



1 March 2023

Tēnā koe

On 19 December 2022, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information:

- *Key decision documents, including cabinet papers and reports to the Minister, regarding the SLP (specifically the exception of means testing for blind people) from 1 June 2014.*

On 2 February 2023, the Ministry emailed you to advise that more time was required to respond to your request, with an extended due date of 22 February 2023. The reason for the extension is that the consultations necessary to make a decision on your request are such that a proper response to your request cannot reasonably be made in the original time frame. I would like to again apologise for the delay in providing this decision to you.

Please see the following documents attached to the Ministry's response:

- Cabinet paper – *Social Security Act Rewrite: Changes to Legislation to Improve Frontline Efficiency and Enable Modern Service Delivery*
- REP/16/2/117 – Aide-mémoire – *Social Security Act Rewrite: Additional Policy Proposals – Advantageous provisions for people who are totally blind*, dated 12 February 2016
- Cabinet paper – *Social Security Act Rewrite: Additional Policy Proposals*
- Cabinet paper – *Social Security legislation Rewrite Bill – Approval for Introduction*
- REP/16/2/154 – Report – *Social Security Act Rewrite: Cabinet Legislation Committee paper for your approval*, dated 25 February 2016
- REP/18/1/114 – Report – *Cabinet Paper: Progressing the Social Security Legislation Rewrite Bill*, dated 8 February 2018
- REP/17/11/1097 – Report – *Advancing the Social Security Legislation Rewrite Bill*, dated 14 November 2017

- REP/17/11/1165 – Report – *A policy-neutral rewrite of the Social Security Act 1964*, dated 15 December 2017
- REP/18/4/525 – Report – *Draft Cabinet papers: Progressing the Social Security Legislation Rewrite Bill*, dated 13 April 2018

You will note that the names of some officials are withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.

Some information is withheld under section 9(2)(ba)(i) of the Act as it is subject to an obligation of confidence, and if released, could prejudice the supply of similar information in the future. The greater public interest is in ensuring that such information can continue to be supplied.

Some information is withheld under section 9(2)(h) of the Act in order to maintain legal professional privilege. The greater public interest is in ensuring that government agencies can continue to obtain confidential legal advice.

As advised on 22 February 2023, the following documents were also identified to be in scope of your request, and are available in the public domain:

- *Regulatory Impact Statement: Policy changes proposed as part of the Rewrite of Social Security Act 1964*, dated 25 May 2015, available here: [www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/regulatory-impact-statements/policy-changes-proposed-as-part-of-the-rewrite-of-social-security-act-1964.pdf](http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/regulatory-impact-statements/policy-changes-proposed-as-part-of-the-rewrite-of-social-security-act-1964.pdf)
- *Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Social Security Legislation Rewrite Bill*, available here: [www.justice.govt.nz/assets/BORA-Social-Security-Legislation-Rewrite-Bill.pdf](http://www.justice.govt.nz/assets/BORA-Social-Security-Legislation-Rewrite-Bill.pdf)
- *Regulatory Impact Statement: Additional policy options proposed as part of the Social Security Act 1964 Rewrite*, available here: [www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/regulatory-impact-statements/additional-policy-options-proposed-as-part-of-the-social-security-act-1964-rewrite.pdf](http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/regulatory-impact-statements/additional-policy-options-proposed-as-part-of-the-social-security-act-1964-rewrite.pdf)

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](mailto:OIA_Requests@msd.govt.nz).

If you are not satisfied with this response regarding key decision documents on Supported Living Payment, 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](http://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 Policy**

# Cover Sheet for Cabinet/Committee Submissions

CAB101(12)web

## Minister's Office to Complete (please print)

**Title of Paper** (for regulations and orders, please copy exact title from the regulation or order as drafted by PCO)

Social Security Act Rewrite : Changes to legislation to improve frontline efficiency and enable modern service delivery

<b>Tick box...</b>	<input type="checkbox"/>	<b>CAB</b>	Cabinet <small>(weekly)</small>	<input type="checkbox"/>	<b>ERD</b>	Cabinet External Relations and Defence Committee <small>(fortnightly, alternates with TOW meeting)</small>
	<input type="checkbox"/>	<b>STR</b>	Cabinet Strategy Committee <small>(first Monday of each sitting period)</small>	<input type="checkbox"/>	<b>DES</b>	Cabinet Committee on Domestic and External Security Co-ordination <small>(as required)</small>
	<input type="checkbox"/>	<b>EGI</b>	Cabinet Economic Growth and Infrastructure Committee <small>(weekly)</small>	<input type="checkbox"/>	<b>SEC</b>	Cabinet Committee on State Sector Reform and Expenditure Control <small>(weekly)</small>
	<input checked="" type="checkbox"/>	<b>SOC</b>	Cabinet Social Policy Committee <small>(weekly)</small>	<input type="checkbox"/>	<b>CER</b>	Cabinet Committee on Canterbury Earthquake Recovery <small>(fortnightly)</small>
	<input type="checkbox"/>	<b>LEG</b>	Cabinet Legislation Committee <small>(weekly)</small>	<input type="checkbox"/>	<b>APH</b>	Cabinet Appointments and Honours Committee <small>(weekly)</small>
	<input type="checkbox"/>	<b>TOW</b>	Cabinet Committee on Treaty of Waitangi Negotiations <small>(fortnightly, alternates with ERD meeting)</small>	<input type="checkbox"/>	<b>CBC</b>	Cabinet Business Committee <small>(during non-sitting weeks as required)</small>

**Date of meeting:** 3 / 6 / 2015

☐ Round Robin

**Classification:**

(default: In Confidence)

In Confidence

**Portfolio:** Social Development

**Department:**

(mark "N/A" if written by Minister's office)

Ministry of Social Development

**Contact name:** Leah Asmus

**Extn:** 9807

## Cabinet Office to Complete

Date/time received in Cabinet Office: (or name of referring committee)

Identifier and Number:

<b>Timeliness:</b>	<b>No. of pages:</b>	<b>Exec Summary:</b>	<b>Enveloping</b>	
<b>B</b> <b>L</b>		<b>Y</b> <b>N</b> <b>N/A</b>	<b>Departments:</b>	<b>Ministers:</b>
			<b>Y</b> <b>N</b>	<b>Y</b> <b>N</b>
<b>Unjustifiable breach of 28-day rule:</b>	<b>AO:</b>	<b>Reviewer:</b>	<b>Attachment/s:</b>	
<b>Y</b> <b>N</b> <b>N/A</b>			<b>Y</b>	<b>N</b>
<b>Registry date and time in:</b>	<b>Registry date and time out:</b>		<b>Comments:</b>	

Chair  
Cabinet Social Policy Committee

## **SOCIAL SECURITY ACT REWRITE: CHANGES TO LEGISLATION TO IMPROVE FRONTLINE EFFICIENCY AND ENABLE MODERN SERVICE DELIVERY**

### **Proposal**

- 1 In June 2013 Cabinet agreed the Social Security Act 1964 (the Act) be rewritten so that it is more coherent, accessible, readable and easier to understand. Cabinet also asked that the rewrite consider a small number of policy changes and proposals to mitigate human rights risks arising from re-enacting existing policy [CAB Min (13) 21/6 refers].
- 2 I have a package of proposals to amend the Act to increase clarity, consistency, efficiency, to simplify processes and mitigate human rights risks. This will free up case manager time currently spent administering benefits for other activities, such as helping clients into employment.

### **Executive summary**

- 3 The Act is over 50 years old and has had multiple, and piecemeal, amendments and reforms making it hard to follow and risky to continuously amend. Rewriting the Act will make the legislation more accessible and understandable.
- 4 I have also taken the opportunity to include a small number of small policy changes aimed at removing barriers to front-line efficiency and to support modern service delivery.

#### *Supporting more efficient and effective use of redirections of benefit payments*

- 5 Redirections are a useful tool to assist clients to budget their benefit, ensuring that essential needs are paid as a priority. Currently redirections can only happen when there is a good reason to do so (known as "good cause"), requiring individual decisions based on a client's individual circumstances. Consent to a redirection can be withdrawn at any time by the beneficiary, which can result in increased administration and inefficient use of this tool. In limited cases, a redirection may be made without a client's consent.
- 6 I propose to:
  - introduce a regulation making power to identify specific client circumstances in which redirection can be compulsorily applied. Clients who are social housing tenants are the first circumstance I have identified for compulsory redirection to cover social housing rent. The proposed power would allow other circumstances to be identified in regulations in the future where there is a clear case for intervention to ensure positive outcomes for clients.

#### *Updating Orphan's and Unsupported Child's Benefit legislation*

- 7 Some children cannot be supported by their parents due to family breakdown, parental illness, incapacity or death. Orphan's Benefit and Unsupported Child's Benefits provide weekly financial support for those children, paid to the caregiver.

8 I propose to:

- merge Orphan's and Unsupported Child's benefits, and:
  - name the newly merged benefit *Supported Child's Payment*
  - align the policy settings so that step-parents will not be eligible for the Supported Child's Payment (they are currently eligible for Orphan's Benefit but not for Unsupported Child's Benefit), with grandparenting provisions for step-parents currently receiving Orphan's Benefit
- include a separate purpose statement in the rewrite Act for the newly merged benefit emphasising it is to be used to meet the child's needs.

#### *Changes to the Emergency Benefit provisions*

9 Emergency Benefit enables support to be provided to people who do not fit the eligibility criteria for other statutory benefits, but are in hardship and genuinely need financial assistance.

10 I propose to:

- rename the benefit as the *Exceptional Circumstances Benefit* to more accurately reflect its purpose
- make it clear that the maximum rate payable is that of the analogous main benefit under the Act (so would not include the higher New Zealand Superannuation or Veteran's Pension rates)
- align with other statutory main benefits by introducing discretion to apply part-time or full-time work obligations or work preparation obligations and associated sanctions to a person receiving Emergency Benefit, where the Chief Executive determines they have capacity to meet such obligations
- allow both parents in split care<sup>1</sup> situations (as distinct from shared care) to be eligible for Sole Parent Support, rather than the current work around that pays the other parent Emergency Benefit. On Sole Parent Support, a client will be expected to look for part-time work or prepare for work, depending on the age of their youngest dependent child.

#### *Support for the Investment Approach*

11 The Investment Approach aims to provide a more complete picture of the benefit system by making the life-time costs and key cost drivers transparent. This informs decisions about where to invest in employment and work-readiness services to support people who are most at risk of long-term benefit receipt to become less dependent on the welfare system.

12 I propose to:

- reflect the Investment Approach in the overarching purpose statement of the Act. This should assist in any human rights challenges arising from investment being made in some people and not others, based primarily on risk of long-term benefit receipt.

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<sup>1</sup> Split care arises where parents are living apart and each parent has care of at least one child of the relationship and both apply for Sole Parent Support.

*Human rights matters arising from the re-enactment of existing legislation*

- 13 Social security legislation is inherently discriminatory as it targets limited assistance to those who need it most – but that does not necessarily mean that it is inconsistent with the New Zealand Bill of Rights Act 1990 (NZBoRA), if the limitations can be justified.<sup>2</sup>
- 14 There are two provisions in the Social Security Act that may be inconsistent with human rights legislation, and are unlikely to be able to be justified. I propose to:
- remove the unused and outdated provision Emergency Benefit to be granted on the condition that the person complies with requirements to undergo medical or other treatment
  - retain the advantageous provisions for people who are totally blind to allow more time to consider the issue of the additional costs of disability. I met with individuals from the Disabled People's Organisations<sup>3</sup> to inform my thinking on this issue.

**Background to the rewrite of the Social Security Act**

- 15 Social security is a fundamental right enshrined in legislation that should be accessible and easy to understand for all New Zealanders. The Act is over 50 years old and has had multiple, and piecemeal, amendments and reforms. It is no longer accessible, coherent or easy to understand and it is doubtful that a lay-person could successfully understand and navigate the Act in its present form.
- 16 The rewrite will modernise the language, address structural issues and consistency, re-number the provisions and re-enact it in a more accessible and understandable form, without changing its substance.
- 17 I intend to introduce the Bill rewriting the Act by December 2015 for referral to the Social Services Committee for consideration. My expectation is that the Bill will be passed in the third quarter of 2016.
- 18 As part of the rewrite process, Cabinet agreed that I establish an expert reference group to provide advice and comment as the rewrite progresses. My officials are looking at options for testing the draft rewrite legislation with a small group of experts prior to introduction. I expect this group would include both legal specialists and those with a strong "user" perspective. As the rewrite is not about making significant policy change, the expert review will focus on usability and accessibility, as well as ensuring that there are no unintentional consequences from the redrafting process.
- 19 If necessary, I will seek the permission of the Attorney-General in respect of the release of draft legislation outside the Crown in accordance with Cabinet Circular CO (14) 4.

<sup>2</sup> Section 5 of the NZBoRA states "Subject to section 4, the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

<sup>3</sup> The seven national Disabled People's Organisations are Disabled Persons Assembly NZ Inc.; People First NZ Inc.; Deaf Aotearoa NZ Inc.; Association of Blind Citizens of New Zealand; Balance New Zealand; Deafblind NZ Inc.; and Ngāti Kāpo o Aotearoa Inc.

**The policy changes included in the rewrite are aimed at removing legislative barriers to frontline efficiency and modern service delivery**

20 Cabinet invited me to report back on six policy areas:

- providing support for redirection of benefit payments and use of payment cards
- changes to Orphan's Benefit and the Unsupported Child's Benefit
- aligning obligations and sanctions for the Emergency Benefit with other main benefits
- considering the way that income is assessed and charged against benefits
- removing requirements for notices to be delivered by letter
- legislative support for the Investment Approach.

**Supporting more efficient and effective use of redirections of benefit payments and the use of payment cards**

*What are redirections of benefit payments?*

- 21 Redirection of benefit payment is when part or all of a benefit is paid to another person or organisation instead of the client. This is distinct from deductions such as Child Support, made by the Ministry of Social Development (MSD) in accordance with other statutes. Redirection of benefit can only occur when there is a good reason to do so (known as "good cause") based on the client's individual circumstances.
- 22 Currently the Act gives the Chief Executive discretion to redirect a client's benefit "with or without the consent of the beneficiary" where there is good cause in three situations:
- where they have insufficient capacity (to understand the consequences of their decision)
  - to pay their lawful debts or other liabilities
  - to or for the benefit of their spouse or partner or dependent children.<sup>4</sup>
- 23 Redirections are a useful tool to assist clients to budget their benefit, ensuring that essential needs are paid as a priority.<sup>5</sup> They aid financial management and literacy, reduce the need for hardship assistance and are a mandatory component of the money management for Youth Service clients to pay accommodation and utility bills.
- 24 Good cause is not defined in legislation but is interpreted as a relatively high threshold requiring that there is something about the client's circumstances that overrides the statutory requirement that a benefit is inalienable (i.e. paid to, or on account of them, directly). Agreement between the beneficiary and another party is not sufficient in itself to establish a redirection – good cause is also needed. Where consent is obtained for the redirection the client can withdraw that consent at any time, which can lead to increased administration and ineffectual financial management. Redirection without the client's consent is rarely applied.

<sup>4</sup> Section 82(3): Payment of benefits.

<sup>5</sup> At the end of November 2014, 12% of all clients have a redirection of benefit payment in place. Two thirds of these have only one redirection, and 4% have four or more redirections. Over half of redirections are for accommodation to both Housing New Zealand (42%) and private landlords (18%). The next largest category is for power which includes electricity and gas (16%).

*I have issued Ministerial Direction on redirection of benefit payments*

- 25 On 17 March 2015 I issued a Direction under the Act to the Chief Executive of MSD providing clarity on the circumstances that should generally be considered to meet good cause and guidance where discretion may be exercised to make a redirection. These circumstances include social housing tenants and other vulnerable clients.
- 26 The Ministerial Direction does not remove the need for the Chief Executive to exercise discretion in each individual case to determine whether or not to redirect benefit payments.

**Enabling specific circumstances to be identified where redirection is compulsory**

- 27 I propose to future proof the legislation by introducing an enabling provision to support the effective administration of redirections. The new provision would allow specific client circumstances to be identified where redirection of benefit to pay for certain essential costs would be compulsory. In these circumstances there would be no requirement to obtain the clients consent and the client would not be able to opt out or cancel the redirection.
- 28 I propose to achieve this by including a regulation making power in the Act, with the details of the specific circumstances (including exceptions) being set out in regulation. The power would allow other circumstances to be identified in regulations in the future where there is a clear case for intervention to ensure positive outcomes for clients.
- 29 As the social housing agency under the Housing Restructuring and Tenancy Matters Act 1992, MSD is now the single purchaser of government-funded social housing. Its role is to provide support for people with serious housing needs for the duration of their need, integrating housing assistance with other social assistance delivered by MSD. Work on the Social Housing Reform Programme has highlighted that the redirection provisions would operate better for providers, MSD and tenants if they could be compulsorily applied to all social housing tenants in receipt of benefit.
- 30 I intend to identify social housing tenancies as the first circumstance through the regulations. Social housing clients are particularly vulnerable having been assessed as 'at risk' or as having a 'serious housing need'. This approach will provide security of tenure and tenancy sustainability as well as a reduced risk of falling behind in their rent, and incurring bank charges such as dishonour fees. I consider the advantages of ensuring rent is paid and the tenancy is secure outweigh any perceived lack of choice clients have to manage their own finances.
- 31 Having regulations defining circumstances, rather than broad administrative discretion to make compulsory redirection in individual cases, provides greater transparency and consistency. It gives Cabinet the ability to make decisions about the specific client circumstances to be identified for compulsory redirection, and all other details.

*Impacts*

- 32 MSD expect few existing social housing clients will notice any change from the introduction of automatic redirections as this proposal largely confirms current practice and reinforces the Direction I recently issued. The majority of social housing tenants who also receive a benefit have a redirection for their rent in place already.
- 33 Social housing providers will be able to rely on regular rent payments for as long as the tenant receives a benefit. They will be able to build this reduced risk into their business and operating models. There are no additional IT costs to implement automatic redirection of rent

for social housing clients as the infrastructure is already in place and most clients already have a redirection. Compulsory redirection will reduce administration costs for providers and MSD, and compliance costs for clients as no consent form would be required.

