



18 October 2022

Tēnā koe

On 17 July 2022, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), information regarding changes to sections 195 and 196 of the Social Security Act. I apologise for the delay in responding to you.

For the sake of clarity, your questions will be addressed in turn below:

- *I would like any of the main documents containing recommendations that were presented to cabinet. I would also like any reports and discussion documents published by the working group and cabinet.*

On 26 July 2022, the Ministry contacted you and advised you that clarification was required to respond to your request for information. On 28 July 2022, you clarified your request to be for the following information:

- *key documents from the Benefit Reform Working Group (BRWG) which informed changes to Social Security Act in 1991. With particular interest to sole parent support, disabled persons and invalids benefit.*

The following documents were identified to be in scope of your request and have been enclosed:

- *Report – Proposals for Benefit Reform: Report of the Working Group on Benefit Reform, dated May 1991*
- *Social Assistance – Welfare that Works, dated 30 July 1991.*
- *In my previous OIA request I was particular interested in information regarding the impact of proposed and enacted changes on parents with disabilities. I am also requesting any information from the working group, government and Ministry of Social Development specifically in respect to the welfare reforms of 1991 regarding:*

- *What consultation was undertaken with vulnerable groups with respect to the changes.*
- *Discussion and analysis on the Impacts of proposed changes on vulnerable people and those with disabilities.*
- *Any other information pertaining to vulnerable groups and people with disabilities within the documentation*

On 26 July 2022, the Ministry contacted you and advised you that clarification was required to respond to your request for information. On 28 July 2022, you clarified your request to be for the following information:

- *Was there any acknowledgment how the proposed changes from the BRWG would impact those persons on an invalids benefit and unable to be employed.*
- *Was there any acknowledgment how the proposed changes from the BRWG would impact those persons on an invalids benefit and unable to be employed. With emphasis on removing the entitlement of both parents to sole parent support.*

In order to provide the information requested above, the Ministry would need to divert personnel from their core duties and allocate extra time to complete this task. This information, if it were to exist, would be held on archived physical files, and Ministry staff would need to locate and identify the information. The diversion of these resources would impair the Ministry's ability to continue standard operations and would be an inefficient use of the Ministry's resources. As such, your request is refused under section 18(f) of the Act as it requires substantial manual collation. The greater public interest is in the effective and efficient administration of the public service.

I have considered whether the Ministry would be able to respond to your requests given extra time, or the ability to charge for the information requested. I have concluded that, in either case, the Ministry's ability to undertake its work would still be prejudiced.

- *I am also requesting any internal documents, reports and statements held by MSD regarding the legality of legislation within the Social Security Act and whether in the ministries and the governments opinion that legislation breaches Human rights or other acts of parliament and other UN acts the New Zealand government is a signatory to. In particular the pertaining to rights of children, rights of those with disabilities and vulnerable groups.*

On 26 July 2022, the Ministry contacted you and advised you that clarification was required to respond to your request for information. On 28 July 2022, you clarified your request to be for the following information:

- *Any documents held by MSD that detail concerns around the legality of sections 195 and 196 of the Social Security Act.*

The following documents were identified to contain information which is in scope of your request:

- *HRRT – Nixon – BJH – 4*
- *HRRT – Nixon – extract of Brief of Evidence of Bede Hogan*

You will find the relevant extracts enclosed in the **Appendix**.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter and attachments on the Ministry's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response regarding sections 195 and 196 of the Social Security Act, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui

A handwritten signature in blue ink that reads "Polly Vowles." The signature is written in a cursive, flowing style.

Polly Vowles
Policy Manager
Welfare System and Income Support
Appendix:

Objectives of the New Policy

2. The new policy is designed to ensure parents do not avoid the responsibility to be self supporting by making custody arrangements that give eligibility to two domestic purposes benefits.

Background

3. Split custody situations arise when each parent has custody of one or more children following separation. The current departmental policy is that both parents may qualify for domestic purposes benefits.

4. In future both parents will only qualify for domestic purposes benefit if a Court Order splits custody between the parents.

