For example, the wellbeing approach for amending the purpose and principles of the Act and the removal of some obligations and sanctions align strongly with the Welfare Expert Advisory Group's theme of mutual expectations and the rebalancing of the social contract between clients and MSD.
- 8 If you agree to Option One, then we will report back to you in July on the findings of the targeted engagement currently underway and seek agreement on next steps including a second round of targeted engagement in late 2022.
- 9 If you agree to Options two or Three, we will report back to you in June rather than July on the findings of the targeted engagement currently underway and seek agreement to start drafting a public discussion document for you to take to Cabinet in August.
- 10 We have also identified a number of initiatives that could be progressed within the current legislative framework of the Act, such as the review of our current operational guidelines on suitable employment, including Cabinet decisions on the role and future direction of MSD's employment services, a review of how MSD is meeting its positive duty to assist¹ those who apply for financial assistance under the Act, and assess how we could further improve the monitoring, evaluation and reporting of outcomes for clients. We can provide you with further advice if you would like to progress some of this work that does not require changes to the Act.

Recommended actions

It is recommended that you:

- 1 **agree** to an updated timeline that would pass a Welfare Overhaul Bill to amend the Social Security Act 2018 in 2024

Yes / No

Scope of the Welfare Overhaul Bill

- 2 **indicate** your preferred scope for the Welfare Overhaul Bill:
 - Option One (current scope):
 - using wellbeing to reframe the purposes and principles of the Act;
 - state that MSD's role is providing employment services and shifting the emphasis to 'suitable employment', to reflect the current definition of

¹It has been determined through case law that MSD has a duty to actively assist applicants who apply for financial assistance.

suitable employment in the Act, and current operational guidance on suitable employment;

- o ensuring people who receive support or services under the Act are treated with dignity and respect;
- o provide further legislative transparency to MSD's duty to provide active assistance to those eligible for support under the Act;
- o providing a Tiriti-related clause to support the Crown to meet its duties under Tiriti; and
- o including specific Tiriti accountability measures for the Chief Executive of the Ministry of Social Development to support better outcomes for Māori who engage with the welfare system

Yes / No

- Option Two includes the scope of option one but with a broader focus on employment services and supports and how te Tiriti provisions could be given effect, and work that may flow-on from the Māori values workstream

Yes / No

- Option Three includes the scope of Option Two and the reviews of work obligations and sanctions, ^{s 9(2)(f)(iv)}

Yes / No

Engagement process for the Welfare Overhaul Bill

3 **note** we are currently engaging with targeted stakeholders on the review of the purposes and principles of the Social Security Act and the development of Tiriti-related provisions for the Act until 1 April 2022, and we will incorporate feedback from engagement in the next phase of this work

4 **agree** to a second round of targeted engagement to commence in late 2022 should you choose option one for the scope of the Welfare Overhaul Bill

Yes / No

5 **agree** to a public consultation process to commence in late 2022 should you choose options two or three for the scope of the Welfare Overhaul Bill

Yes / No

6 **indicate** whether you would like further advice on what work could be progressed within the current legislative framework

Yes / No

7 **note** broadening the scope of the Bill will have fiscal implications, and we will provide further advice on costs as work progresses

8 **note** officials are available to discuss these options with you.

Christian Opeteia
Policy Manager
Welfare System and Income Support

Date

Hon Carmel Sepuloni
Minister for Social Development and Employment

Date

Background

- 11 In December 2021, you agreed to progressing the work on resetting the foundations of the welfare system by introducing a Bill to amend the Social Security Act 2018 (the Act) in September 2022, to be passed in May 2023 [REP/21/12/1384 refers].
- 12 To support this work, we have been engaging with targeted stakeholders on Tiriti o Waitangi/Treaty of Waitangi (te Tiriti) provisions for the Act as well as our proposed wellbeing approach to amending the current purpose and principles of the Act. Targeted engagement is scheduled to conclude on 1 April with advice on the outcome of the engagement to follow shortly after.
- 13 We provided your office with further advice on timelines on 24 February. The advice included two options:
 - pass a Welfare Overhaul Bill in 2024; or
 - pass a Welfare Overhaul Bill in 2022.
- 14 Your office has indicated that your preference is to pass a Welfare Overhaul Bill in 2024.

Extending the timeframe for the Bill has a number of advantages

- 15 You have indicated your preference for extending the timeframe for passing a Welfare Overhaul Bill to 2024. The proposed timeline is attached at **Appendix One**.
- 16 Early engagement on the proposed Bill has revealed two consistent themes:
 - respondents are unhappy that the proposed amendments do not contain strong enough value statements; and
 - respondents want to understand how the changes will be reflected in changes to frontline operations.
- 17 Extending the timeframe provides more time to respond to feedback from the current engagement, and we see potential to improve the proposal by:
 - broadening the scope of the Bill, which could mean more of an impact and stronger narrative and the ability to better address some of the feedback we have received from agencies and Ministers;
 - including a concrete proposal around how the proposed Māori values framework will be used to drive a systems change in the welfare system; and
 - developing concrete implementation plans, including changes to operational policy and/or other parts of the legislation as required. It also provides an opportunity to include any changes that come out of the reviews of work obligations and sanctions, ^{s 9(2)(f)(iv)}

An extended timeline allows for options to broaden the scope of the Bill

- 18 An extended timeframe allows for a broader scope for the Bill which could have a more significant impact on those who receive support and services under the Act and welfare programmes. You are asked to consider three options for the scope of the Bill. The options are outlined below.