#### *Client review rights*

- 34 I propose the Act be amended to provide review and appeal rights in respect of a decision that a client meets the specific client circumstances identified in regulations for compulsory redirection of benefit payments.

#### **The use of Payment Cards**

- 35 MSD's current use of payment cards is limited to two types of payments: hardship assistance and as part of money management in the Youth Service. In these situations the payment card can only be used at approved suppliers. Essentially, the money on the payment card is ring-fenced for specific costs or for use at specific suppliers in order to control how the money on the card is spent.
- 36 The Act currently includes a wide discretion as to the method of paying benefits, except for Youth Service clients who are under prescriptive money management. I intend to maintain this discretion in the rewrite Act. If in the future, the payment card could operate like a debit card for example, the legislation is flexible enough to support paying a benefit in this way. However, widespread use of the payment card (as it currently operates using approved suppliers) for all or part of a person's benefit would not be appropriate under this discretion. This would amount to money management and would require specific approval and legislative change.

#### **Updating Orphan's and Unsupported Child's Benefit legislation**

- 37 Orphan's and Unsupported Child's Benefit provide weekly financial support towards the cost of caring for a child whose parents cannot provide care or support due to family breakdown (Unsupported Child's Benefit) or due to parental illness, incapacity, or death of the parents (Orphan's Benefit). Although paid to the caregiver, the legislation requires it to be applied towards the "maintenance or education of the child" or otherwise for the child's benefit.<sup>6</sup> These benefits are paid to around 9,000 caregivers looking after approximately 13,000 children.<sup>7</sup>

#### **Simplifying the benefit system by merging the Orphan's and Unsupported Child's benefits**

- 38 Orphan's and Unsupported Child's benefit serve a similar purpose – providing weekly financial support towards the cost of caring for a child who is not the caregiver's own. The distinction between family breakdown, parental illness, incapacity or death of the parents is focused on the circumstances of the parents rather than the child and the support and caring arrangement in place. This is an arbitrary distinction given that almost all other settings are identical including rate, likely period of care and income test.
- 39 I therefore propose to merge the Orphan's Benefit and Unsupported Child's Benefit, to make the benefit system simpler and easier to understand. There are two areas where decisions are required following the merger of the two benefits.

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<sup>6</sup> Section 31: Orphan's benefit and unsupported child's benefit to be used for benefit of child.

<sup>7</sup> All figures quoted in the Orphan's and Unsupported Child's Benefit sections are as at the end of September 2014.

*The name for the newly merged benefit should reflect the purpose of the payment*

- 40 The name of a benefit should give the lay-person a fair idea what the payment is for. I have looked to name the newly merged benefit in line with the purpose of the payment to make it easier for people to understand and remove potential confusion.
- 41 I propose to name the merged Orphan's and Unsupported Child's benefit as the *Supported Child's Payment* – focusing on the current care arrangement and positively stating that the child is supported. This option also more clearly signals that the payment is for the child.

*Defining who can receive the Orphan's and Unsupported Child's benefit on behalf of a child*

- 42 Generally the State should not intervene when a parent is available to provide care for children and has an obligation to do so. Nor should the State pay people to look after children they are legally responsible for. The Act currently specifies *natural, adoptive parent, or step-parent* are excluded from receiving Unsupported Child's Benefits but step parents are not excluded from receiving the Orphan's Benefit. The same principle should apply to Orphan's Benefit.
- 43 Step-parents can receive the same assistance as natural parents for children in their care. Children can be included in their benefit giving them access to the Family Tax Credit, increased maxima for Accommodation Supplement, and hardship assistance if they meet the criteria. If they are working and not on a benefit they can access the Working for Families assistance (tax credits) and Accommodation Supplement if they meet the criteria.
- 44 I propose that step-parents should not be able to receive the newly merged benefit. To ensure there are no 'losers' I propose to grandparent entitlement for current step-parents receiving Orphan's Benefit until they are no longer eligible for the benefit. The cost of grandparenting will be negligible.<sup>8</sup>
- 45 New Zealand has Reciprocal Agreements with 10 countries.<sup>9</sup> Two such agreements, with the Republic of Ireland and the Hellenic Republic (Greece), include Orphan's Benefit. As part of working through the transitional arrangements associated with the changes proposed in this paper, MSD will work through the implications for the Agreements that provide for the Orphan's Benefit and any recipients that could be impacted.<sup>10</sup>

#### **Allow a settling-in period for new care arrangements**

- 46 As part of this package, I intend to seek Cabinet approval to create a new exemption to work preparation and work obligations that allows for a short settling-in period for new Supported Child Payment care arrangements. This does not require any change to the primary legislation, as exemptions are set out in regulations.<sup>11</sup>

<sup>8</sup> MSD cannot accurately estimate how many clients might be grandparented as systems only started recording whether the caregiver was a step-parent in 2011. Since then only 5 step-parents have been granted Orphan's Benefit. Given there are fewer than 400 Orphan's Benefit caregivers in total, the number of step-parents who will be covered by grandparenting measures will be very low.

<sup>9</sup> Agreements help former residents of one country access certain benefits and pensions under the other countries social security system.

<sup>10</sup> Currently no one is receiving Orphan's Benefit under a Reciprocal Agreement.

<sup>11</sup> Social Security (Exemptions under Section 105) Regulations 1998.

## **Providing stronger signals that the Supported Child Payment is to be used to meet the child's needs**

- 47 Children supported by these benefits are a vulnerable group and may not be fully aware of what supports are available to them. MSD has considered how best to signal that the Supported Child's Payment is for the benefit of the child. I propose to add a specific purpose statement to the Supported Child's Payment provisions. This will provide a strong upfront message and complement the current provision that requires these benefits to be used for the maintenance or education of the child or for their benefit. This lines up with the proposed new name for the newly merged benefit, Supported Child's Payment.

## **Changes to the Emergency Benefit provisions**

- 48 An Emergency Benefit may be granted to a client who is not eligible for another benefit<sup>12</sup> and is in hardship because they cannot earn enough to support themselves and their dependants.<sup>13</sup> The reason they cannot support themselves determines the analogous benefit<sup>14</sup> which in turn sets the maximum rate of the benefit payable. For example a client who meets all the qualifying criteria for Supported Living Payment except the residency requirement (i.e. hasn't lived in New Zealand continuously for 2 years) would be granted Emergency Benefit at the Supported Living Payment rate.

## **Renaming Emergency Benefit to Exceptional Circumstances Benefit**

- 49 Emergency Benefit is the only main benefit that has not been recently reformed and renamed. The use of the word "emergency" creates the impression that Emergency Benefit is only payable in an emergency such as following a natural disaster. In fact, this benefit is paid in a diverse range of circumstances, and in some cases payments continue over an extended period.
- 50 I would like to take this opportunity to rename it *Exceptional Circumstances Benefit* to better reflect the purpose of the benefit – to financially support people who cannot qualify for any other benefit due to their individual circumstances. The term "exceptional circumstances" signals that there is something exceptional in the client's individual circumstances that mean they do not qualify for any other benefit, but still need financial assistance.

## **The maximum rate of Emergency Benefit paid should be a main benefit rate under the Social Security Act**

- 51 A majority (63%)<sup>15</sup> of Emergency Benefit recipients are aged 65 years and over and receive it because they do not meet the residence criteria for New Zealand Superannuation or a Veteran's Pension (and are in financial hardship). The analogous benefit rate in these circumstances is the appropriate working age main benefit – generally Jobseeker Support or Supported Living Payment.
- 52 However, in the past Emergency Benefit has been granted at a New Zealand Superannuation rate, which is higher than the rates for all other benefits.<sup>16</sup> A judicial ruling from 2004

<sup>12</sup> This includes New Zealand Superannuation or a Veteran's Pension.

<sup>13</sup> An Emergency Benefit can also be granted, in the exercise of discretion, instead of or in substitution for a Supported Living Payment, Sole Parent Support, or Jobseeker Support.

<sup>14</sup> The analogous benefit is the statutory benefit that best fits the client's reason(s) that prevents them from earning a sufficient livelihood.

<sup>15</sup> All data in the Emergency Benefit section are as at the end of January 2015.

<sup>16</sup> Veteran's Pension is also paid at a higher rate.

confirmed that in rare cases, if the reason for the applicant's hardship is age, the law currently allows this.<sup>17</sup>

- 53 Allowing people who do not qualify for New Zealand Superannuation or Veteran's Pension to qualify for the same rate through Emergency Benefit effectively undermines the eligibility requirements for these benefits. Those requirements include 10 years residence in New Zealand, of which 5 years must be after age 50.
- 54 I propose that the Act be amended to clarify that the analogous rate of benefit that is used to determine the maximum rate of Emergency Benefit must be that of a main benefit under the Act (so by definition would not include New Zealand Superannuation or Veteran's Pension). Although no one is currently receiving Emergency Benefit at a New Zealand Superannuation or Veteran's Pension rate, and payment systems no longer allow the higher rate to be set, I will include grandparenting provisions to protect any current recipients if necessary as part of the transitional arrangements for the rewrite.

### **Aligning work obligations and sanctions for Emergency Benefit**

- 55 Unlike other benefits, Emergency Benefit clients do not have default work or work preparation obligations (specifically set out in the Act) due to the discretionary nature of the benefit and the wide range of circumstances it can be granted for. Case managers can apply conditions to the grant of an Emergency Benefit that mirror obligations in the analogous benefit. In practice conditions of grant are rarely applied, as there is no automated system to support the discretionary process and insufficient legislative support for sanctioning non-compliance so the benefit must be cancelled (as the grant was conditional), or re-granted at a manually calculated rate.
- 56 The lack of effective work obligations for Emergency Benefit clients means some people on Emergency Benefit who can work are not supported to do so. This is inconsistent with the purpose of the Act. I therefore propose to make sure that those clients who can work are supported to do so and have obligations aligned to those of other beneficiaries.

### *Introducing discretion to apply work or work preparation obligations, and associated sanctions, for Emergency Benefit clients where they have capacity*

- 57 I propose to introduce discretion to apply work or work preparation obligations and associated sanctions to working-age clients receiving Emergency Benefit where the Chief Executive determines they have capacity to seek, undertake, and be available for part-time or full-time work or to prepare for work. This would enable other benefit settings to be applied to these clients, such as target hours of work, obligation failures and the graduated sanctions regime, and the 50 percent protection of benefit payment for parents. Where part-time or full-time obligations are activated, clients would be streamed into Work Focused Case Management or Work Search Support (and allocated to a case manager in accordance with the prioritisation rules).
- 58 Given that work obligations are not appropriate for a large number of Emergency Benefit clients, these changes support a work focus for Emergency Benefit clients who can work, while retaining support for those who cannot. This will ensure equity across the benefit system. The Act already includes a similar approach for clients receiving Jobseeker Support on the ground of a health condition, injury or disability, who are assessed to determine whether they have capacity to meet part-time work obligations.<sup>18</sup>

<sup>17</sup> *Pillay v Chief Executive of the Ministry of Social Development* (HC) CIV 2003 485 2626.

<sup>18</sup> Section 88F(2) and (4): Jobseeker support: obligations for beneficiaries.

- 59 For this change to be fully effective it should be supported by automated systems to administer the work obligations and sanctions. The cost of changing the current IT system is estimated at \$506,000 and outlined in the financial implications section of this paper. However, even if manual systems continue in the short to medium term, the process for applying work and work preparation obligations will be simpler as obligations will not need to be set up as conditions of grant, and the associated sanctions and recompliance will no longer require cancellation and re-granting of Emergency Benefit.

### **Allowing both parents in split care situations to receive Sole Parent Support**

- 60 Split care arises where parents are living apart and each parent has the care of at least one child from the relationship, and both apply for Sole Parent Support. Since 1991 only one parent can qualify for Sole Parent Support (or its predecessor, the Domestic Purposes Benefit for solo parents) unless there is a Court order for day-to-day parenting involving split care.<sup>19</sup>
- 61 Split care is distinct from shared care where two parents who are living apart share the day-to-day care of a single child. In this situation only the parent deemed to have the greater responsibility for the child can have the child taken into account when determining their entitlement to benefit assistance.<sup>20</sup> The rationale behind the shared care distinction, is that one parent should be caring for the child and that the other parent should be available to work full-time rather than being reliant on the benefit system. I am not proposing any changes to the regime for shared care. Any move away from the current approach to shared care would have significant fiscal implications and could impact on work incentives.
- 62 In split care, if one of the parents is already receiving Sole Parent Support the other cannot. If both parents apply at the same time MSD must determine who the main caregiver of the children was immediately before they separated. There is little justification for this 'first in the door' approach and it can be difficult to decide which parent should receive Sole Parent Support.
- 63 For the parent who cannot receive Sole Parent Support, and where they cannot meet the obligations of Jobseeker Support and are in hardship and are not unable to earn a sufficient livelihood for themselves or their dependents, they are generally granted Emergency Benefit (in the form of Emergency Maintenance Allowance)<sup>21</sup> analogous to Sole Parent Support. At the end of January 2015, 617 clients were receiving Emergency Maintenance Allowance on the basis of split care accounting for 54 percent of all Emergency Maintenance Allowance clients. The net result is that both parents receive a benefit, paid at the same rate. This largely circumvents the original rationale for not allowing both parents to be paid Sole Parent Support.
- 64 I propose to amend the Act to remove the split care restriction in Sole Parent Support. This would ensure statutory entitlement to benefit for both parents and more financial certainty for their families, rather than relying on discretion.
- 65 A positive effect of this proposal is that appropriate work or work preparation obligations would be applied to both parents based on the existing rules and infrastructure for Sole Parent Support.
- 66 This change could draw greater visibility to the availability of benefit in split care situations (as it would be more explicit in the legislation) and could mean some people arrange their

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<sup>19</sup> Section 20C: Sole parent support: split custody.

<sup>20</sup> Section 70B: Entitlement to benefit in cases of shared custody.

<sup>21</sup> Emergency Maintenance Allowance is an administrative subset of Emergency Benefit paid to sole parents.

circumstances in order to receive a benefit. This can already happen now with one parent receiving Sole Parent Support and the other Emergency Maintenance Allowance.<sup>22</sup>

- 67 MSD expect Sole Parent Support numbers to increase at the implementation of this change as split care clients receiving Emergency Maintenance Allowance are transferred to Sole Parent Support. Emergency Benefit numbers will go down accordingly.
- 68 As noted in the financial implications section of this paper, MSD estimates that the overall impacts of this policy change will be fiscally neutral, or possibly slightly reduce benefit expenditure. Work or work preparation obligations automatically apply to clients receiving Sole Parent Support, and could see some clients moving into work and receiving income at a level that would abate their benefit.

### **Reviewing the way that income is assessed and charged against benefits**

- 69 The benefit system is designed to provide targeted financial assistance to families and individuals at the time they need it. The approach to income is fundamental to the design of the benefit system as it is used to determine eligibility for certain benefits<sup>23</sup>, when a person's benefit should start, and how much they receive each week.
- 70 When people have income from other sources such as paid work, their assistance may be reduced or stopped. Clients have a duty to tell MSD of any change in their circumstances that will affect their benefit rate – such as starting work or changes in income.<sup>24</sup>

*MSD processed more than 1.3 million income-related actions for beneficiaries and non-beneficiaries in 2014*

- 71 The Simplification Project<sup>25</sup> will transform MSD's service delivery model to provide simpler transactional services. The aim is for less time spent on repetitive tasks and paperwork and more time helping clients to better social outcomes. The rewrite supports the Simplification Project by removing legislative barriers to efficiency and modern service delivery.
- 72 This paper is focused on changes to primary legislation necessary to support the aims of Simplification. To date officials have only identified one potential area for change to the way income is treated in the primary legislation – the stand-down and associated waiver provisions.<sup>26</sup> To ensure that the approach to stand-downs takes into account the revised benefit targets, proposals related to stand-downs and waivers will be presented in the context of advice on the Government's manifesto commitments.
- 73 Most of the detail relating to the treatment of income is in delegated legislation (regulations and Ministerial Directions). My officials are exploring the potential for efficiency gains through changes to these instruments. I will report on proposals in this regard, at the time I report on consequential changes to regulations arising from the rewrite.

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<sup>22</sup> The risk is partly mitigated by the current voluntary unemployment stand-down of 13 weeks for work obligated clients who quit their job, or are dismissed, without a good and sufficient reason.

<sup>23</sup> In respect of Jobseeker Support, Youth Payment, and Young Parent Payment.

<sup>24</sup> Section 80A: Duty to advise of change of circumstances affecting entitlement to benefit.

<sup>25</sup> The Business Case for the Simplification Project was agreed by the State Sector Reform and Expenditure Control Cabinet Committee (SEC) on 10 December 2014.

<sup>26</sup> A "stand-down" is the period between the date someone becomes eligible for benefit and the date payment of the benefit actually commences. All applicants for benefit are subject to a stand-down for one or two weeks depending on their previous income, unless they qualify for a waiver where the stand-down is not imposed.

## **Supporting greater use of electronic communications**

- 74 When the Act was drafted in 1964, communications were almost invariably in writing and delivered by post. Some of the provisions in the Act still reflect that time of limited communication options. The Electronic Transactions Act 2002 allows for electronic technology to replace written communication (paper), where this is consented to and the communication achieves the same effect (functionally equivalent to the present legal requirements).
- 75 MSD officials are working with the Parliamentary Counsel Office to ensure the drafting of the rewrite is up-to-date and permissive across the full range of communication methods. No Cabinet decision is required to allow this work to proceed.

## **Support for the Investment Approach**

- 76 An "investment" approach to welfare was introduced in 2013 as part of the recent welfare reforms. The Investment Approach uses actuarial valuations to help MSD to identify where to target support based on how long a person is expected to remain on benefit, and to understand which supports and services will make the biggest difference in improving client outcomes. In March 2014, I issued the Employment and Work Readiness Assistance Programme to guide the granting of special assistance for people who may be at risk of long-term benefit receipt in order to improve client outcomes. However, there is little visibility of the Investment Approach in primary legislation.