5. New Zealand families are of various compositions and have varying needs. Many families change in composition through separation, reconstitution, divorce and remarriage as well as the addition of children by birth, adoption or other caring arrangements. The change needs to take into account these situations.

Proposed Policy

6. It is proposed that the previous principal caregiver has first claim on eligibility to domestic purposes benefit.
7. Where it is not clear which parent was the principal caregiver, the parent who has custody of the youngest child will have priority.
8. If one parent is granted domestic purposes benefit, the other parent will only be eligible for unemployment benefit or some other alternative.
9. The previous principal caregiver may not apply for or require domestic purposes benefit at the time of separation because of entering a new relationship or being in employment. In this situation the other parent will be able to receive the domestic purposes benefit.
10. A parent will not qualify for domestic purposes benefit because of caring for a dependent child born to a relationship, if the other parent is receiving domestic purposes benefit while caring for other children of the relationship.

Comment on the Proposed Policy

11. Identification of the qualifying parent will be fairly straight forward. If both parents apply for benefit at the time of separation the previous principal caregiver will qualify for domestic purposes benefit. The other parent may qualify for an alternative benefit if the criteria is met and payment will be made at the appropriate sole parent rate. Only one parent will be exempt from the work test.
12. If only one parent applies for benefit following separation, that parent will be eligible for domestic purposes benefit. Staff will need to check whether the other parent intends applying for benefit before a decision is made to grant a benefit. Once a benefit has been granted to one parent, the other cannot be granted domestic purposes benefit regardless of which parent was the principal caregiver prior to the separation.
13. One parent may have custody of all the children at separation and be granted domestic purposes benefit. At some later date a further child may be born to the relationship or some of the children may go back to the care of the other parent. The eligibility of the person already receiving benefit will not change. The parent who gained later custody will not be eligible for domestic purposes benefit.

Relevant extracts from: *HRRT – Nixon – extract of Brief of Evidence of Bede Hogan*

The current situation under s 70B

4. In order to receive a benefit which provides an entitlement reflecting care of a child, an applicant must be caring for a dependent child, meaning a child:¹
 - (a) Whose care is primarily the responsibility of the person; and
 - (b) Who is being maintained as a member of that person's family; and
 - (c) Who is financially dependent on that person.
5. In order for a parent to have a dependent child included in their benefit entitlements, that parent must show they are primarily responsible for that child and s 70B aims to assist in determining who the primarily responsible parent is. Section 70B applies in situations where parents of a dependent child are living apart, are both beneficiaries, and each has primary responsibility for the care of that child for at least 40% of the time. Section 70B then establishes a framework for determining who has greater responsibility for the child or, failing this, who was the principal caregiver before separation and can, therefore, have the child taken into account by the chief executive in assessing that parent's entitlement to a benefit. As a last resort the parents will decide the matter themselves and if they cannot reach agreement neither parent will have the child taken into account when assessing benefit entitlements.
6. The decision made under s 70B will affect entitlements to both main and second tier benefits.
7. Main benefits include Jobseeker Support, Sole Parent Support, Supported Living Payment and Emergency Benefit. Second tier benefits are Accommodation Supplement, Disability Allowance, Child Disability Allowance and Childcare Assistance Programme (which includes the Childcare Subsidy and Out of School Care and Recreation ("OSCAR") payment).
8. Third tier benefits (e.g. Temporary Additional Support) are paid at rates consistent with the decision made under s 70B as to who should have the child taken into account for the assessment of benefit entitlements.
9. The parent who receives the benefit entitlement for the child under s 70B will:
 - (a) Have social obligations to meet in respect of that child;
 - (b) Have that child taken into account when calculating job seeking obligations;

- (c) Have the child taken into account when applying any sanctions for failure to meet their obligations; and
- (d) Have the child taken into account when setting income and cash asset thresholds.

The situation prior to 1991

- 10. Prior to 1991 parents living apart, who cared for their child an average of three nights a week, would each be paid a benefit reflecting their responsibility for the care of that child. For example, each parent could receive the domestic purposes benefit. Family support payments were divided between the two parents.