Option One: Continue with current scope

- 19 Option One would continue within the current scope of the Bill:
 - purposes and principles and associated legislative obligations;

- employment services and supports; and
- Tiriti provisions.

Purposes and principles

20 The current scope of the purposes and principles includes:

- using wellbeing to reframe the purposes and principles of the Act;
- ensuring people who receive support or services under the Act are treated with dignity and respect; and
- provide further legislative transparency to MSD's duty to provide active assistance to those eligible for support under the Act.

21 One of the ways we will operationalise the changes to the purposes and principles of the Act will be through a social security charter. The charter will aim to give clear meaning and guidance to those making decisions and providing services under the Act.

22 Done well, the charter proposal can provide the link between relatively theoretical changes to the purpose and principles, and the downstream changes that we hope to achieve as a result. Subsequent targeted engagement would provide an opportunity to receive feedback on this aspect of the proposal.

Employment services and supports

23 The current scope for employment services and supports include:

- a clearer statement that MSD's role is providing employment services;
- shifting the emphasis to 'suitable employment', to reflect the current definition of suitable employment² in the Act, and current operational guidance on suitable employment; and
- establish new requirements on MSD that improve transparency and accountability.

Tiriti provisions

24 The current scope for the Treaty provision is to include in the Act:

- a general clause that confirms that the department must administer the Act in a way that is consistent with the Crown's Treaty responsibilities; and
- a clause that would require MSD's Chief Executive to engage with Māori to develop and regularly report against a set of Tiriti objectives for the department; and
- exploring how working towards more equitable outcomes for Māori could be addressed.

² Suitable employment is defined in the Act as: *in relation to a person, means employment that MSD is satisfied is suitable for the person to undertake for a number of hours a week determined by MSD having regard to the employment required to satisfy the work test for that person, but is affected by section 18(1) (which relates to refusing to work, or to continue to work, as a sex worker) of the Prostitution Reform Act 2003.*

Option Two: Broaden the scope of the Bill for employment services and supports, Treaty provisions and include any flow-on work from the Māori values workstream

25 Option Two would include:

- purposes and principles and associated legislative obligations;
- employment services and supports with an expanded scope;
- Treaty provisions, including a broader focus on how the provisions will be given effect; and
- work resulting from developing the Māori values framework.

Purposes and principles

26 The scope for the purposes and principles would be the same as under Option One.

Employment services and supports

27 In addition to the current scope, a broadened scope could provide us with more time to consider the implications and trade-offs of the above options as well as consider a wider scope, including:

- strengthening the authorising provision for creating employment assistance; and
- reviewing the definition of suitable employment in the Act, and considering options for amendments to further support the overall objective of resetting the foundations of the welfare setting – and bring about some tangible changes to operational practice.

Tiriti provisions

28 In addition to the current scope, a broadened scope could:

- restore the link between te Tiriti proposal and Māori values framework;
- work through the operational implications of a strengthened legal commitment to te Tiriti and its principles, and identifying what specific changes to operational policies (and or legislation) might be required; and
- consider more innovative options for te Tiriti provisions (such as further developing the work we are doing on a commitment to equitable outcomes for Māori).

Māori values framework

29 Option Two would include any work resulting from developing the Māori values framework. Ngā Mātanga Māori provided a report on a proposed Māori values framework for the welfare system in October 2021. An extended timeframe for the Bill would align with work on the implementation of the Māori values framework. This provides a stronger and more cohesive narrative to the proposed changes as a whole package. We will be providing you with further advice on the Māori values framework in April 2022.

30 There has been considerable interest from other groups in the application of the Māori values framework to areas related to the wider scope of the welfare system, including from the National Iwi Chairs Forum. Advice on using this interest to promote the use of the values framework will be provided as part of wider advice on the values in April 2022.

Option Three: Further broaden scope to include review of obligations and sanctions (preferred option)

31 The scope for Option Three is the same as Option Two, but also includes the reviews of work obligations and sanctions, ^{s 9(2)(f)(iv)} [REDACTED]

Review of work obligations and sanctions

32 You agreed to a proposed scope for reviewing work obligations and sanctions in May 2021 [REP/21/3/296]. The current timeline for the review of work obligations is to pass a Bill in 2024 [REP/21/7/748 refers], this aligns with the new timeline for the Welfare Overhaul Bill.

33 There are strong links between the review of the purposes and principles of the Act and the review of work obligations and sanctions. Including work obligations and sanctions to the Welfare Overhaul Bill would align with the objective of rebalancing mutual expectations between MSD and clients, and provide an even stronger argument for the need for a Bill. It is likely to result in tangible changes that will have an immediate impact on clients once the Bill is passed.