### *The Investment Approach will be supported in a rewritten purpose statement*

- 77 The current purpose statement in the Act<sup>27</sup> includes reference to providing services to encourage and help young persons to move to education, training, and employment recognising them as an 'at risk group'. There is no such reference to working age people at risk of long-term benefit dependence. I am taking the opportunity to embed the objectives of the Investment Approach in the purpose statement of the Act as part of redrafting. This will support decisions made by MSD to provide employment and work readiness assistance to individuals and groups who are most at risk of long-term benefit receipt.
- 78 Reflecting the Investment Approach in the purpose provisions in the Act should assist with defending policy against any human rights challenges arising from investment being made in some clients and not others. The objectives of the approach will be more clearly prescribed by law, and so should provide the framework for justifying any prima facie discrimination.
- 79 MSD officials have instructed Parliamentary Counsel Office to draft a new purpose statement incorporating the intent of the Investment Approach.

## **Human rights matters arising from the re-enactment of existing legislation**

- 80 Prior to a Bill being introduced I am required to indicate that it complies with the rights and freedoms contained in the NZBoRA and Human Rights Act 1993. My officials have identified two areas of the Social Security Act that may need to be changed, as the provisions if re-enacted may not be able to be justified:
- a provision which allows MSD to grant an Emergency Benefit on the condition that the beneficiary complies with requirements to undertake medical or other treatment and
  - advantageous provisions for people who are totally blind.

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<sup>27</sup> Section 1A: Purpose.

### Provision allowing MSD to require people to undergo medical treatment

- 81 There is an unused provision in the Act which gives the Chief Executive discretion to grant an Emergency Benefit on the condition that the beneficiary complies with the Chief Executive's requirements in regard to undertaking medical or other treatment. This is likely to be inconsistent with the right to refuse to undergo medical treatment set out in section 11 of the NZBoRA. The provision was introduced as part of the 1938 Act.
- 82 It is unlikely the limit on the right to refuse medical treatment would be justifiable, so I propose that this provision be removed from the Act.
- 83 Today there are other, more appropriate, legislative mechanisms to support medical treatment being provided where a person does not have capacity to make decisions, or where they may constitute a threat to the public if not treated. For example under the Mental Health (Compulsory Assessment and Treatment) Act 1992.

### Advantageous provisions for totally blind people

- 84 Provisions in the Act giving preferential treatment to people who are totally blind, compared with the treatment of other people with other forms of disability or health condition, may be inconsistent with the NZBoRA. The provisions include:
- **Automatic eligibility to benefit** – A totally blind person can be granted Supported Living Payment<sup>28,29</sup> without having to establish that they are permanently<sup>30</sup> and severely limited in their capacity to work. All other people can only access Supported Living Payment if they have proven this limited capacity to work.
  - **No 'hours of work' test** – Under the criteria for being severely limited in capacity for work, people who are able to regularly work 15 hours a week or more in open employment are not eligible for Supported Living Payment except if they are totally blind. There will be some Supported Living Payment recipients who are totally blind and working full time.
  - **Additional income exemption**<sup>31</sup> – Supported Living Payment clients can have \$20 of personal income (earned by their own efforts) exempt from the income test, with a further discretionary exemption for clients with "severe disablement". Totally blind clients have all personal income exempt – so they can still receive a full rate of benefit despite receiving high wages or salary.
  - **Blind subsidy**<sup>32</sup> – An additional allowance of 25 percent of their average earnings (from any occupation) can be paid to a totally blind person who is receiving Supported Living Payment. There is a limit on the total income that can attract this allowance, known as the "blind subsidy".<sup>33</sup> There are no provisions similar to the blind subsidy for other severely disabled clients.
- 85 I met with individuals from the Disabled People's Organisations to inform my thinking on this issue. They explained that blind people fought for these provisions to meet some of the

<sup>28</sup> Section 40B(1)(a): Supported living payment: on ground of sickness, injury, disability, or total blindness: eligibility and ineligibility.

<sup>29</sup> References in this section to Supported Living Payment are to Supported Living Payment on the ground of sickness, injury, or disability or total blindness.

<sup>30</sup> Permanent for this purpose is defined in the Social Security (Supported Living Payments Benefit) Regulation 1998 as being for two years or more.

<sup>31</sup> Schedule 6(1) proviso (a) and (b) Rates of supported living payment.

<sup>32</sup> Section 40J: Supported living payment: subsidy on totally blind beneficiaries' earnings.

<sup>33</sup> As at 1 April 2015 these limits were \$18,140.72 a year or \$348.86 (gross) per week for clients who are married, in a civil union or de facto relationship and \$20,417.28 a year or \$392.64 (gross) per week for single clients.

additional costs of disability. These provisions have been successful in incentivising work for people who are totally blind, and mechanisms to meet the additional costs of disability should be made available to all disabled people.

- 86 I have considered this issue and decided to retain these provisions until some broader work is undertaken to better understand the additional costs of disability, existing mechanisms to meet these, and the responsibilities of the government, individuals and others to meet these. These provisions are very long-standing (pre-dating the 1938 Social Security Act), and provide additional support to a disadvantaged group. I acknowledge that as the provisions don't apply equally to all disabled people, they are likely to be inconsistent with the NZBoRA.
- 87 There is an opportunity to include some work on the additional costs of disability, existing mechanisms to meet these, and the responsibilities of the government, individuals and others to meet these costs as part of the revised Disability Action Plan. I intend to bring together a group of the relevant Ministers to discuss how we could approach this work, including the involvement of Disabled People's Organisations and other disability stakeholders. The process to identify new actions will start in June 2015.

## Consultation

- 88 The following agencies have been consulted in the preparation of this paper: the Ministries of Health, Education, Justice, Business, Innovation and Employment, and Pacific Island Affairs; the Ministry for Women, the Treasury, Te Puni Kōkiri, Accident Compensation Corporation and State Services Commission. Comments from these agencies have been incorporated into the paper. The Department of Prime Minister and Cabinet has been informed.
- 89 Officials have been working closely with the Law Commission, Parliamentary Counsel Office and Crown Law Office on the overarching design and structure of the rewrite Bill, consistent with the principles agreed by Cabinet, and will continue to do so.
- 90 I also met with individuals from the Disabled People's Organisations to inform my thinking about the approach to the provisions for the blind.

## Financial implications

- 91 Some of the proposals in this paper involve implementation costs. The total cost of IT changes required to give effect to the rewrite package is estimated at \$1.8 million. This figure is broken down for each of the proposals in this paper Table 1 below. The total cost is reduced by \$220,000, as there will be economies of scale from making all the IT changes together.
- 92 It should be noted that these costs are likely to be an overestimation, as they are based on current systems and:
- several core systems are moving to a simpler and more sustainable format this year; and
  - the changes are likely to be combined with other changes required to give effect to the Simplification Project and Government's manifesto commitments.

**Table 1: Indicative IT costings based on current systems**

Area of change	Proposal	Indicative IT costings
Orphan's Benefit and the Unsupported Child's Benefit	• merge Orphan's Benefit and Unsupported Child's Benefit and transition existing clients onto the new benefit	\$374,622
	• rename the newly merged benefit to Supported Child's Payment	\$410,449
	• create new 'settling-in' exemption	\$323,972
Emergency Benefit	• changing name of Emergency Benefit to Exceptional Circumstances Benefit	\$434,300
	• aligning obligations and sanctions for the Emergency Benefit with other main benefits	\$506,000
	<b>Cost of package if IT changes are made individually</b>	<b>\$2,049,343</b>
	<b>Cost of package if IT changes made together</b>	<b>\$1,829,343</b>

- 93 There will be other costs such as communications costs (including changes to application forms, brochures etc.) required due to changes to qualifications and obligations, and benefit names. All costs will be met or managed (for example by relying on manual systems in the short to medium term) within baseline without fiscal implications.
- 94 The proposal to allow both parents in split care situations to be eligible for Sole Parent Support is likely to be cost neutral or result in small savings. Clients receiving Sole Parent Support with part-time obligations (where the youngest child in their care is over the age of 5) will be eligible for streaming into active case management and are likely to receive more intensive support to find and retain employment, compared with other Emergency Benefit recipients who receive general case management. As Sole Parent Support clients there is a higher probability that a proportion of these clients will gain employment and have their benefit abated due to income earned.
- 95 A very small number of Emergency Benefit applications are declined due to not meeting the hardship test (3 declines in 2014), so removing the hardship criteria is not likely to result in large numbers being eligible for Sole Parent Support who were not eligible for Emergency Benefit.

### Human rights implications

- 96 Social security legislation is inherently discriminatory as it targets limited assistance to those who need it most - but that does not necessarily mean that it is inconsistent with the NZBoRA. Legislation that may limit the rights contained in NZBoRA, does not breach the NZBoRA if it can be reasonably justified. A final view on whether the rewrite Bill is consistent with the NZBoRA will be determined once the final Bill is drafted.

### *Supporting more efficient and effective use of redirections of benefit payments*

- 97 The proposal to allow for specific client circumstances to be identified for compulsory redirection of benefit payments, may appear to prima facie limit the right to be free from discrimination, including on the grounds of employment status.
- 98 The proposal that compulsory redirections apply to social housing clients is based on housing being an essential need. This proposal aims to reduce the risk of eviction or homelessness for social housing tenants, due to not being able to meet their rental commitments. Social

housing is allocated according to a client's eligibility for social housing, their housing need and their priority rating. Eligibility to social housing is limited to clients who are determined to be 'at risk' or 'in serious housing need'. Ensuring these clients maintain stable accommodation will have positive social and economic outcomes for this vulnerable group. In light of these reasons, the prima facie discrimination is likely to be justifiable.

- 99 Specific client circumstances will only be identified in regulations, where such an intervention would lead to positive outcomes for clients.

#### *Changes to the Emergency Benefit provisions*

- 100 The proposal to restrict the rate of Emergency Benefit payable to a main benefit rate may appear to prima facie limit the right to be free from discrimination, including on the basis of nationality or citizenship as many of the clients aged 65 and older were born overseas. However, this proposal also affects clients born in New Zealand who do not meet the residence criteria for New Zealand Superannuation or Veteran's Pension.
- 101 New Zealand Superannuation is a universal benefit available to people aged 65, and over, who meet the residency requirements. The residence criteria (10 years from age 20 and 5 years from age 50) reflect that a person who has been in New Zealand for this period or longer has made a contribution to New Zealand (as a worker, as a carer or contributor to their community etc.) and it is appropriate that they receive universal superannuation from age 65.
- 102 To allow some people aged 65 and over who don't meet the residency requirements to receive Emergency Benefit at the higher New Zealand Superannuation or Veteran's Pension rate undermines the eligibility criteria. As such the restriction proposed is likely to be justifiable.

#### *Human rights matters arising from the re-enactment of existing legislation*

- 103 The proposals to remove an outdated provision allowing MSD to grant an Emergency Benefit on the condition of complying with requirements as to medical or other treatment aims to improve consistency with NZBoRA and as such does not raise any further human rights concerns.
- 104 The human rights issues associated with retaining the provisions for people who are totally blind are discussed separately in this report.

#### **Legislative implications**

- 105 The changes in this paper require amendments to the Social Security Act 1964. I propose to introduce a Bill rewriting the Act by December 2015 for implementation starting late 2016 or early 2017. The rewrite Bill has a category 5 priority on the 2015 Legislation Programme (to be referred to a select committee this year).

#### **Making minor decisions**

- 106 As MSD, in conjunction with the Parliamentary Counsel Office go through the redrafting process officials will inevitably come across parts of the Act where the policy intention is not well supported, including previous drafting errors or omissions. To ensure that progress is not slowed down or impeded, and that Cabinet's time is not unnecessarily taken up, I ask that you authorise me to make technical or minor policy changes (including transitional arrangements)

required to finalise draft legislation in keeping with the overall policy aims of the rewrite. I will consult other Ministers as appropriate.

### **Regulatory impact and compliance cost statement**

- 107 The Regulatory Impact Analysis (RIA) requirements apply to this proposal. As such a Regulatory Impact Statement (RIS) has been prepared and is attached to this Cabinet Paper.
- 108 The Regulatory Impact Analysis Team (RIAT) has reviewed the RIS prepared by MSD and associated supporting material, and considers that the information and analysis summarised in the RIS meets the quality assurance criteria.
- 109 Although the conclusion in the RIS as regards the treatment of people who are totally blind is not in line with the proposals in the Cabinet paper, the RIS contains sufficient evidence and analysis to enable an informed decision to be made on this, as on other aspects of the proposed rewrite at the state. RIAT notes that further consideration will be given to this point in the context of the revised Disability Action Plan.

### **Gender implications**

#### *Updating Orphan's and Unsupported Child's Benefit legislation*

- 110 While Orphan's and Unsupported Child's benefit are gender neutral, they are paid to caregivers who are overwhelmingly female – 87 percent of all Orphan's and Unsupported Child's benefit caregivers are female.

#### *Changes to the Emergency Benefit provisions*

- 111 While the proposal to allow both parents in a split care situations to be eligible for Sole Parent Support is gender neutral, the overwhelming majority of clients receiving Emergency Maintenance Allowance in this situation are male (82%, 504) compared with female (18%, 113). The proposal is positive as it allows both parents to be treated the same.

### **Disability perspective**

- 112 There are no proposals that have disability implications. The disability perspective issues associated with the blind provisions are discussed separately in this report.

### **Publicity**

- 113 I will work with officials to consider options for publishing this paper on the Ministry of Social Development website.

### **Recommendations**

- 114 It is recommended that the Committee:

- 1 **note** that Cabinet invited me to report to the Cabinet Social Policy Committee with proposals for policy changes to include in the rewrite of the Social Security Act 1964, and proposals to mitigate any human rights risks that may arise from re-enacting the legislation [CAB Min (13) 21/6 refers];

**Supporting more efficient and effective use of redirections of benefit payments and the use of payment cards (pp 4-6)**

- 2 **agree** that the rewrite Act introduce a regulation making power to identify specific client circumstances where compulsory redirection of benefit payments is appropriate in order to ensure positive outcomes for clients;
- 3 **agree** that the Ministry of Social Development must redirect the benefits of the clients who fall within the description identified in such regulations enabled in recommendation 2 above, for the specified kinds of costs identified in those regulations;
- 4 **agree** that clients will have review or appeal rights in respect of a decision that a client meets the specific client circumstances identified in regulations for compulsory redirections of benefit payments;
- 5 **note** that beneficiaries in social housing tenancies will be the first circumstance identified in regulations for compulsory redirection of part of their benefit to pay their rent;
- 6 **note** there is a wide discretion as to the method of paying benefits, except as prescribed for money management for Youth Support Payment clients;
- 7 **note** the wide discretion as to the method of paying benefits will be retained in the rewrite Act;

**Updating Orphan's and Unsupported Child's Benefit legislation (pp 6-8)**

- 8 **agree** that Orphan's and Unsupported Child benefits be merged into a single benefit in the rewrite Act;
- 9 **agree** that the newly merged benefit be named *Supported Child's Payment*;
- 10 **agree** that step-parents will not be eligible to receive the newly merged benefit;
- 11 **agree** that step-parents who currently receive Orphan's Benefit be protected through grandparenting provisions;
- 12 **note** that a purpose statement will be introduced to the newly merged Benefit provisions to provide stronger signals that the payment is to be used to meet the child's needs;

**Changes to Emergency Benefit provisions (pp 8-11)**

- 13 **agree** that the Emergency Benefit be renamed the *Exceptional Circumstances Benefit*;
- 14 **agree** that the rewrite Act clarify that the analogous rate of benefit that is used to determine the maximum rate of Emergency Benefit must be that of a main benefit under the Act (so would not include New Zealand Superannuation or Veteran's Pension);
- 15 **note** that primary Emergency Benefit clients can have conditions of grant that are similar to the work or work preparation obligations of the analogous benefit, though in practice these conditions are rarely applied or enforced due to reliance on manual processes and insufficient legislative support for sanctioning non-compliance;
- 16 **note** that the current manual process for adding conditions of grant (described in recommendation 15) means that Emergency Benefit clients are treated inconsistently

from clients receiving statutory main benefits in terms of their expectations to look for or prepare for work;

- 17 **agree** that the rewrite Act introduce a discretion to apply part-time or full-time work test obligations or work preparation obligations, and the associated sanctions policy, to an Emergency Benefit client where the Chief Executive determines they have capacity to seek, undertake, and be available for part-time or full-time work or, if not, to prepare for work;
- 18 **agree** that the rewrite Act allow both parents in split care situations to be eligible for Sole Parent Support;

#### **Reviewing the way that income is assessed and charged against benefits (p 11)**

- 19 **note** that much of the detail relating to the treatment of income is in delegated legislation and that officials have only identified initial stand-downs and waivers as an area that could be changed in the rewrite Act;
- 20 **note** proposals related to stand-downs and waivers will be presented to you along with further advice on our manifesto commitments;

#### **Supporting greater use of electronic communications (p 12)**

- 21 **note** the rewrite will ensure the language used in the Act is modern and permissive across the range of communication methods;

#### **Support for the Investment Approach (p 12)**

- 22 **note** the rewrite Act will include the objectives of the Investment Approach in the overarching Purpose statement;

#### **Human rights risks arising from the re-enactment of existing legislation (pp 12-14)**

- 23 **note** that the Social Security Act 1964 includes an unused provision, allowing the Ministry of Social Development to grant a person an Emergency Benefit on the condition that the person complies with any requirements of the Chief Executive in regard to receiving medical or other treatment, that may be found in breach of human rights legislation;
- 24 **agree** to remove the provision concerning the ability to require medical or other treatment in the rewrite Act, to improve consistency with human rights legislation;
- 25 **note** that people who are totally blind are given preferential access to the Supported Living Payment and other financial incentives compared to other people, including people with other forms of severe disability, that may be found in breach of human rights legislation;
- 26 **note** that I met with individuals from the Disabled People's Organisations and they explained that these provisions are seen as a mechanism for meeting some of the additional costs of disability;
- 27 **agree** that the provisions applying to people who are totally blind be retained in the rewrite Act at this time;

- 28 **note** that there is an opportunity to include some work on the additional costs of disability, existing mechanisms to meet these, and the responsibilities of government, individuals and others in meeting these costs as part of the revised Disability Action Plan;

#### Next steps

- 29 **authorise** the Minister for Social Development in consultation with other Ministers as appropriate, to make technical and minor policy changes, including any consequential changes or transitional arrangements required, to finalise draft legislation in keeping with the overall aims of the rewrite;
- 30 **note** that Cabinet invited the Minister for Social Development to establish an expert reference group, and that my officials are preparing advice on options for testing the draft rewrite legislation with a small group of experts prior to introduction;
- 31 **invite** the Minister for Social Development to issue drafting instructions to the Parliamentary Counsel Office to give effect to these recommendations;
- 32 **note** that I will work with officials to consider options for publishing this paper on the Ministry of Social Development website;
- 33 **note** the Ministry of Social Development will manage the implementation costs associated with the proposals in this paper within current baselines.