1991 policy development process

- 11. In March 1991 the current definition of “dependent child” was included in the Act. It replaced an earlier definition which had defined dependent child by reference to payment of universal family benefit.²
- 12. The definition of dependent child required the parent to be “primarily responsible” for the child and thereby contemplated payment of only one benefit.
- 13. Section 70B was then introduced as part of the benefit reforms implemented by the Social Security Amendment Act (No 2) 1991. Its introduction followed consideration of the recommendations of a Benefit Reform Working Group. Paragraph 1 of the terms of reference for the Benefit Reform Working Group described the principal task of reform as follows:

... to develop a new system of categorical social welfare benefits which will facilitate the Government’s objectives of encouraging greater self-sufficiency by New Zealanders and discouraging unnecessary dependence on the benefit system by people who have the capacity to participate in the full or part time paid work force.

- 14. The Working Group reported to the Minister of Social Welfare on 17 May 1991 and described its proposals as follows:

² The previous definition was no longer applicable given the repeal of the family benefit payment.

The proposals have been developed around the philosophy that people of work force age should be primarily responsible for supporting themselves and the dependent members of their core families through their own work efforts. Accordingly the benefit system is available as a safety net where people are unable to meet these self-support requirements. In return for receiving benefit support in such situations, people accept the reciprocal obligation to take all reasonable steps to move out of the benefit system and into paid employment; or undergo training or rehabilitation towards greater independence.

15. A copy of the terms of reference is attached as "BJH-1". A copy of the report of the Benefit Reform Working Group is attached as "BJH-2".
16. On 1 July 1991 Cabinet endorsed principles for benefit reform. A copy of the Cabinet minute is attached as "BJH-3". The first three principles endorsed were as follows:
 - (a) The benefit system should be based on principles of fairness, self-reliance, and efficiency;
 - (b) Where practicable, the benefit system should encourage people to move off benefits and into the paid work force;
 - (c) The core family has primary responsibilities for meeting its own welfare needs. The state has a responsibility to provide income maintenance for those unable to support themselves despite carrying out their primary obligations.
17. On 2 July 1991 the issue of split custody was addressed in a briefing to the Minister of Social Welfare. A copy of this briefing is attached as "BJH-4". Split care involves one parent having day to day custody for one or more children of the relationship and the other parent having day to day custody of another child or children of the relationship. Shared care is where parents share care of the same child or children. An example of this is a child spending two weeks per month in the custody of one parent and two weeks per month in the custody of the other parent.
18. Although the briefing deals with the approach to be adopted for split custody, the principles of encouraging and providing incentives for parents

to be self-supporting also applied to situations of shared care. The briefing paper stated:

The new policy is designed to ensure parents do not avoid the responsibility to be self-supporting by making custody arrangements that give eligibility to two domestic purposes benefits.

19. On 15 July 1991 Cabinet agreed "to amend Domestic Purposes Benefit entitlements in cases of shared custody from 1 October 1991, so that only one benefit is payable". A copy of Cabinet Minute "CAB (91) M 28/29 – Additional Item: Domestic Purposes Benefit – Split and Shared Custody Cases" is attached as "BJH-5".
20. The change was summarised in an information booklet entitled 1991 Budget Social Welfare Changes. The booklet is attached as "BJH-6". It summarised the changes at page 16 as follows:

With effect from 1 October 1991, the domestic purposes benefit provisions will be tightened to ensure that only one benefit is paid in cases where the custody of children is shared by the parents (i.e. where each parent has full-time care of all of the children of the relationship part of the time). Currently these parents can each qualify for the benefit.

In respect of new applications lodged on or after 1 October, the benefit will be paid only to the principal care-giver. Where the parents share custody on an equal basis (e.g. week and week about) further factors will be taken into account including

who makes decisions about the daily activities of the child including their education and health needs?

who takes the children to and from school, supervises their leisure activities, and so on?

the financial arrangements for the children and the basis on which costs are shared.

If these factors do not clarify which of the parents is the principal care-giver, the benefit will be paid to the parent who fulfilled that role prior to the break-up of the relationship.