^{s 9(2)(f)(iv)} [REDACTED]

34 ^{s 9(2)(f)(iv)} [REDACTED]

35 ^{s 9(2)(f)(iv)} [REDACTED]

36 You received advice ^{s 9(2)(f)(iv)} [REDACTED] in June 2021 [REP/21/6/613]. A review of the data available suggests that the current policy has not improved employment outcomes for welfare recipients, particularly for Māori.

37 ^{s 9(2)(f)(iv)} [REDACTED]

Reframing targeted engagement and a public engagement process could address stakeholders' concerns from extending the timeframe

38 As we are currently engaging with targeted partners and stakeholders, there will be an expectation that this work is being progressed. It is likely that stakeholders will criticise the delay and may lose confidence that the work programme will be delivered.

39 This can be mitigated through reframing current targeted engagement as an initial step in a more thorough process. This can include committing to keeping stakeholders informed at certain intervals throughout the process. We could also run another round of targeted engagement in late 2022 if you prefer Option One.

40 A public consultation process could also be run in late 2022 on an expanded proposal as per Option Two and Option Three. A public consultation document could include preferred options for amending the Act. This would provide an opportunity to meet

with targeted stakeholders again to discuss the preferred options, and for the public to comment on preferred options.

- 41 Public engagement would strengthen the Bill, as it means that final proposals can be thoroughly informed by stakeholder feedback. It would also signal that the Government still has a clear intention for resetting the foundations of the welfare system, and show progress towards delivering the work programme.

Broadening the scope will likely have associated costs

- 42 There are likely to be fiscal implications if the scope is broadened. The likely fiscal implications could also mean there would be additional dependencies with other process, for example the Budget process.
- 43 We will provide you with further advice and options for policy development work in due course, before engagement, and include options that could be progressed through baselines.

Some of the 'resetting the foundations' work could be progressed within the current legislative framework of the Act

- 44 Some of the work that could be progressed without legislation includes:

- s 9(2)(f)(iv)
-
-

- 45 s 9(2)(f)(iv)

- 46 s 9(2)(f)(iv)

- 47 MSD has a duty to actively assist clients who contact MSD under the current Act. This legal duty has been confirmed through case law. s9(2)(f)(iv) OIA

- 48 We can provide you with further advice if you would like to progress some of the work outside of legislation.

Next steps

- 49 If you agree to Option One, then we will report back to you in July on the findings of the targeted engagement currently underway and seek agreement on next steps, including a second round of targeted engagement in late 2022.
- 50 If you agree to Options Two or Three, we will report back to you in June rather than July on the findings of the targeted engagement currently underway and seek

agreement to start drafting a public discussion document for you to take to Cabinet in August.

Appendix

- 51 Appendix One - Proposed timelines for passing a Welfare Overhaul Bill to amend the Social Security Act 2018 in 2024

File ref: REF/22/3/146

Author: Jeanne Barnard, Senior Policy Analyst, Welfare System and Income Support

Responsible manager: Christian Opeteia, Policy Manager, Welfare System and Income Support

Proposed timeline for passing a Welfare Overhaul Bill in 2024

Option one – current scope with the inclusion of a second round of targeted engagement in late 2022

2022	January	February	March	April	May	June	July	August	September	October	November	December
			First round of targeted engagement			Analysis	Report: Submissions analysis and preferred options			Second round of targeted engagement		
2023	January	February	March	April	May	June	July	August	September	October	November	December
			Report: Submissions analysis and preferred options		Cabinet paper: Approval of preferred options and issue drafting instructions	Period of restraint/Election					s9(2)(f)(iv) OIA	
2024	January	February	March	April	May	June	July	August	September	October	November	December
		s9(2)(f)(iv) OIA			s9(2)(f)(iv) OIA				s9(2)(f)(iv) OIA	s9(2)(f)(iv) OIA	s9(2)(f)(iv) OIA	

Option two – broader scope with the inclusion of work derived from the Māori values workstream and public consultation

2022	January	February	March	April	May	June	July	August	September	October	November	December
			Targeted engagement/policy development			Report: Advice on options to include in discussion document		Cabinet paper – approval for public consultation		Public consultation		
2023	January	February	March	April	May	June	July	August	September	October	November	December
			Report: Submissions analysis and preferred options		Cabinet paper: Approval of preferred options and issue drafting instructions	Period of restraint/Election					s9(2)(f)(iv) OIA	
2024	January	February	March	April	May	June	July	August	September	October	November	December
		s9(2)(f)(iv) OIA			s9(2)(f)(iv) OIA				s9(2)(f)(iv) OIA	s9(2)(f)(iv) OIA	s9(2)(f)(iv) OIA	

Option Three - broader scope with the inclusion of work derived from the Māori values workstream, work obligations and sanctions, and public consultation s 9(2)(f)(iv)

Option Three would be progressed on the same timeline as Option Two.