Hon Anne Tolley  
Minister for Social Development

25 / 5 / 15

## Consultation on Cabinet and Cabinet Committee Submissions

### Certification by Department:

Guidance on consultation requirements for Cabinet/Cabinet committee papers is provided in the CabGuide (see Procedures: Consultation): <http://www.cabguide.cabinetoffice.govt.nz/procedures/consultation>

**Departments/agencies consulted:** The attached submission has implications for the following departments/agencies whose views have been sought and are accurately reflected in the submission:

The following agencies have been consulted: the Ministries of Health, Education, Justice, Business, Innovation and Employment, and Pacific Island Affairs; the Ministry for Women, the Treasury, Te Puni Kōkiri, Accident Compensation Corporation and State Services Commission.

**Departments/agencies informed:** In addition to those listed above, the following departments/agencies have an interest in the submission and have been informed:

The Department of Prime Minister and Cabinet has been informed.

**Others consulted:** Other interested groups have been consulted as follows:

Law Commission, Parliamentary Counsel Office, Crown Law, and individuals from the seven Disabled People's Organisations.

**Name, Title, Department:** Nic Blakeley, Deputy Chief Executive, Ministry of Social Development.

**Date:** 25/05/2015

**Signature**

### Certification by Minister:

Ministers should be prepared to update and amplify the advice below when the submission is discussed at Cabinet/Cabinet committee

#### The attached proposal:

*Consultation at Ministerial level*

- ☒ **has been** consulted with the Minister of Finance  
[required for all submissions seeking new funding]
- ☒ **has been** consulted with the following portfolio Ministers:
- ☐ **did not need** consultation with other Ministers

Tertiary Education, Skills and Employment; Social Housing; Health; Justice; Attorney-General; Youth Affairs; Senior Citizens; Veterans' Affairs; Disability Issues.

*Discussion with National caucus*

- ☐ **has been** or ☐ **will be** discussed with the government caucus
- ☒ **does not need** discussion with the government caucus

*Discussion with other parties*

- ☐ **has been** discussed with the following other parties represented in Parliament:
- ☐ Act Party ☐ Maori Party ☐ United Future Party
- ☐ Other [specify]
- ☐ **will be** discussed with the following other parties represented in Parliament:
- ☐ Act Party ☐ Maori Party ☐ United Future Party
- ☐ Other [specify]
- ☒ **does not need** discussion with other parties represented in Parliament

**Portfolio**

Social Development

**Date**

25/5/15

**Signature**

*[Signature]*

# Aide-mémoire



MINISTRY OF SOCIAL  
DEVELOPMENT  
TE MANATŪ WHAKAHIATO ORA

## Cabinet paper

**Date:** 12 February 2016

**Security Level:** Cabinet Sensitive

**For:** Hon Nicky Wagner, Minister for Disability Issues

**File Reference:** REP/16/2/117

### **Social Security Act Rewrite: Additional Policy Proposals - Advantageous provisions for people who are totally blind**

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**Cabinet Committee**

Social Policy

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**Date of meeting**

17 February 2016

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**Minister**

Hon Nicky Wagner, Minister for Disability Issues

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**Proposal**

The paper sets out three issues and presents options for how these issues should be dealt with in the rewrite of the Social Security Act. Relevant to the Disability portfolio are options to address:

- the advantageous provisions for people who are blind are likely to breach human rights legislation
- the discretion to exempt personal earnings of people with severe disablement from the benefit income test.

#### **Advantageous provisions for people who are blind are likely to breach human rights legislation**

*Option 1A: remove the "blind provisions" with grand-parenting provisions so no current recipient loses*

People who are blind get much more generous treatment on benefit than people with other serious disabilities.

- For example they can work full-time and get Supported Living Payment, with no reduction in their payment, no matter how much they earn.

Officials have found no justification for the more generous treatment of blind people – costs of working are higher for people with some other disabilities.

Blind people applying for a benefit after the change would be treated the same as other disabled people – those who are

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already receiving Supported Living Payment on the basis of being blind will retain the provisions through grand-parenting.

There is more appropriate and fair support that can meet the additional costs of disabled people who are working. These costs can generally be met through Disability Allowance, Support Funds and other employment support, including subsidies.

We recommend that you **support** option 1A: remove the "blind provisions" with grand-parenting provisions so no current recipient loses

*Option 1B: retain the "blind provisions"*

The provisions are long-standing – they have existed since 1924 – and advantage a group of disabled people.

If they are re-enacted through the Rewrite Bill they will continue to be lawful, despite the fact that they will probably be found to be inconsistent with human rights legislation.

We recommend that you **do not support** option 1B: to retain remove the "blind provisions".

**Discretion to exempt personal earnings of people with severe disablement from the benefit income test**

*Option 2A: remove the discretion*

The discretion for case managers to exempt some or all of the personal earnings of people with severe disability from the income test for benefit assistance requires judgements to be made about the severity of the person's disability, their costs of work compared to a non-disabled person, and the effort they have to make in order to work. Exempting an amount from the benefit income test may mean the person gets to keep a bit more of their benefit, but the amount involved will be less than their costs of work.

There is more appropriate and fair support that can meet the additional costs of disabled people who are working. These costs can generally be met through Disability Allowance, Support Funds and other employment support, including subsidies.

We recommend that you **support** option 2A: remove the discretion to exempt personal earnings of people with severe disablement from the benefit income test.

*Option 2B: retain the discretion*

The exemption is available to any disabled person who receives benefit assistance, so it does not breach human rights legislation. Around 100 people currently have the exemption.

While decisions required are complex, it still assists some

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people while they remain on benefit.

We recommend that you **do not support** option 2B: retain the discretion.

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## Key issues

### **Advantageous provisions for people who are blind**

#### *Option 1A: Removing the "blind provisions"*

*The "blind provisions" allow a totally blind person to get a full benefit while working full-time*

A person automatically qualifies for the Supported Living Payment if they are totally blind - their work capacity is not assessed. Any other disabled person is assessed to see whether they can regularly work 15 hours a week or more - if they can they don't qualify.

The earnings of a blind person don't affect the rate of their Supported Living Payment - they can earn as much as they like and still get a full rate of benefit. Earnings of other disabled people start to reduce the rate of their benefit when their non-benefit income rises above \$120 a week.

People getting Supported Living Payment on the grounds of total blindness at the time the policy changes will have their conditions protected through grand-parenting provisions - currently there are close to a thousand totally blind recipients.

Totally blind people can also be paid a 25 per cent subsidy on their earnings. The subsidy is not available to people with other disabilities.

The subsidy can only be paid when total income from all sources including the benefit and all other assistance is no more than a set limit, currently \$348.86 a week (plus \$43.78 for a single blind person). Because welfare assistance is included in the total, people who need more welfare assistance can't get as much earnings subsidy.

The earnings subsidy is meant to encourage a person to work. But when the person's total income hits the set limit, every extra dollar of income, whether wages or welfare assistance, reduces the subsidy by a dollar - the person is stuck on that income level. There is no incentive for them to work more, unless they can earn enough to lift their earnings well over the limit.

Anyone getting the subsidy at the time the policy changes will be protected by grand-parenting - currently no-one is getting it, but people could still apply until July 2017 and get this protection.

*The "blind provisions" are likely to breach human rights legislation*

There is no evidence that costs of work are higher for people who are blind than they are for other severely disabled people -

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the evidence is that their costs, on average, are actually lower. The Cost of Disability Final Report<sup>1</sup> shows that people with physical and mental health impairments have higher costs associated with living an ordinary life in the community than people with vision impairments.

It is unlikely that the provisions that advantage only blind people can be justified. If they continue in the Rewrite Bill they are likely to be declared inconsistent with the New Zealand Bill of Rights Act 1990.

*In limited consultation, individuals from Disabled People's Organisations supported the proposal to remove the "blind provisions"*

Cabinet agreed to delay a decision on the "blind provisions" to allow time to consider other ways of supporting disabled person in work and for limited consultation with the sector.

Disabled People's Organisations representatives were consulted. They were not able to consult with members of their organisations. s9(2)(ba)(i)

*Other supports are now in place to help disabled people to find and maintain employment*

Since 1924, there have been significant advances in assistive technologies, the introduction of Support Funds to meet additional costs, other employment supports, e.g. subsidies and more enlightened attitudes towards people with disabilities. As a result of these changes there are better ways to assist disabled people to work.

Examples are funding for transport, technology and support people. Support Funds are administered by Workbridge.

Under Support Funds, people can access up to \$16,900 per annum to help them find and/or stay in work<sup>2</sup>. Data shows that vision impaired people receive proportionately the largest amount of funding under Job Support for 2014/15.

Officials are working on advice on how to enhance Support Funds to:

- streamline administration
- provide more information to employers and disabled workers about how the funds can be used

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<sup>1</sup> The Cost of Disability Final Report - DRC (Disability Resource Centre Auckland Inc.). This project was co-funded by the Ministry and the Health Research Council of New Zealand, and conducted by the Disability Resource Centre, in collaboration with the University of Auckland. Published in 2010. The research included only costs of accessing education, employment, health care and community based support services, but not costs incurred within those services. The costs represent additional resources disabled people need to access these services (eg transport and communication support).

<sup>2</sup> As part of the Job Support component of Support Funds. Funds for training and self-employment are also available under Support Funds.

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- make an appropriate level of funding available.

*Option 1B: retain the "blind provisions"*

The "blind provisions" assist a group of disabled people. They have a very long history. They were the first social security measures introduced for disabled people in New Zealand.

The provisions could be re-enacted in the Rewrite Bill. Even if they are identified as being inconsistent with the New Zealand Bill of Rights Act, it would still be lawful under the Act to provide the advantages only to blind people.

s9(2)(h)

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*Option 2A: remove the "severe disablement" exemption*

*The Ministry of Social Development has discretion to disregard some of the income of severely disabled people*

The discretion allows MSD to disregard some or all of the income "derived from personal effort" of a severely disabled person. It was added to the Social Security Act in 1972, to recognise the personal effort and costs that going to work involves for people who are severely disabled. At that time, only the blind provisions were in place – and they did not help people with other disabilities.

The exemption is not likely to breach human rights legislation as it covers all forms of severe disability, but there may be good reason to consider removing it.

As stated on page four of this aide memoire, there are now other supports are now in place to help disabled people to find and maintain employment.

*The "severe disability" exemption only helps people getting welfare assistance*

Having the exemption allows a person to keep more of their benefit assistance while working. But that reduces the incentive for the person to move completely off a main benefit.

For example, the income test for Supported Living Payment starts slowly reducing the benefit when income exceeds \$100 a week. An extra \$20 a week exemption applies to their personal earnings -so they can have \$120 a week of income without their benefit being reduced. The severe disability income exemption increases the amount they can earn before their benefit starts to reduce. So, a person with a severe disability exemption of \$50 a week could earn \$170 a week with no reduction in their benefit.

The exemption also applies to the income tests for other benefit assistance such as the Accommodation Supplement and Temporary Additional Support.

*It is claimed by few people – and they will be able to keep it as*

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*long as they stay in their job*

Only around 100 people are getting the severe disability income exemption. They will be protected by grand-parenting measures – they will not lose the exemption until they leave their current job.

*Removing the exemption would simplify administration*

The removal of the exemption will simplify administration – the severity of their disability and the amount of income exempted for each person must be considered. The additional costs that person faces when working compared to a non-disabled person has to be estimated, and the amount of effort required for them to work.

An additional amount can be exempted to recognise effort. In practice case managers applying the discretion usually take only actual work-related costs into account when setting the exemption. Measuring and setting a dollar value to effort adds a lot of complexity to the administration of the exemption.

The complexity and discretionary nature of the exemption leads to some inconsistent results for people in similar situations. The additional exemption provides no practical help to people whose income, including their earnings, is below the level that affects their benefit (\$120 a week for a person on Supported Living Payment).

*Option 2B: retain the "severe disablement" exemption*

*The exemption does help some disabled people*

A small group of people (currently around 100) gain some advantage from the discretion to exempt some of their income from employment from the income test that applies to their benefit.

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**Our advice**

We recommend that you **support** option 1A: remove the "blind provisions" with grand-parenting provisions so no current recipient loses and that you **support** option 2A: remove the discretion to exempt personal earnings of people with severe disablement from the benefit income test.

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Chair  
Cabinet Social Policy Committee

## **SOCIAL SECURITY ACT REWRITE – ADDITIONAL POLICY OPTIONS**

### **Proposal**

- 1 I am seeking your decisions on three additional options for changes that could be included in the rewrite of the Social Security Act 1964 (the Act).
- 2 The first option concerns a current group of provisions, dating back to 1924, that my officials consider will be found to be inconsistent with New Zealand human rights legislation<sup>1</sup>. I seek your decision on whether or not to remove the provisions that advantage people who are totally blind. If you decide to remove them, I propose grand-parenting arrangements so that current recipients<sup>2</sup> would continue to be entitled to receive Supported Living Payment under the advantageous conditions that currently apply to them.
- 3 The second option concerns a similar provision (section 66A of the Act) that exempts some income earned by severely disabled people from the income test that affects the rate of benefit paid. Again, grand-parenting arrangements would protect current recipients if you choose to remove this provision.
- 4 The third option concerns eligibility for Sole Parent Support to single carers being paid Orphan's Benefit or Unsupported Child's Benefit<sup>3</sup>. Introducing a single rate of Sole Parent Support and allowing recipients of Orphan's Benefit and Unsupported Child's Benefit to be eligible for it would provide the appropriate work obligations and rate of benefit for these carers.

### **Executive summary**

- 5 The purpose of the rewrite is to modernise the Act so that it is easier to navigate, use and understand. It is largely policy neutral.
- 6 In June 2015, as part of the rewrite of the Act, officials identified that provisions (dating back to 1924) for totally blind people are likely to be found inconsistent with human rights legislation. These provisions give advantageous treatment to totally blind people, compared to treatment of other disabled people [SOC Min (15) 12/1]. There are currently 1,049 people who receive Supported Living Payment on the basis of being totally blind.

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<sup>1</sup> New Zealand Bill of Rights Act 1990 and Human Rights Act 1993.

<sup>2</sup> The term "current recipients" in this paper includes people receiving Supported Living Payment on the ground of total blindness (or people receiving the income exemption under section 66A or the "blind subsidy") before the new Act comes into force and also to people who apply (and are eligible) for that benefit, exemption or subsidy, but not yet granted it, before the new Act commences.

<sup>3</sup> In the new Act, these two benefits will be merged into a single benefit called Supported Child's Payment.

- 7 Cabinet decided to retain these advantageous provisions until Ministry of Social Development (the Ministry) officials completed work to understand the additional costs of disability in employment, the mechanisms to address these costs, and to identify options for change [SOC Min (15) 12/1].
- 8 This work identified that a range of mechanisms are now in place to meet the additional costs of disability for disabled people in employment. The main mechanism is Support Funds administered by Workbridge on behalf of the Ministry. Support Funds provide funding for a range of accommodations including transport, technology, and support people.
- 9 Removing the advantageous Supported Living Payment provisions for totally blind people from the Act (with grand-parenting arrangements for current recipients) would improve compliance with human rights legislation. The provisions allow totally blind people to receive a full rate of Supported Living Payment regardless of their hours of work or earnings. Over a limited range of income, they can also be paid a 25 per cent subsidy on their workforce earnings.
- 10 It is likely that the provisions will be found to be inconsistent with human rights legislation. They do not apply to other disabled people, who may have higher disability-related costs of employment.
- 11 Ministry officials are undertaking work to improve the effectiveness of Support Funds. These improvements are expected to streamline the funds resulting in more cost-effective administration, improve clarity around how these funds can be used, and ensure appropriate levels of funding are available.
- 12 As part of this work, officials identified that section 66A of the current Act is also inconsistent with Government priorities to reduce long term benefit dependence. It exempts some of the income earned by severely disabled people from paid employment from the calculation of the benefit rate. That provision could be removed as part of the rewrite, with grand-parenting arrangements for current recipients.
- 13 I have consulted with Disabled People's Organisations (DPOs) representatives. They, as individuals, support the proposals to remove the advantageous Supported Living Payment provisions for the totally blind and section 66A with grand-parenting arrangements and proposed improvements to Support Funds. DPO representatives advised that the status quo is no longer justifiable or desirable. Wider public consultation, on this and other options set out in this paper, could be considered as part of the legislative process.
- 14 As part of the rewrite, Cabinet also decided to consider some changes to Orphan's Benefit and Unsupported Child's Benefit [CAB Min (13) 21/6)]. Orphan's Benefit and Unsupported Child's Benefit provide financial support to the carer of a child whose parents cannot support them due to family breakdown, parental illness, incapacity, or death.
- 15 Under the Act, single carers who are paid Orphan's Benefit or Unsupported Child's Benefit are not eligible for Sole Parent Support unless they are also caring for another dependent child under 14 years of age. As a result they have different work obligations compared to sole parents with children of the same age. If placed on

Jobseeker Support they generally<sup>4</sup> will be required to seek full-time work; as an alternative they may be placed on Emergency Benefit where often no work or work preparation obligations are applied.

