

Report

Date: 15 March 2018 **Security Level:** BUDGET SENSITIVE

To: Hon Carmel Sepuloni, Minister for Social Development
Hon Stuart Nash, Minister of Inland Revenue

Repealing section 70A: Consequential amendments to the Child Support Act 1991

Purpose of the report

- 1 This report advises you of amendments required to the Child Support Act 1991 (the CSA) as a consequence of repealing section 70A of the Social Security Act 1964 (the SSA). It also seeks your decision on the best way to get Cabinet approval for the repeal and consequential amendments.

Recommended actions

It is recommended that you:

- 1 **note** that Child Support policy for beneficiaries sits in both the Child Support Act 1991 and Social Security Act 1964
- 2 **note** that repealing section 70A of the Social Security Act, which reduces the benefit of sole parents who do not meet specific Child Support obligations, will require changes to both the Child Support Act and Social Security Act
- 3 **agree** that alongside the repeal of section 70A of the Social Security Act, sections 9(6), 9(6B), 9(7) and 122(2) in the Child Support Act are repealed to ensure legislative alignment

Agree / Disagree

Agree / Disagree

- 4 **agree** that section 9(5B) of the Child Support Act is amended to enable the Commissioner of Inland Revenue to exempt a beneficiary from applying for a formula assessment of Child Support

Agree / Disagree

Agree / Disagree

EITHER

- 5 **agree** that Cabinet approval to the repeal of section 70A and consequential amendments to the Child Support Act, and an invitation for the Minister for Social Development to issue drafting instructions, be sought in the Budget 2018 Cabinet paper (preferred)

Agree / Disagree

Agree / Disagree

OR

- 6 **agree** that Cabinet approval to the repeal of section 70A and consequential amendments to the Child Support Act, and an invitation for the Minister for Social Development to issue drafting instructions, be sought through a standalone Cabinet paper.

Agree / Disagree

Agree / Disagree

Fiona Carter-Giddings
General Manager
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Policy Manager
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Hon Carmel Sepuloni
Minister for Social Development

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Hon Stuart Nash
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Child Support policy for beneficiaries sits in both the CSA and SSA

- 2 An obligation that a sole parent beneficiary or Unsupported Child Benefit recipient apply for formula assessment of Child Support is contained in section 9 of the Child Support Act 1991 (CSA). Section 122 of the CSA also provides these benefit recipients can be compelled to be a witness against the parent(s) liable to pay child support.
- 3 Section 70A of the Social Security Act 1964 (SSA) provides (subject to some exceptions) that a sole parent's benefit shall be reduced if the parent fails or refuses to:
 - identify the other parent in law, or
 - apply for Child Support for each dependent child, or
 - if required, attend and give evidence against the liable parent(s) for child support during a hearing of a proceeding under the CSA.

You have committed to repealing section 70A of the SSA...

- 4 The Labour Manifesto includes a commitment to repeal section 70A, due to the hardship it creates for the affected sole parents, overwhelmingly women, and their children. As at November 2017, almost 13,000 sole parents had a reduction in place, and 26,500 children lived in households affected by the reductions.
- 5 To progress the repeal, \$95 million in additional funding over four years is being sought through Budget 2018. This would cover:
 - implementation and evaluation costs
 - increased benefit expenditure as a result of removing all existing section 70A sanctions
 - a reduction in Child Support retained by the Crown due to the behavioural impact of removing sanctions, as sole parents applying for a benefit will have less incentive to apply for Child Support.
- 6 Subject to funding being confirmed, the necessary legislative change would be progressed through an omnibus Social Assistance Amendment Bill. This is expected to be introduced in July 2018, but first Cabinet approval is needed.

... and a number of related provisions in the CSA also need to be repealed or amended

- 7 To ensure alignment of the CSA and SSA, the provisions in the CSA that directly reference section 70A need to be repealed as a consequential amendment to repealing section 70A. This includes sections 9(6), 9(6B), 9(7), which relate to the obligation to apply for a formula assessment of Child Support.
- 8 We also propose to amend section 9(5B) so that either the chief executive of the department at the time being responsible for the administration of the Social Security Act (currently the Ministry of Social Development) or the Commissioner of Inland Revenue can exempt the beneficiary from applying for a formula assessment of Child Support.
- 9 This would address a current issue, whereby Inland Revenue must accept or will request an application for child support from a sole parent beneficiary or Unsupported Child Benefit recipient even when Inland Revenue are aware the parent or carer meets one of the exemption criteria in section 9(5B) of the CSA.

There is a flow on impact to a minor provision, section 122(2), in the CSA

- 10 Section 122 of the CSA outlines a parent or carer's obligation to be a compellable witness against the parent liable for Child Support. Section 122(2) states that if they fail to testify, they can have their benefit reduced, under section 70A of the SSA,

subject to some exceptions. The provision is excessive, as there is no explicit provision for the benefit reduction to be removed once it is applied.

- 11 While reviewing the provisions in section 70A of the SSA, we also identified drafting inconsistencies with section 122(2) of the CSA that would lead to an inequitable application of the benefit reduction. This is because only sole parents on a benefit are able to have their benefit reduced under section 70A. Other parents or carers, such as those receiving the Unsupported Childs Benefit, cannot have their benefit reduced.
- 12 Repealing section 122(2) of the CSA would mean that parents and carers on a benefit would still have an obligation to testify, but would not have their benefit reduced if they failed to comply.
- 13 Inland Revenue have no records of requesting that the Ministry of Social Development consider applying a section 70A deduction as a result of a parent or carer failing to appear as a witness. As such, repealing it is unlikely to have any adverse flow on effects or fiscal implications.

We need Cabinet approval to make the necessary changes to the SSA and CSA

- 14 We seek your agreement to use the wider Budget 2018 Cabinet paper to ask Cabinet to approve the repeal of section 70A and invite the Minister for Social Development to issue drafting instructions for the legislative changes required to repeal section 70A, and to consequentially amend the CSA. This is the most streamlined way to gain approval.
- 15 If you prefer, we can prepare a standalone Cabinet paper on the repeal of section 70A, and associated sections in the CSA, for consideration at the Social Wellbeing Committee.

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