- 16 To better align the work obligations of these carers, the eligibility for Sole Parent Support could be amended so that single carers being paid Orphan's Benefit or Unsupported Child's Benefit can receive it. A single rate of Sole Parent Support would be introduced so they would be paid at the same rate they would receive as a single person receiving Jobseeker Support. The carers would then have the same work obligations as sole parents in similar situations with children of the same age.

## Background

- 17 The largely policy-neutral rewrite of the Act is being undertaken to improve accessibility and ease of understanding. Drafting of a *Social Security Legislation Rewrite Bill* is being finalised. A general summary of the changes you can expect to see in the rewrite Act is attached as an Appendix.
- 18 There is an opportunity to include some further policy changes in the rewrite. Three options for policy change are set out in this paper.

### Some current provisions in the Act give advantageous treatment to totally blind people

- 19 Ministry officials have advised me that some provisions in the Act (dating back to 1924) for totally blind people are likely to be found inconsistent with human rights legislation. The provisions giving advantageous treatment to totally blind people, compared to treatment of other people, including other disabled people, are:
- a totally blind person is granted Supported Living Payment on grounds of sickness, injury, or disability without having to establish they are permanently and severely limited in their capacity to work. All other disabled people have to establish this incapacity to access Supported Living Payment
  - a totally blind person, who regularly works 15 hours a week or more, including full-time work, can still receive Supported Living Payment. Other disabled people who regularly work more than 15 hours or more are not eligible for Supported Living Payment
  - as an incentive to personal effort, the personal earnings of a totally blind person on Supported Living Payment are exempt from the benefit income test – so a blind person can still receive a full rate of benefit irrespective of their level of wages or salary. Other Supported Living Payment recipients can only have \$20 of their personal earnings exempt from the income test
  - an additional allowance of 25% of their average personal earnings can be paid to a totally blind person in receipt of Supported Living Payment (this is known as the "blind subsidy"). There is a limit on the total income<sup>5</sup> that a person can receive and still access this allowance. Other Supported Living Payment recipients are not eligible for this type of 'top up'.

<sup>4</sup> A part-time work obligation may apply if the carer has a health condition or disability that limits their capacity to work but part-time work is achievable.

<sup>5</sup> Currently, total income including the benefit and subsidy cannot exceed \$20,417.28 a year.

- 20 In June 2015, Cabinet decided to retain these provisions until Ministry officials completed work to understand the additional costs of disability in employment, the mechanisms to address these costs, and to identify options for change [SOC Min (15) 12/1].
- 21 The advantageous provisions for the totally blind were introduced in 1924, a time when there was not the technology and other support available to assist totally blind people to work. Since this time, more inclusive mechanisms have been put in place so all disabled people can participate in sustainable employment and be supported to become independent of the benefit system.
- 22 Many of these mechanisms are funded by Government through agencies including the Ministries of Social Development and Health, the New Zealand Transport Agency and the Accident Compensation Corporation.
- 23 I met with DPO representatives who told me that blind people originally sought these advantageous provisions to meet the additional costs of disability in employment. Historical records also show that these provisions were offered to blind people if, as a result of their impairment, they were unable to earn a proper living and also to encourage employment.

**A similar provision exempts some of the income earned by disabled people from benefit income tests**

- 24 There is discretion in section 66A of the Act for people with “severe disablement” to have all or part of their personal earnings exempted, but it is not an automatic entitlement<sup>6</sup>. Employment-related costs and extra effort are taken into account when deciding whether to exempt any additional income, and if so how much income should be exempt.
- 25 The section 66A exemption can be applied to all main benefits, including work focused ones like Jobseeker Support, however most clients claiming the exemption are in receipt of the Supported Living Payment. One hundred and three clients<sup>7</sup> are recorded as claiming the exemption.
- 26 While this provision applies across all kinds of disability, and so is unlikely to breach human rights legislation, there are now better ways of supporting disabled people in employment. The rewrite provides an opportunity to consider whether to continue this provision into the new Social Security Act.

**Improvements to Support Funds will ensure the right support is in place for disabled people in employment**

- 27 Removing the blind provisions and/or section 66A would need to be supported by mechanisms to help meet the additional costs of disability in employment work more effectively.

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<sup>6</sup> In exercising discretion case managers take into account matters such as work related costs when deciding to exempt any additional income, and if so how much income should be exempt.

<sup>7</sup> As at the end of September 2015. Limitations with the Ministry’s payment system mean the section 66A figures are indicative only.

- 28 Ministry officials are undertaking work to improve the effectiveness of Support Funds. Improvements to Support Funds are expected to reduce costs through more streamlined and cost-effective administration and processes.
- 29 I expect advice from my officials in the first quarter of this year on options for change, including ways to:
- simplify and make administration processes more cost-effective
  - improve clarity and provide more information about how Support Funds can be used to help employers and employees
  - ensure the level of funding is appropriate to meet the additional costs of disability in employment for all eligible disabled people in employment.
- 30 Decisions on options to improve Support Funds will be made irrespective of decisions on the advantageous provisions for the totally blind and section 66A from the Act.
- 31 If you decide to remove the advantageous blind provisions, or the section 66A exemption or both (as discussed in the options set out below), I propose to reinvest resulting savings in changes to Support Funds. This will ensure that funding that is currently available for additional costs of disability in employment is still available for this purpose and can be distributed more effectively across all disabled people who access Support Funds.

**Work obligations for a group of single carers being paid Orphan's Benefit or Unsupported Child's Benefit for a child in their care do not take that child into account**

- 32 Orphan's Benefit and Unsupported Child's Benefit provide weekly financial support to the carer of a child whose parents cannot support them due to family breakdown<sup>8</sup>, or parental illness, incapacity, or death<sup>9</sup>. The two benefits serve a similar purpose – providing financial support towards the cost of caring for a child who is not the carer's own
- 33 In June 2013 Cabinet identified Orphan's Benefit or Unsupported Child's Benefit as an area for potential policy change as part of rewrite of the Act [CAB Min (13) 21/6]. I propose to align the work obligations of single carers receiving Orphan's Benefit or Unsupported Child's Benefit with sole parents in the benefit system. Under the Act, there is a small group of single carers, who are paid Orphan's Benefit or Unsupported Child's Benefit for the care of children, who have different work obligations compared to sole parents with children of the same age.
- 34 Children for whom Orphan's Benefit or Unsupported Child's Benefit is paid cannot be taken into account in their carer's benefit rate, and any corresponding work obligations except when the carer qualifies for Sole Parent Support or Emergency Benefit<sup>10</sup>. This exclusion prevents carers receiving two types of financial assistance for the same child (ie a benefit rate that includes financial support for the child *and*

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<sup>8</sup> Unsupported Child's Benefit.

<sup>9</sup> Orphan's Benefit.

<sup>10</sup> See definition of 'dependent child' in section 3 of the Act. A child for whom Orphan's Benefit or Unsupported Child's Benefit is paid is taken into account when setting work obligations for Sole Parent Support (if the carer has another child included in that benefit) or Emergency Benefit.

Orphan's Benefit or Unsupported Child's Benefit). However, it also means single carers who are paid Orphan's Benefit or Unsupported Child's Benefit are not eligible for Sole Parent Support unless they are also caring for another dependent child under 14 years who may be included in their benefit rate.

- 35 Sole Parent Support takes all dependent children, including those for whom Orphan's Benefit or Unsupported Child's Benefit is paid, into account when setting the parent's work obligations. Work obligations are based on the age of the youngest dependent child in the parent's care. If the child is under 14, these obligations include work preparation or part-time work obligations.
- 36 Single carers who are not eligible for Sole Parent Support because they are paid Orphan's Benefit or Unsupported Child's Benefit:
- may receive Jobseeker Support, which has a full-time work expectation, unless the person qualifies for an exemption or deferral. There are about 491 single carers being paid Orphan's Benefit or Unsupported Child's Benefit on Jobseeker Support, of whom about 261 have full-time work obligations; or
  - they may be granted Emergency Benefit on the grounds of hardship (as they are unable to meet Jobseeker Support's full-time work obligations). There are about 117 single carers being paid Orphan's Benefit or Unsupported Child's Benefit on Emergency Benefit. Work obligations may be applied as a condition of Emergency Benefit but as this is a manual process, it has been difficult for case managers to apply in practice<sup>11</sup>.
- 37 Some single carers have chosen to forgo payment of Orphan's Benefit or Unsupported Child's Benefit and include the child in their benefit<sup>12</sup>, therefore becoming eligible for Sole Parent Support. These carers' work obligations on Sole Parent Support are based on the age of their youngest dependent child. They are also eligible for the Family Tax Credit but some are financially disadvantaged by choosing this option.

## Options

### Option 1A: remove the advantageous provisions for totally blind people

- 38 Removal of the advantageous provisions for the totally blind with grand-parenting arrangements for current recipients should be considered as the provisions are likely to be considered inconsistent with human rights legislation.
- 39 There may no longer be justification for advantageous treatment of totally blind people because there has been a significant shift in thinking about disability and employment – a shift that recognises most disabled people can work and should work where they are able to and that all disabled people should be treated on an equal basis.

<sup>11</sup> Cabinet agreed that the rewrite Act introduce a discretion to apply part-time or full-time work test or work preparation obligations, and the associated sanctions policy, to Emergency Benefit clients, where appropriate [SOC Min (15) 12/1].

<sup>12</sup> Carers may also choose to forgo payment of Orphan's Benefit or Unsupported Child's Benefit and include the child in their Jobseeker Support or Emergency Benefit. This may or may not be financially advantageous to the carer, depending on their individual circumstances.

- 40 Ministry officials completed work to understand the additional costs of disability in employment, the mechanisms to address these costs, and to identify options for change. This work identified that there are already a range of mechanisms in place to meet the additional costs of disability for disabled people in employment. The main mechanism is Support Funds administered by Workbridge on behalf of the Ministry. Support Funds provide funding for a range of accommodations including transport, technology, and support people.
- 41 If the advantageous provisions were removed, all new totally blind applicants for benefit would be assessed for their capacity to work and encouraged to work to the extent that they are able to. That is the same as happens for all other clients. Totally blind people who are permanently and severely restricted in their capacity for work to an extent that limits their ability to work 15 hours or more in open employment within the next two years will continue to qualify for Supported Living Payment.
- 42 Totally blind people working, or able to work, 15 hours or more a week would no longer qualify for Supported Living Payment. However, unless they were working full-time or earning more than the benefit cut out points, they would likely qualify for another benefit, such as Jobseeker Support.
- 43 Grand-parenting measures would protect current recipients from any financial loss as a result of the change in policy. There are 1,049 totally blind people receiving Supported Living Payment<sup>13</sup>. Ministry officials estimate that 60 current Supported Living Payment recipients could potentially have their benefit reduced or cancelled as a result of removal of the blind provisions. Grand-parenting provisions would prevent the potential loss of benefit for these people. While the previous sole recipient<sup>14</sup> of the blind subsidy has now moved onto New Zealand Superannuation and no longer receives it, grand-parenting would protect anyone who applied and was eligible for it before the new Act commences.
- 44 If this option is chosen, I propose grand-parenting arrangements remain in place for blind people until they have a change of circumstances that results in loss of entitlement to Supported Living Payment, for example, moving overseas, or receiving New Zealand Superannuation. This approach to grand-parenting is consistent with other grand-parenting arrangements the Ministry has in place.
- 45 The removal of these provisions and associated publicity could lead to an increase in applications in the short-term. Totally blind people who learn that they are entitled, or seeking to preserve entitlement, may claim the Supported Living Payment and grand-parenting protection. However, totally blind people not in receipt of Supported Living Payment could continue to not claim Supported Living Payment as they may prefer not to be beneficiaries.

#### **Option 1B: status quo**

- 46 Retaining the provisions would continue the long-standing advantageous treatment of totally blind people. The provisions would continue to be lawful as long as they continue in the Act, but it is likely that they would have to be declared inconsistent

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<sup>13</sup> As at the end of January 2016.

<sup>14</sup> As at February 2015.

with human rights legislation in the Section 7 report required on introduction of the Bill. Matters raised in a Section 7 report are more likely to be raised as issues in Select Committee hearings on a Bill, and may lead to proposals for changes to the Bill from the Select Committee.

- 47 If the current provisions are retained and declared inconsistent with human rights legislation that will lead to publicity and increased awareness. Increased applications for Supported Living Payment from totally blind people could still be the result. A declaration of inconsistency and resulting publicity could also result in human rights complaints from people with other forms of severe disability who cannot access the same provisions as people who are totally blind.

**Option 2A: remove special exemption for severe disablement in section 66A**

- 48 Remove the exemption. Since 1972 there have been significant advances in assistive technologies, the introduction of Support Funds to meet additional costs, and more enlightened attitudes towards people with disabilities. As a result of these changes there are better ways to assist disabled people to work.
- 49 Not all disabled people are entitled to the exemption under section 66A, due to the high level of disability threshold needed for eligibility. The section also does not align with the purpose of the payment of a benefit to people who cannot support themselves through paid work.
- 50 If Cabinet agrees to remove the advantageous provisions for the totally blind from the Act, I propose that section 66A is also removed with grand-parenting arrangements for current recipients. Grand-parenting will remain in place for current recipients until the end of their employment (for which the exemption was granted).

**Option 2B: status quo**

- 51 Retain the exemption. This would allow case managers to continue to exercise discretion to exempt some of the income of people with severe disablement from the income test that applies to benefits.
- 52 Because this is a discretionary judgment, people in similar circumstances may be treated differently by case managers. In exercising their discretion, case managers have to make complex judgements for each individual, weighing up:
- the severity of their disablement
  - the effort that the individual has to make in order to work
  - the costs that work involves for the person, compared to the costs that work involves for a non-disabled person.

**Option 3A: extending eligibility for Sole Parent Support to single carers who are paid Orphan's Benefit or Unsupported Child's Benefit**

- 53 Extending eligibility for Sole Parent Support to single carers being paid Orphan's Benefit or Unsupported Child's Benefit for children in their care would mean that they

can have the same work obligations as sole parents in similar circumstances with children the same age.

54 Under this option the benefit settings would be changed to:

- amend the eligibility for Sole Parent Support so that single carers being paid Orphan's Benefit or Unsupported Child's Benefit can choose to receive Sole Parent Support (with work obligations based on the age of their youngest dependent child)
- introduce a single rate of Sole Parent Support for these carers that is the same as the single rate of Jobseeker Support<sup>15</sup> in recognition that financial assistance towards the care of the dependent child/ren is already provided through the Orphan's Benefit or Unsupported Child's Benefit payment
- align all other settings (including full-time income test, weekly benefit, commencement date and child support obligations) for single carers who transfer to the single rate of Sole Parent Support to the settings for single carers receiving Jobseeker Support.

### Option 3B: status quo

- 55 Alternatively, the current arrangements, that include the option of granting Emergency Benefit<sup>16</sup>, can continue. Cabinet has agreed to an enhancement to that benefit allowing case managers to set work obligations and apply associated sanctions when an applicant is considered to have work capacity [SOC Min (15) 12/1].
- 56 Single carers who are paid Orphan's Benefit or Unsupported Child's Benefit and have no other dependent child would continue to be excluded from eligibility for Sole Parent Support in the rewrite of the Act.

### Consultation

- 57 The following agencies have been consulted in the preparation of this paper: the Ministries of Health, Education, Justice, Business, Innovation and Employment, and Pacific Island Affairs; the Ministry for Women's Affairs, the Treasury, Te Puni Kōkiri, Accident Compensation Corporation, Inland Revenue and State Services Commission. Comments from these agencies have been incorporated into the paper. The Department of Prime Minister and Cabinet has been informed.
- 58 DPO representatives were consulted about removing the advantageous provisions for totally blind clients and severe disablement exemption and provided input and advice. They advised Ministry officials that they are supportive of this option as the status quo is no longer desirable or justifiable. It should be noted that given the targeted nature of engagement agreed to by the Ministerial Committee on Disability Issues<sup>17</sup>, comments and views expressed by DPO representatives are of the individual not the

<sup>15</sup> The Jobseeker Support single rate differs depending on the age of the client.

<sup>16</sup> To be re-named Exceptional Circumstances Payment as part of the rewrite.

<sup>17</sup> In July 2015, the Ministry provided the Ministerial Committee on Disability Issues with information about the option of removing the advantageous provisions for the totally blind. The Committee agreed the scope of the work on additional costs of disability in employment and targeted engagement with DPO representatives only – so the representatives were not able to consult with members of their respective organisations.

organisation or wider membership<sup>18</sup>. DPO representatives advised Ministry officials that additional costs of disability that fall outside of employment should also be considered. An action has now been included in the Disability Action Plan to *develop a framework for understanding the costs of disability and mechanisms for meeting these* [SOC-15-MIN-0077].

- 59 Grandparents Raising Grandchildren Trust (the Trust) was consulted on option 3A regarding Orphan's Benefit or Unsupported Child's Benefit. The Trust was generally supportive of the option. However, in the Trust's view, the option needed to include a general exemption from part-time work obligations for some single carers, given the special circumstances that may exist (such as the advanced age and/or poor health of the carer, and the psychological and social needs of the children).
- 60 In December 2014, I agreed, under my delegated authority, to recommend that Cabinet introduce a new exemption for work preparation and work obligations for Orphan's Benefit or Unsupported Child's Benefit carers who require a settling-in period when a child first comes into their care, subject to budget approval. I propose to introduce the new exemption at the same time as other changes are being made to regulations as part of the rewrite. This timing will allow any Ministry systems changes to be made at the same time and reduce costs.

### Financial implications

- 61 If option 1A proceeds through legislation, small savings would be generated over time estimated at \$177,000 per year, with some initial offsetting expenditure if there are increased claims for benefit from blind people in the period prior to the legislation commencing. If option 2A is agreed, the Ministry will work with the Treasury to identify any savings that may result.
- 62 The options to remove the advantageous blind provisions and severe disablement exemption require system changes that have been estimated at \$0.25 million. The option to allow single carers being paid Orphan's Benefit or Unsupported Child's Benefit to receive Sole Parent Support will require system changes estimated at \$1.52 million. Combined the system costs from the package of options are \$1.77 million.
- 63 There will also be other costs for options 1A, 2A and 3A, such as changes to application forms and brochures. All costs will be met within baseline without fiscal implications.

### Human rights implications

- 64 The options are considered to be consistent with the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990.
- 65 Option 3A is considered to be consistent with the rights of vulnerable children set out in the United Nations Convention on the Rights of the Child.

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<sup>18</sup> Ministry officials engaged with DPO chairs and Chief Executives.

## **Legislative implications**

- 66 Changes to the Act are required to implement options 1A, 2A and 3A. The option to remove the advantageous blind provisions and section 66A and the option to extend eligibility for Sole Parent Support can be included in the Social Security Legislation Rewrite Bill which I expect to be introduced in March 2016.

## **Regulatory impact and compliance cost statement**

- 67 The Regulatory Impact Analysis (RIA) requirements apply to the options in this paper. A Regulatory Impact Statement (RIS) has been prepared and is attached.
- 68 The Regulatory Impact Analysis Team (RIAT) has reviewed the RIS prepared by the Ministry of Social Development, and considers that the information and analysis summarised in the RIS *meets* the quality assurance criteria.
- 69 We note that both of the issues discussed in this RIS were also considered in a RIS presented to SOC in June 2015 [SOC Min (15) 12/1]. The Ministry's identification of the problem being addressed and its analysis of the likely impacts of each option are almost identical to when they were last considered. Consultation with the disability sector has been limited, meaning that the stakeholder reaction to removing provisions giving advantageous treatment to totally blind people cannot be fully anticipated.

## **Gender implications**

- 70 There are no gender implications for options 1A and 2A. Forty-one percent of Supported Living Payment recipients whose main capacity is recorded as blindness are female<sup>19</sup>.
- 71 While Orphan's Benefit or Unsupported Child's Benefit benefits are gender neutral they are paid to carers who are overwhelmingly female. About ninety-three percent of single carers who receive Orphan's Benefit or Unsupported Child's Benefit for a child under 14 are female.

## **Disability perspective**

- 72 The options in this paper are consistent with the United Nations Convention on the Rights of Persons with Disabilities and the New Zealand Disability Strategy.

## **Publicity**

- 73 Following your decisions, appropriate publicity and communications material will be developed as part of the wider communications on the introduction of the Social Security Legislation Rewrite Bill.

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<sup>19</sup> Data on the gender of the estimated 103 persons receiving the section 66A exemption was not available at the time of the paper.

## Recommendations

74 It is recommended that the Committee:

### *Advantageous provisions for totally blind people and the special exemption for severe disablement*

- 1 **note** that officials working on the rewrite of the Social Security Act 1964 (the Act) identified that provisions (dating back to 1924) for totally blind people are likely to be found inconsistent with human rights legislation
- 2 **note** that Cabinet decided to retain these advantageous provisions until Ministry of Social Development (the Ministry) officials completed work to understand the additional costs of disability in employment; the mechanisms to address these costs; and to identify options for change [SOC Min (15) 12/1]
- 3 **note** that the Government meets most of the additional costs of disability in employment through a range of mechanisms including Support Funds administered by Workbridge on behalf of the Ministry
- 4 **agree** that Ministry officials undertake work with Disabled People's Organisations to improve the effectiveness of Support Funds, including simplify administration and processes, providing more information and providing appropriate levels of funding for individuals

### *Decisions on the "blind provisions"*

**either**

- 5 **agree** to remove the advantageous provisions for the totally blind as part of the rewrite of the Act; and
- 6 **agree** to protect current recipients of the Supported Living Payment on the grounds of total blindness (including the "blind subsidy") with grand-parenting arrangements, until they have a change of circumstances that results in loss of entitlement to that benefit' entitlements through grand-parenting provisions
- 7 **note** that if you agree to recommendation 5 above, the Ministry intends to use the savings of up to \$177,000 per annum from the policy changes to make improvements to Support Funds once options for changes for the Support Funds have been considered by the Minister for Social Development
- 8 **delegate** the Minister of Finance and the Minister for Social Development to jointly approve any changes to funding and related appropriations to enable savings identified as a result of removing the advantageous blind provisions (and any further identified savings if you agree to recommendation 10 below) to be reinvested in Support Funds in the 2016 March Baseline Update

**or**

- 9 **agree** to continue the advantageous provisions for the totally blind in the rewrite of the Act, whether or not these provisions breach human rights legislation

*Decisions on the special exemption for severe disability*

**either**

- 10 **agree** to remove the special exemption for severe disablement (section 66A of the Act) as part of the rewrite of the Act; and
- 11 **agree** that grand-parenting arrangements will apply to current recipients of the section 66A special exemption for severe disablement until their employment (for which the exemption was granted) ends

**or**

- 12 **agree** to retain the special exemption for severe disablement (section 66A of the Act) in the rewrite of the Act

*Work obligations for single carers paid Orphan's Benefit and Unsupported Child's Benefit*

- 13 **note** that Cabinet agreed to consider some changes to Orphan's Benefit and Unsupported Child's Benefit as part of rewrite of the Act [CAB Min (13) 21/6]
- 14 **note** that the work obligations of a small group of single carers receiving Orphan's Benefit or Unsupported Child's Benefit are not the same as those of sole parents in similar situations caring for children of the same age (in some cases where part-time work obligations would otherwise apply they have full-time work obligations; in other cases no work obligations)
- 15 **note** that extending eligibility for Sole Parent Support to single carers who are paid Orphan's Benefit or Unsupported Child's Benefit will extend automated processes to more closely align the work obligations of these carers to sole parents with children of the same age, without these carers having to give up the Orphan's or Unsupported Child's Benefit

*Decisions on access to Sole Parent Support for single carers receiving Orphan's Benefit or Unsupported Child's Benefit*

**either**

- 16 **agree** to extend eligibility for Sole Parent Support to single carers being paid Orphan's Benefit or Unsupported Child's Benefit; and
- 17 **agree** to introduce a single rate of Sole Parent Support (which will be the same as the single rate of Jobseeker Support) to allow these carers to receive an appropriate rate of benefit while continuing to receive payment of Orphan's Benefit or Unsupported Child's Benefit; and
- 18 **agree** to align all other settings (including full-time income test, weekly benefit, commencement date and child support obligations) for single carers who transfer to the single rate of Sole Parent Support to the settings for single carers receiving Jobseeker Support

or

- 19 **note** that the existing option of placing single carers receiving Orphan's Benefit or Unsupported Child's Benefit on Emergency Benefit will be enhanced by a change Cabinet has agreed for that benefit allowing case managers to set work obligations and apply associated sanctions when an applicant is considered to have work capacity [SOC Min (15) 12/1]; and
- 20 **agree** that the current settings excluding single carers who are paid Orphan's Benefit or Unsupported Child's Benefit and have no other dependent child from eligibility for Sole Parent Support continue in the rewrite of the Act; and
- 21 **note** that exemptions from work obligations are set out in regulations that are to be reviewed in work on associated regulations that will be required as part of the implementation of the Social Security Legislation Rewrite Bill 2016

*Fiscal implications of options*

- 22 **note** that implementing the decisions set out in recommendations 5, 6, 10, 11, 16 and 17 above would require changes in the Ministry's systems estimated to cost \$1.77 million and there will be additional costs related to communications materials
- 23 **note** that all costs resulting from the decisions will be met within baseline without fiscal implications
- 24 **note** that the decisions agreed above can be included in the Social Security Legislation Rewrite Bill which is proposed to be introduced in March 2016

*Public consultation*

- 25 **note** that wider public consultation on the policy decisions could be undertaken as part of the Social Security Legislation Rewrite Bill legislative process

*Drafting instructions*

- 26 **invite** the Minister for Social Development to issue drafting instructions to the Parliamentary Counsel Office to give effect to these decisions.

Hon Anne Tolley  
Minister for Social Development

Chair  
Cabinet Legislation Committee

## **SOCIAL SECURITY LEGISLATION REWRITE BILL: APPROVAL FOR INTRODUCTION**

### **Proposal**

- 1 This paper seeks approval to introduce the Social Security Legislation Rewrite Bill (the Rewrite Bill) to the House of Representatives.
- 2 The Social Security Act 1964 (the Act) is a high profile piece of legislation. It establishes New Zealanders' fundamental legal entitlements to social assistance, delivered through the benefit system.
- 3 In June 2013, Cabinet agreed the Act be rewritten so that it is more coherent, accessible, readable and easier to understand. Cabinet also asked that the rewrite consider a small number of policy changes and proposals to mitigate human rights risks arising from re-enacting existing policy [CAB Min (13) 21/6 refers].
- 4 The Rewrite Bill will:
  - repeal and replace the Social Security Act 1964 and the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990 with rewritten Acts
  - increase clarity and consistency of language and provide an improved and more logical structure to the social security legislation. This includes moving some of the current detail into delegated legislation
  - introduce a small number of policy changes to improve frontline efficiency and enable modern service delivery
  - mitigate a human rights risk by repealing an unused existing anomalous provision.

### **Policy**

#### **Rewriting existing provisions**

*The Rewrite Bill improves the clarity and consistency of existing provisions*

- 5 The Act is over 50 years old and has had multiple and piecemeal amendments and reforms making it hard to follow and risky to continuously amend. Over the last five years, there have been significant and far-reaching welfare reforms. The reforms moved social security to a more active system which is work-focused for adults and education-focused for young people. These welfare reforms have been included in the Act alongside hundreds of other amendments made over time.
- 6 The Rewrite Bill:
  - provides greater clarity, transparency and coherence: the Act is easier for the general public and practitioners to read and understand
  - provides greater consistency in the level of detail provided in the Act and in subordinate legislation: flexibility helps to future-proof the legislation

- updates the Act in line with modern practice: modernising the drafting style and removing legislative barriers to efficient, modern service delivery.
- 7 An example of increasing clarity is the insertion of a new principle that the Ministry of Social Development (MSD) can identify assistance, support, and services under the Act to help achieve the best possible outcome for people at risk of long-term welfare dependency. This supports an investment approach to guide decisions on how interventions, supports, and services are delivered.
- 8 Re-enacting existing provisions opens them up to scrutiny and debate. This will likely lead to some policy settings that have already been considered and endorsed by Parliament being “re-litigated”.

*The new structure is more logical and intuitive, and future-proofs legislation*

- 9 Cabinet also agreed that the Rewrite Bill have a structure based on the following principles [CAB Min (13) 21/6 refers]:
- main benefit eligibility, obligations, and sanctions are set out in detailed provisions in primary legislation
  - supplementary assistance set out with broad parameters in primary legislation, with further detail in regulations
  - hardship and emergency assistance enabled through flexibility and discretion in primary legislation, with further detail in regulations and/or welfare programmes
  - simplified provisions in primary legislation for general, technical, and administrative provisions
  - retaining rates of payments, income and means tests in the Schedules to the Act.
- 10 The Rewrite Bill keeps the broad eligibility criteria and discretion in primary legislation, but includes new regulation-making powers to allow some of the more detailed provisions in the current Act to be moved into regulations. This allows MSD to be responsive and adaptive to changes in society.
- 11 An example of a new regulation-making power is for overseas absence provisions. The general rule that benefits are not payable while a person is absent from New Zealand is retained in primary legislation but exceptions to that rule can be set out in regulations.

*The Rewrite Bill will become three separate Acts*

- 12 The Act currently includes provisions relating to distinct subject matter that would be better dealt with as stand-alone legislation.
- 13 The Minister of Health and I have agreed that, at the Committee of the Whole House stage, the residential care and home-based disability support provisions should be separated into a stand-alone Act.
- 14 The provisions relating to reciprocity agreements and artificial limb services are currently split between two Acts. Reciprocity provisions will be combined in the new Social Security Act (with some of the administrative detail moved into regulations). Artificial limb service provisions will be combined and become a separate stand-alone Act.

15 The resulting new Acts will be:

- Social Security Act
- Residential Care and Disability Support Services Act
- Artificial Limb Service Act.

### **A small number of policy changes will be introduced through the Rewrite Bill**

16 The Rewrite Bill includes a small number of policy changes that Cabinet has agreed to improve frontline efficiency and enable modern service delivery [CAB Min (13) 21/6, SOC-15-MIN-0007 and SOC-16-MIN-0004 refer].

#### *Supporting more efficient and effective use of redirections of benefit payments*

17 Cabinet agreed to introduce a regulation-making power to identify specific client circumstances where redirection will be mandatory, without the need to confirm 'good cause' for every client [SOC Min (15) 12/1 refers]. Clients who are social housing tenants are the first circumstance planned for mandatory redirection to cover social housing rent.

#### *Updating Orphan's and Unsupported Child's Benefit legislation*

18 Cabinet agreed to [SOC Min (15) 12/1 refers]:

- merge Orphan's and Unsupported Child's Benefits, and:
  - name the newly merged benefit *Supported Child's Payment*
  - align the policy settings so that step-parents will not be eligible for the Supported Child's Payment (they are currently eligible for Orphan's Benefit but not for Unsupported Child's Benefit), with grandparenting provisions for step-parents currently receiving Orphan's Benefit.

19 Cabinet also agreed to [SOC-16-MIN-0004 refers]:

- ensure automated processes to align the work obligations of some Orphan's and Unsupported Child's Benefit carers on benefit with those of other beneficiaries with children in their care by extending eligibility for Sole Parent Support to single Orphan's and Unsupported Child's Benefit carers:
  - introduce a single rate of Sole Parent Support for these caregivers that is the same as the single rate of Jobseeker Support so they are paid the appropriate benefit rate<sup>1</sup>
  - align all other settings (including full-time income test, weekly benefit, commencement date and child support obligations<sup>2</sup>) to the settings for single caregivers receiving Jobseeker Support.

#### *Changes to the Emergency Benefit provisions*

20 Cabinet agreed to [SOC Min (15) 12/1 refers]:

- rename the benefit as the *Exceptional Circumstances Benefit* to more accurately reflect its purpose

<sup>1</sup> These clients will continue to receive newly created Supported Child's Payment.

<sup>2</sup> Currently only Unsupported Child's Benefit clients have an obligation to apply for a formula assessment of child support - Orphan's Benefit clients do not. This setting will be continued in the newly merged benefit.

- make it clear that the maximum rate payable is that of the relevant main benefit under the Act (so it is not paid at the higher New Zealand Superannuation or Veteran's Pension rates) with grandparenting provisions to protect anyone being paid at the higher rate at the time the legislation changes
- introduce discretion to apply work or work preparation obligations and associated sanctions to align with other working age benefits
- allow both parents in split care<sup>3</sup> situations (as distinct from shared care) to be eligible for Sole Parent Support, rather than preserving the current work-around that pays one parent Sole Parent Support and the other parent Emergency Benefit.

#### *Implementation of the policy changes and rewritten provisions*

- 21 Some of the policy changes, and changes from rewriting the Act<sup>4</sup>, involve implementation costs such as IT enhancements and communications costs (including changes to application forms, brochures etc). All costs will be met or managed within baseline without fiscal implications.

#### **Human rights matters arising from the re-enactment of existing legislation**

- 22 To improve compliance with human rights legislation, Cabinet agreed to remove the unused and outdated provision allowing Emergency Benefit to be granted on the condition that the person complies with requirements to undergo medical or other treatment [SOC Min (15) 12/1 refers].

#### **I have made some minor and technical decisions**

- 23 In June 2015, Cabinet authorised me to make minor and technical policy changes to finalise draft legislation in keeping with the overall aims of the rewrite [SOC Min (15) 12/1 refers]. The Rewrite Bill reflects decisions I have made consistent with Cabinet's policy intent, including correcting previous drafting errors or omissions, outdated processes, and removing redundant provisions.

#### **Other changes included in the Rewrite Bill**

- 24 The Rewrite Bill includes consequential amendments to other legislation to align with changes made in the Bill. Transitional provisions are included to provide clarity and certainty about the legal position once the Act is repealed and replaced.

#### **Regulatory impact analysis**

- 25 A Regulatory Impact Statement was prepared in accordance with the necessary requirements and was submitted on both occasions when Cabinet approval was sought for the policy changes.

<sup>3</sup> Split care arises where parents are living apart and each parent has care of at least one child of the relationship and both apply for Sole Parent Support.

<sup>4</sup> An example when rewriting the Act will require changes is when MSD request information from employers or banks. Letters include the section of the Act that requires them to provide information so they can understand their roles and responsibilities. These references will need to be updated.

## Compliance

26 The Rewrite Bill complies with each of the following:

- the principles of the Treaty of Waitangi
- the disclosure statement requirements. A disclosure statement has been prepared and is attached to this paper. Given that this Bill largely re-enacts existing policy and law, the disclosure statement focuses on policy changes agreed by Cabinet and minor and technical changes that have been included. Treasury has agreed to this approach.
- the principles and guidelines set out in the Privacy Act 1993. The Government Chief Privacy Officer was consulted during the development of the Rewrite Bill, and the Office of the Privacy Commissioner was provided with an earlier version of it and given an opportunity to comment. Both advised that they had no concerns.
- relevant international standards and obligations
- the LAC Guidelines on the Process and Content of Legislation include a general rule that legislation should be prospective, but provide circumstances where retrospective legislation can be appropriate. A number of technical errors are being addressed in the Bill where retrospective effect is appropriate. Additional analysis is provided in the attached disclosure statement.

## Compliance with human rights legislation

- 27 The Rewrite Bill generally complies with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. An area of previous concern has been addressed and remedied with the Rewrite Bill (see paragraph 22 about changes to Emergency Benefit settings).
- 28 There is however one area where the Rewrite Bill may not comply with human rights legislation. There are provisions (dating back to 1924) that give advantageous treatment to totally blind people, compared to other disabled people.
- 29 In February 2016, Cabinet decided to continue the advantageous provisions for the totally blind whether or not these provisions breach human rights legislation [SOC-16-MIN-0004 refers].
- 30 Ministry of Justice officials advise the provisions appear to be inconsistent with the right to freedom from discrimination affirmed in section 19 of the New Zealand Bill of Rights Act 1990 and are unlikely to be justifiable under section 5 of that Act. Even if the provisions are found to be inconsistent with the New Zealand Bill of Rights Act, it will still be lawful under the rewritten Act to provide the advantages only to blind people.
- 31 Final advice from the Attorney-General will be available at the Committee meeting.

## Consultation

- 32 MSD consulted with the Ministries of Health, Education, Justice, Business, Innovation and Employment, the Ministries for Women's, and Pacific Peoples; Inland Revenue, the Treasury, Te Puni Kōkiri, Accident Compensation Corporation and State Services Commission during the development of the Rewrite Bill. The Department of Prime Minister and Cabinet was informed.

- 33 Inland Revenue has undertaken to continue to work closely with MSD on the revenue, legislative and administrative implications arising from the proposals in the Rewrite Bill having regard also to its own Business Transformation programme.
- 34 MSD worked with the Ministry of Health to provide joint advice on the placement of the residential care provisions. The New Zealand Artificial Limb Service supported a separate stand-alone Act for the limb service provisions.
- 35 On 28 May 2014, the former Minister for Social Development issued a media release on the intention to rewrite the Act. MSD also that day published on its website the Cabinet paper and CAB Min (13) 21/6. A dedicated email address was set up so members of the public could contact the Ministry.
- 36 The Office of the Clerk was also consulted on the Rewrite Bill and they advise it is compliant with Standing Orders.

### **Consultation on the design of the Rewrite Bill**

- 37 MSD worked closely with the Parliamentary Counsel Office on the design of the Rewrite Bill. A sub-group of the Legislation Design and Advisory Committee was consulted on the overall balance between primary and delegated legislation and other legislative features.
- 38 Other organisations MSD engaged with include Crown Law, the Law Commission and particularly Sir Grant Hammond (President), the National Beneficiary Advocacy Consultancy Group, the Social Security Appeal Authority chair, the Human Rights Commission, the Government Chief Privacy Officer, Office of the Privacy Commissioner and Buddle Findlay (a private law firm).

### **Consultation on the new policy being introduced**

- 39 Grandparents Raising Grandchildren Trust was consulted on the changes allowing single people caring for someone else's child and receiving an Orphan's or Unsupported Child's Benefit to receive Sole Parent Support.

### **Binding on the Crown**

- 40 The Social Security Act 1964 and the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990 are not currently binding on the Crown. Section 27 of the Interpretation Act 1999 provides that "No enactment binds the Crown unless the enactment expressly provides that the Crown is bound by the enactment".
- 41 The general principle is that the Crown should be bound by Acts unless the application of a particular Act to the Crown would impair the efficient functioning of the Government (CO (02) 4). There are several accepted exemptions for when an Act does not have to be binding on the Crown, none of which apply in this case.
- 42 I propose the Rewrite Bill will be binding on the Crown meaning that all three resulting Acts will be binding on the Crown.

### **Creating new agencies or amending law relating to existing agencies**

- 43 Not applicable.

## Allocation of decision making powers

- 44 The Rewrite Bill complies with the criteria and procedures set out in the Legislation Advisory Committee report, *LAC Guidelines: Guidelines on Process and Content of Legislation* with respect to decision-making powers.

## Associated regulations

- 45 Achieving the appropriate balance between primary and delegated legislation is an integral part of the design of this Bill. The Bill reflects a shift in the balance between primary and delegated legislation, with some of the detail from the Act moving to regulations.
- 46 Decisions on which provisions (and which parts of the provisions) should be shifted to regulations and other delegated legislation were based on the following key principles:
- creating consistency where there are existing regulations so that there is a standard approach to what is included in regulations (for example, exemptions from various policies, overseas absence, and supplementary assistance)
  - removing unnecessary detail from the primary legislation (such as administration, provisions that relate to procedure, and the mechanics of implementing a policy)
  - the need for some provisions to be flexible and responsive to changes in policy, processes, and terminology (for example, rural assistance payments activated when there is a natural disaster).
- 47 The empowering provisions to allow delegated legislation to be made will come into effect earlier than the rest of the new legislation, on the day after Royal assent. This allows for the required regulations, rules and Ministerial directions to be made and come into effect at the same time as the new Act.

## Other instruments

- 48 The current Act confers power on me to issue Directions to the Chief Executive and establish and approve welfare programmes. The Rewrite Bill re-enacts these powers. Under the Legislation Act 2012, directions and welfare programmes will generally be disallowable instruments that are not legislative instruments.

## Definition of Minister and department

- 49 The Rewrite Bill includes the existing definitions of **Minister** and **Chief Executive**. The definition of **responsible department** has been updated in line with current drafting practice.

## Commencement of legislation

- 50 The Rewrite Bill will come into force on 3 July 2017 except the empowering provisions to allow delegated legislation to be made which will come into effect the day after Royal assent.
- 51 The Rewrite Bill has been drafted to reflect other upcoming legislative changes (including; legislation passed but yet to come into effect; and legislation that is still before the House) such as the:

- Social Security (Extension of Young Persons Services and Remedial Matters) Amendment Bill and
- Social Security Amendment Act 2015 (split from the Support for Children in Hardship Bill) commencing on 1 April 2016.

## Parliamentary stages

52 I propose the Rewrite Bill should be introduced to the House by Monday 28 March 2016 and passed by November 2016. It should be referred to the Social Services Select Committee with an expected report back date of September 2016. I anticipate the Select Committee process will take six months given the importance of social security legislation to New Zealanders.

## Recommendations

53 I recommend that the Committee:

- 1 **note** I have submitted a bid for the Social Security Legislation Rewrite Bill to be given priority 3 on the 2016 legislation programme (to be passed if possible in the year);
- 2 **note** that in June 2013, Cabinet agreed the Social Security Act 1964 be rewritten so that it is more coherent, accessible, readable and easier to understand [CAB Min (13) 21/6 refers];
- 3 **note** that policy decisions for the amendments in the Social Security Legislation Rewrite Bill were taken by Cabinet in June 2015 [SOC Min (15) 12/1 refers] and February 2016 [SOC-16-MIN-0004 refers];
- 4 **note** The Social Security Legislation Rewrite Bill will become three separate Acts, the Social Security Act; Residential Care and Disability Support Services Act; and the Artificial Limb Service Act;
- 5 **agree** that the three Acts resulting from the Social Security Legislation Rewrite Bill be binding on the Crown;
- 6 **approve** the Social Security Legislation Rewrite Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 7 **agree** that the Bill be introduced by 28 March 2016;

8 **agree** that the government propose that the Bill be:

8.1 **referred** to the Social Services Select Committee for consideration;

8.2 **reported** back by the Social Services Select Committee by September 2016;

8.3 **enacted** by November 2016.

Hon Anne Tolley  
Minister for Social Development

\_\_\_\_ / \_\_\_\_ / \_\_\_\_

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT



**MINISTRY OF SOCIAL  
DEVELOPMENT**  
TE MANATŪ WHAKAHIATO ORA

## Social Security Act Rewrite: Cabinet Legislation Committee paper for your approval

**Date:** 25 February 2016

**Report no.:** REP/16/02/154

**Security level:** IN CONFIDENCE

**Priority:** Medium

### Action Sought

**Hon Anne Tolley**

Minister for Social Development

Approve the Cabinet paper and agree to  
definition correction

2 March 2016

### Contact for telephone discussion

Name	Position	Telephone	1st Contact
Wendy Illingworth	Director, Rewrite	04 910 9805 029 200 6380	<input checked="" type="checkbox"/>
Ann Reeves	Principal Policy Analyst, Rewrite Team	04 978 4179 029 200 8568	

**Other departments consulted:** Inland Revenue, Ministries of Health, Education, Justice, Business, Innovation and Employment, Ministry for Pacific Peoples, Ministry for Women, the Treasury, Te Puni Kokiri, Accident Compensation Commission, State Services Commission

### Minister's office comments

- ☐ Noted
- ☐ Seen
- ☐ Approved
- ☐ Needs change
- ☐ Withdrawn
- ☐ Not seen by Minister
- ☐ Overtaken by events
- ☐ Referred to (specify)

#### Comments

Reprovided  
with signed  
cover report. Sorry  
this was not included in  
earlier returned copy. KTF  
and signed  
Cabinet  
paper.

**Date received from MSD**

25 FEB 2016

**Date returned to MSD**

18.3.2016

29.3.2016.



# Report

**Date:** 25 February 2016

**Security Level:** IN CONFIDENCE

**To:** Hon Anne Tolley, Minister for Social Development

## **Social Security Act Rewrite: Cabinet Legislation Committee paper for your approval**

### **Purpose of the report**

- 1 We seek your:
  - agreement to the correction of the definition of *health practitioners* in the Social Security Act 1964 as part of the rewrite
  - approval of the attached paper *Social Security Legislation Rewrite Bill: Approval for Introduction*.
- 2 The paper is due to be lodged by 10 am on Thursday, 3 March 2016, so it can be considered at the Cabinet Legislation Committee (LEG) meeting on Wednesday, 9 March 2016.

### **Executive summary**

- 3 The attached Cabinet paper seeks approval for the Social Security Legislation Rewrite Bill (the Bill) to be introduced to the House by 28 March 2016.
- 4 The Bill is largely policy neutral, setting out existing policy in a new, logical structure. Two pieces of legislation, the Social Security Act 1964 and the Social Welfare (Reciprocity Agreements and New Zealand Artificial Limb Service) Act 1990 will be repealed. Reciprocity provisions will be brought together in the new Social Security Act. The New Zealand Artificial Limb Service provisions and provisions on residential care and disability support services will become two separate stand-alone pieces of legislation.
- 5 The Bill includes a small number of policy changes agreed by Cabinet. There are also some minor and technical changes approved by you under Cabinet's delegated authority.
- 6 A correction to the definition of *health practitioner*, to exclude former practitioners, has been made in the Bill. We seek your agreement to this change. Former practitioners are not asked to perform any of the functions set out in the Social Security Act for health practitioners, and it would be inappropriate for them to do so.
- 7 We have revised the timeline for the Bill. It is still on track to be passed by the end of 2016.

## Recommended actions

It is recommended that you:

- 1 **note** that a 2003 change to the Social Security Act 1964 (the Act) incorrectly included former practitioners in the definition of health practitioner  

☒ Yes / ☐ No
- 2 **note** that Ministry of Health and Ministry of Social Development officials agree that it would be inappropriate to use former practitioners for purposes that are set out in the Act for health practitioners and our practice is to use only current practitioners  

☒ Yes / ☐ No
- 3 **note** that you can agree to the correction of the definition under the authority Cabinet has delegated for you to make technical and minor policy changes required for the drafting of the Bill [SOC Min (15) 12/1 refers]  

☒ Yes / ☐ No
- 4 **agree** that the definition of health practitioner in the Act be amended through the Rewrite so that it excludes former practitioners  

AT ☒ Agree / ☐ Disagree
- 5 **note** the attached Cabinet paper *Social Security Legislation Rewrite Bill: Approval for Introduction* will need to be lodged in CabNet by 10 am on 3 March 2016, so it can be considered at the 9 March 2016 LEG meeting  

☒ Yes / ☐ No
- 6 **approve** the attached Cabinet paper for lodgement in CabNet.  

AT ☒ Agree / ☐ Disagree

  
Sacha O'Dea  
General Manager  
Ageing, Disability and International

25/2/16  
Date

  
Hon Anne Tolley  
Minister for Social Development

3-3-16  
Date

File ref: Objective A8684279; REP/16/2/158

## **The Cabinet paper seeks approval for the Bill to be introduced to the House**

- 8 The Rewrite of Social Security Legislation Bill (the Bill) is ready for introduction to the House, subject to Cabinet approval. The attached Cabinet paper seeks approval for introduction of the Bill on 28 March 2016.
- 9 A copy of the current draft of the Bill is enclosed. Minor flaws in the draft may be corrected before the meeting. A final version of the Bill will be provided to LEG by Parliamentary Counsel Office.

## **The Bill rewrites and updates two existing pieces of legislation**

- 10 The Bill is largely a policy neutral rewrite of current policy in modern drafting language with a new coherent structure. It rewrites the Social Security Act 1964 (the Act) and the Social Welfare (Reciprocity Agreements and New Zealand Artificial Limb Service) Act 1990. The provisions relating to reciprocity agreements are split between the two Acts and will be combined in the new Social Security Act, with some of the administrative detail moved into regulations.
- 11 At the Committee of the whole House stage, the Bill will be split into three separate pieces of legislation:
  - the Social Security Act 2016
  - the Residential Care and Disability Support Services Act 2016
  - the Artificial Limb Service Act 2016.
- 12 The policy settings in the Bill include some changes that have been recently, or are soon to be, enacted that will be in force before the Bill is passed (for example the provisions of the Social Security (Extension of Young Persons Services and Remedial Matters) Amendment Bill, including the changes you propose to introduce to that Bill by a Supplementary Order Paper).

## **Modern drafting techniques used in the Bill**

- 13 New features in the Bill, that are part of modern drafting practice, include:
  - terms are defined in a dictionary in a schedule near the back (schedule 2) instead of definitions appearing at the front of the legislation
  - a comprehensive index appears at the front of the Bill, and each Part has its own index to guide readers through the legislation – that adds to the length of the Bill but makes it more accessible to readers
  - some new terms are used – for example “work gap” instead of unemployment; and “MSD” instead of the chief executive – MSD is defined as “the responsible department”.

## **Policy decisions made over a series of Cabinet meetings are reflected in the Bill**

*In 2013 Cabinet agreed to a largely policy-neutral rewrite of the Social Security Act and a framework for its structure*

- 14 On 24 June 2013, Cabinet agreed to a largely policy neutral rewrite of the Act to improve coherence, clarity and accessibility. Six policy areas were identified for possible policy changes. Officials were also asked to advise on ways of reducing human rights risks associated with re-enacting existing provisions in the Act [CAB Min (13) 21/6 refers].
- 15 Cabinet agreed that key elements, including main benefit eligibility, obligations and sanctions, would be retained in the Act. Some of the administrative detail would move into delegated legislation that can be changed more quickly than primary legislation.

*In June 2015 decisions were made on the policy areas previously identified by Cabinet, with the aim of improving efficiency and service delivery*

16 In June 2015, Cabinet agreed that as part of the rewrite [SOC Min (15) 12/1 refers]:

- a regulation-making power will be introduced to identify specific client circumstances where compulsory redirection of benefit payments is appropriate, in order to ensure positive outcomes for clients
- Orphan's and Unsupported Child's benefits will be merged into a single benefit named *Supported Child's Payment*. The policy settings will be aligned so that step-parents would not be eligible (grand-parenting provisions will protect the entitlement of step-parents granted Orphan's Benefit prior to the change in legislation)
- Emergency Benefit will be renamed *Exceptional Circumstances Benefit* and be paid only at a main benefit rate (with grand-parenting protection for any recipient being paid at the New Zealand Superannuation or Veterans Pension rate prior to the change)
- case managers will be given discretion to apply work or work preparation obligations to a person granted the Exceptional Circumstances Benefit, if the person has the capacity to meet the obligation
- both parents in split care situations (where each parent cares for at least one dependent child from the former relationship) will be eligible for Sole Parent Support
- objectives of the Investment Approach will be included in the overarching purpose and principles of the Act
- a provision allowing MSD to require a person granted an Emergency Benefit to receive medical or other treatment, that has never been used and is likely to be in breach of human rights legislation, will be removed.

*A further policy change was agreed in February 2016*

17 In February 2016, Cabinet agreed that a single rate of Sole Parent Support would be established [SOC-16-MIN-004 refers]. Single carers who are paid the Orphan's or Unsupported Child's benefit (to be merged into Supported Child's Payment) will be able to get the right work obligations set and the right rate of benefit paid to them as a result. Currently they either:

- get the single rate of benefit paid through Jobseeker Support and have full-time work obligations; or
- are paid an Emergency Benefit at the single rate generally with no work obligations set; or
- must give up the Orphan's or Unsupported Child's Benefit and include the child in their benefit to claim a sole parent rate of benefit with work obligations set appropriately taking the child into account.

### **You have made minor and technical policy decisions under the authority delegated by Cabinet**

18 The appendix to this paper sets out the decisions you have made under the delegated authority Cabinet gave you to make technical and minor policy changes to finalise draft legislation [SOC Min (15) 12/1 refers].

19 The decisions are consistent with Cabinet's policy intent. Existing operational practice is also consistent with the decisions, so there is no fiscal impact. The decisions are beneficial to clients with two exceptions:

- clarification that when benefit payments stop because of an outstanding warrant to arrest and a risk to public safety, that includes stopping supplementary assistance granted to a non-beneficiary with children (this is an exception to the usual protection of half the financial assistance paid to families with children)

- an amendment to the definition of areas for Accommodation Supplement purposes, so that the area boundaries do not change every time the Government Statistician moves the statistical boundary. The changes to statistical boundaries would otherwise have led to some people having increases and others reductions in their rate of Accommodation Supplement.

### **Your agreement is needed for the definition of 'health practitioner' to be corrected in the Bill**

- 20 In 2003, a change was made to registration processes in the health sector. Changes to legislation to support the changed process included a consequential change to the Act - the words *registered health professional* in the Act were replaced with the term *health practitioner*. A definition for the term *health practitioner* was included, with reference to the Health Practitioners Competence Assurance Act 2003 and states that *health practitioner* includes "a former health practitioner".
- 21 It appears that no consideration was given at that time to whether it was appropriate for former practitioners to be included in the definition in the Act. Under the Health Practitioners Competence Assurance Act 2003 a former practitioner is no longer registered. Former practitioners are included in provisions in that Act in the context of legal actions and procedures (such as surrender of a practising certificate) that can apply to them.
- 22 Our practice is to only use or accept current health practitioners for the purposes specified in the Act. Examples of specified purposes are issuing medical certificates to support applications for Jobseeker Support on the grounds of a health condition, injury or disability, and providing treatment and rehabilitation services. We have consulted with Ministry of Health officials who agree with us that it would be inappropriate to use former health practitioners for these purposes.
- 23 We instructed Parliamentary Counsel Office (PCO) to remove the reference to former practitioners from the definition in the draft Bill. That has been done.
- 24 Although we considered this change to be a correction of a drafting error, PCO has advised that this change is a policy change and it is listed in the Bill as such. Accordingly we seek your approval of the correction, under the delegated decision-making authority given to you by Cabinet.

### **We consulted other agencies and have included the Treasury feedback in the Cabinet paper**

- 25 We circulated a draft of the attached Cabinet paper to other relevant government agencies so they could provide feedback.
- 26 The Treasury asked us to include a statement on the financial implications of the rewrite, drawing together the statements set out in the series of policy papers Cabinet had considered. That is not required in LEG papers, but we agreed it would be helpful. A statement summarising the overall financial implications, noting that implementation costs will be absorbed within current baselines, is included in the Cabinet paper.

### **Our disclosure statement is now also attached to the Cabinet paper**

- 27 MSD is required to prepare a disclosure statement for the Bill. We consulted the Treasury in the course of preparing the statement and have incorporated the feedback we received. MSD's draft disclosure statement is attached to the Cabinet paper. As is the case with the draft Bill, minor flaws may be corrected in the draft statement before it is finalised and lodged in CabNet.

### **Human rights consistency issue**

- 28 The Attorney-General will make the final determination on whether the "blind provisions" that will be re-enacted in the Bill are consistent with the New Zealand Bill of Rights Act 1990. Cabinet has agreed that these provisions will continue, regardless of that determination [SOC-16-MIN-004 refers].

- 29 If the Attorney-General finds these provisions to be inconsistent with the New Zealand Bill of Rights Act, we will provide you with advice on the process to follow on introduction of the Bill.

### Next steps

- 30 The proposed timing for the Bill to be enacted, revised following the need for additional work as a result of the recent policy Cabinet decisions, is set out in the table below:

Milestone	Date
<i>Bill of Rights Act vetting complete</i>	<i>3 March 2016</i>
Cabinet Legislation Committee	9 March 2016
Cabinet confirmation	14 March 2016
<i>Recess 21 – 25 March</i>	
Introduction of the Bill	By 28 March 2016
First reading and referral to Select Committee	From 31 March 2016
Select Committee	Six months to September 2016
Second reading	October 2016
Committee of whole House	October/November 2016
Third reading	November 2016
Royal Assent	December 2016
Commencement	July 2017

- 31 An aide memoire to support your presentation to LEG will be provided to your office by Friday, 4 March 2016.
- 32 We will also provide you with draft speech notes and briefing notes for the first reading of the Bill by 17 March 2016.

## Minor and Technical decisions

The decisions made under Cabinet's delegated authority ensure that provisions drafted for the Bill:

- clarify that sole parents whose youngest dependent child is aged over 14 years and who lost the support of their partners due to imprisonment:
  - receive the sole parent rate of Jobseeker Support rather than half of the married rate
  - can have their benefit backdated for up to 28 days from the date of application as is provided to all Sole Parent Support recipients
- allow decisions on medical grounds to cancel or decline Supported Living Payment (on the grounds of caring for a patient requiring care) to be appealed to the Medical Appeal Board that has the appropriate expertise to review such decisions
- amend service provider provisions to ensure the original intention is maintained including clarifying that a client's ability to report changes in circumstances to their service provider (rather than MSD itself) only applies in respect of Youth Service providers
- amend overseas absence provisions to ensure the original intention is maintained including:
  - clarifying that supplementary assistance paid to New Zealand Superannuation clients, Veterans Pension clients, and non-beneficiaries are not benefits for the purposes of section 77 (Effect of absence of beneficiary from New Zealand: provisions)
  - clarifying that clients can be absent from New Zealand and paid any benefit for 28 days in total in any 52 week period even where they transfer between benefits
  - clarifying that a client who has been granted an approved travel reason can have a deferral from their work obligations for the period of the approved travel
  - clarifying that a work-tested sole parent support client with an exemption from all of their work obligations under section 102A (full exemption), is allowed to travel and continue to receive their benefit for up to four weeks in any 52-week period without an approved travel reason (subject to other restrictions on overseas absence)
- repeal the War Serviceman's Dependents Allowance, as entitlements for veterans and any dependent family sit rightly within the Veteran's Support Act 2014 rather than the Social Security Act
- remove the provision that Accommodation Supplement areas are defined by the Government Statistician, but:
  - validate payments that have been made based on the unadjusted areas
  - protect anyone who has had their Accommodation Supplement rate increased as a result of a successful legal challenge to have the area adjustments applied to their situation. No reductions in Accommodation Supplement rates have occurred as a result of the statistical boundary changes despite some changes to area boundaries that would result in reductions
- clarify that clients with children who are receiving supplementary assistance (such as the Accommodation Supplement) but not a main benefit, and who have an outstanding warrant to arrest and are a risk to public safety, must have all of their assistance stopped immediately rather than retaining half of it
- replace the outdated term 'shared custody' with 'shared care'

- clarify that sanctioned work-tested beneficiaries continue to receive a reduced rate of benefit unless they cease to be work-tested beneficiaries
- clarify that the 50 percent benefit protection for people with dependent children who are subject to the 13-week non-entitlement period applies when a benefit has not yet been granted, not just when it has been cancelled
- clarify that the discretion to not pay Disability Allowance or pay it at a reduced rate when a client is receiving other similar assistance only applies to an overseas pension or periodical payment if it is made for the same purpose
- changes to Benefits Review Committee provisions to better support clients, which will:
  - for clients who have moved since the decision was made, allow a Benefits Review Committee to be established in an office close to the client's current home
  - allow the community representative to be a resident or closely connected with the office where the Committee will be held
- ensure the *special income exemption in respect of sick benefits from friendly or like society* is available to all clients receiving a main benefit by including Supported Living Payment (on the grounds of caring for a patient requiring care) in the list of benefits
- remove an outdated provision related to declarations
- clarify that *health practitioner* means only current health practitioners.

Three further minor and technical changes you have agreed are to be introduced to the Social Security (Extension of Young Persons Services and Remedial Matters) Amendment Bill by Supplementary Order Paper. These changes will:

- replace the mandatory requirement that all services provided by contracted service providers must be specified in regulations with provisions that only make it mandatory for services provided to young persons to be specified in regulations (so that doing so is optional in all other cases)
- ensure that a Youth Support Payment is paid for a minimum 6 months even if the client becomes eligible for another benefit during that time, unless the benefit involved is Supported Living Payment on ground of restricted work capacity
- clarify that a young person must provide all the information required to set up money management within 20 days, and will be sanctioned if he or she fails to do so.

Chair  
Cabinet Legislation Committee

## **SOCIAL SECURITY LEGISLATION REWRITE BILL: APPROVAL FOR INTRODUCTION**

### **Proposal**

- 1 This paper seeks approval to introduce the Social Security Legislation Rewrite Bill (the Rewrite Bill) to the House of Representatives.
- 2 The Social Security Act 1964 (the Act) is a high profile piece of legislation. It establishes New Zealanders' fundamental legal entitlements to social assistance, delivered through the benefit system.
- 3 In June 2013, Cabinet agreed the Act be rewritten so that it is more coherent, accessible, readable and easier to understand. Cabinet also asked that the rewrite consider a small number of policy changes and proposals to mitigate human rights risks arising from re-enacting existing policy [CAB Min (13) 21/6 refers].
- 4 The Rewrite Bill will:
  - repeal and replace the Social Security Act 1964 and the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990 with rewritten Acts
  - increase clarity and consistency of language and provide an improved and more logical structure to the social security legislation. This includes moving some of the current detail into delegated legislation
  - introduce a small number of policy changes to improve frontline efficiency and enable modern service delivery
  - mitigate a human rights risk by repealing an unused existing anomalous provision.

### **Policy**

#### **Rewriting existing provisions**

*The Rewrite Bill improves the clarity and consistency of existing provisions*

- 5 The Act is over 50 years old and has had multiple and piecemeal amendments and reforms making it hard to follow and risky to continuously amend. Over the last five years, there have been significant and far-reaching welfare reforms. The reforms moved social security to a more active system which is work-focused for adults and education-focused for young people. These welfare reforms have been included in the Act alongside hundreds of other amendments made over time.
- 6 The Rewrite Bill:
  - provides greater clarity, transparency and coherence: the Act is easier for the general public and practitioners to read and understand
  - provides greater consistency in the level of detail provided in the Act and in subordinate legislation: flexibility helps to future-proof the legislation

- updates the Act in line with modern practice: modernising the drafting style and removing legislative barriers to efficient, modern service delivery.
- 7 An example of increasing clarity is the insertion of a new principle that the Ministry of Social Development (MSD) can identify assistance, support, and services under the Act to help achieve the best possible outcome for people at risk of long-term welfare dependency. This supports an investment approach to guide decisions on how interventions, supports, and services are delivered.
  - 8 Re-enacting existing provisions opens them up to scrutiny and debate. This will likely lead to some policy settings that have already been considered and endorsed by Parliament being “re-litigated”.

*The new structure is more logical and intuitive, and future-proofs legislation*

- 9 Cabinet also agreed that the Rewrite Bill have a structure based on the following principles [CAB Min (13) 21/6 refers]:
  - main benefit eligibility, obligations, and sanctions are set out in detailed provisions in primary legislation
  - supplementary assistance set out with broad parameters in primary legislation, with further detail in regulations
  - hardship and emergency assistance enabled through flexibility and discretion in primary legislation, with further detail in regulations and/or welfare programmes
  - simplified provisions in primary legislation for general, technical, and administrative provisions
  - retaining rates of payments, income and means tests in the Schedules to the Act.
- 10 The Rewrite Bill keeps the broad eligibility criteria and discretion in primary legislation, but includes new regulation-making powers to allow some of the more detailed provisions in the current Act to be moved into regulations. This allows MSD to be responsive and adaptive to changes in society.
- 11 An example of a new regulation-making power is for overseas absence provisions. The general rule that benefits are not payable while a person is absent from New Zealand is retained in primary legislation but exceptions to that rule can be set out in regulations.

*The Rewrite Bill will become three separate Acts*

- 12 The Act currently includes provisions relating to distinct subject matter that would be better dealt with as stand-alone legislation.
- 13 The Minister of Health and I have agreed that, at the Committee of the Whole House stage, the residential care and home-based disability support provisions should be separated into a stand-alone Act.
- 14 The provisions relating to reciprocity agreements and artificial limb services are currently split between two Acts. Reciprocity provisions will be combined in the new Social Security Act (with some of the administrative detail moved into regulations). Artificial limb service provisions will be combined and become a separate stand-alone Act.

15 The resulting new Acts will be:

- Social Security Act
- Residential Care and Disability Support Services Act
- Artificial Limb Service Act.

**A small number of policy changes will be introduced through the Rewrite Bill**

16 The Rewrite Bill includes a small number of policy changes that Cabinet has agreed to improve frontline efficiency and enable modern service delivery [CAB Min (13) 21/6, SOC-15-MIN-0007 and SOC-16-MIN-0004 refer].

*Supporting more efficient and effective use of redirections of benefit payments*

17 Cabinet agreed to introduce a regulation-making power to identify specific client circumstances where redirection will be mandatory, without the need to confirm 'good cause' for every client [SOC Min (15) 12/1 refers]. Clients who are social housing tenants are the first circumstance planned for mandatory redirection to cover social housing rent.

*Updating Orphan's and Unsupported Child's Benefit legislation*

18 Cabinet agreed to [SOC Min (15) 12/1 refers]:

- merge Orphan's and Unsupported Child's Benefits, and:
  - name the newly merged benefit *Supported Child's Payment*
  - align the policy settings so that step-parents will not be eligible for the Supported Child's Payment (they are currently eligible for Orphan's Benefit but not for Unsupported Child's Benefit), with grandparenting provisions for step-parents currently receiving Orphan's Benefit.

19 Cabinet also agreed to [SOC-16-MIN-0004 refers]:

- ensure automated processes to align the work obligations of some Orphan's and Unsupported Child's Benefit carers on benefit with those of other beneficiaries with children in their care by extending eligibility for Sole Parent Support to single Orphan's and Unsupported Child's Benefit carers:
  - introduce a single rate of Sole Parent Support for these caregivers that is the same as the single rate of Jobseeker Support so they are paid the appropriate benefit rate<sup>1</sup>
  - align all other settings (including full-time income test, weekly benefit, commencement date and child support obligations<sup>2</sup>) to the settings for single caregivers receiving Jobseeker Support.

*Changes to the Emergency Benefit provisions*

20 Cabinet agreed to [SOC Min (15) 12/1 refers]:

- rename the benefit as the *Exceptional Circumstances Benefit* to more accurately reflect its purpose

<sup>1</sup> These clients will continue to receive newly created Supported Child's Payment.

<sup>2</sup> Currently only Unsupported Child's Benefit clients have an obligation to apply for a formula assessment of child support - Orphan's Benefit clients do not. This setting will be continued in the newly merged benefit.

- make it clear that the maximum rate payable is that of the relevant main benefit under the Act (so it is not paid at the higher New Zealand Superannuation or Veteran's Pension rates) with grandparenting provisions to protect anyone being paid at the higher rate at the time the legislation changes
- introduce discretion to apply work or work preparation obligations and associated sanctions to align with other working age benefits
- allow both parents in split care<sup>3</sup> situations (as distinct from shared care) to be eligible for Sole Parent Support, rather than preserving the current work-around that pays one parent Sole Parent Support and the other parent Emergency Benefit.

#### *Implementation of the policy changes and rewritten provisions*

- 21 Some of the policy changes, and changes from rewriting the Act<sup>4</sup>, involve implementation costs such as IT enhancements and communications costs (including changes to application forms, brochures etc). All costs will be met or managed within baseline without fiscal implications.

#### **Human rights matters arising from the re-enactment of existing legislation**

- 22 To improve compliance with human rights legislation, Cabinet agreed to remove the unused and outdated provision allowing Emergency Benefit to be granted on the condition that the person complies with requirements to undergo medical or other treatment [SOC Min (15) 12/1 refers].

#### **I have made some minor and technical decisions**

- 23 In June 2015, Cabinet authorised me to make minor and technical policy changes to finalise draft legislation in keeping with the overall aims of the rewrite [SOC Min (15) 12/1 refers]. The Rewrite Bill reflects decisions I have made consistent with Cabinet's policy intent, including correcting previous drafting errors or omissions, outdated processes, and removing redundant provisions.

#### **Other changes included in the Rewrite Bill**

- 24 The Rewrite Bill includes consequential amendments to other legislation to align with changes made in the Bill. Transitional provisions are included to provide clarity and certainty about the legal position once the Act is repealed and replaced.

#### **Regulatory impact analysis**

- 25 A Regulatory Impact Statement was prepared in accordance with the necessary requirements and was submitted on both occasions when Cabinet approval was sought for the policy changes.

<sup>3</sup> Split care arises where parents are living apart and each parent has care of at least one child of the relationship and both apply for Sole Parent Support.

<sup>4</sup> An example when rewriting the Act will require changes is when MSD request information from employers or banks. Letters include the section of the Act that requires them to provide information so they can understand their roles and responsibilities. These references will need to be updated.

## **Compliance**

26 The Rewrite Bill complies with each of the following:

- the principles of the Treaty of Waitangi
- the disclosure statement requirements. A disclosure statement has been prepared and is attached to this paper. Given that this Bill largely re-enacts existing policy and law, the disclosure statement focuses on policy changes agreed by Cabinet and minor and technical changes that have been included. Treasury has agreed to this approach.
- the principles and guidelines set out in the Privacy Act 1993. The Government Chief Privacy Officer was consulted during the development of the Rewrite Bill, and the Office of the Privacy Commissioner was provided with an earlier version of it and given an opportunity to comment. Both advised that they had no concerns.
- relevant international standards and obligations
- the LAC Guidelines on the Process and Content of Legislation include a general rule that legislation should be prospective, but provide circumstances where retrospective legislation can be appropriate. A number of technical errors are being addressed in the Bill where retrospective effect is appropriate. Additional analysis is provided in the attached disclosure statement.

## **Compliance with human rights legislation**

- 27 The Rewrite Bill generally complies with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. An area of previous concern has been addressed and remedied with the Rewrite Bill (see paragraph 22 about changes to Emergency Benefit settings).
- 28 There is however one area where the Rewrite Bill may not comply with human rights legislation. There are provisions (dating back to 1924) that give advantageous treatment to totally blind people, compared to other disabled people.
- 29 In February 2016, Cabinet decided to continue the advantageous provisions for the totally blind whether or not these provisions breach human rights legislation [SOC-16-MIN-0004 refers].
- 30 Ministry of Justice officials advise the provisions appear to be inconsistent with the right to freedom from discrimination affirmed in section 19 of the New Zealand Bill of Rights Act 1990 and are unlikely to be justifiable under section 5 of that Act. Even if the provisions are found to be inconsistent with the New Zealand Bill of Rights Act, it will still be lawful under the rewritten Act to provide the advantages only to blind people.
- 31 Final advice from the Attorney-General will be available at the Committee meeting.

## **Consultation**

- 32 MSD consulted with the Ministries of Health, Education, Justice, Business, Innovation and Employment, the Ministries for Women's, and Pacific Peoples; Inland Revenue, the Treasury, Te Puni Kōkiri, Accident Compensation Corporation and State Services Commission during the development of the Rewrite Bill. The Department of Prime Minister and Cabinet was informed.

- 33 Inland Revenue has undertaken to continue to work closely with MSD on the revenue, legislative and administrative implications arising from the proposals in the Rewrite Bill having regard also to its own Business Transformation programme.
- 34 MSD worked with the Ministry of Health to provide joint advice on the placement of the residential care provisions. The New Zealand Artificial Limb Service supported a separate stand-alone Act for the limb service provisions.
- 35 On 28 May 2014, the former Minister for Social Development issued a media release on the intention to rewrite the Act. MSD also that day published on its website the Cabinet paper and CAB Min (13) 21/6. A dedicated email address was set up so members of the public could contact the Ministry.
- 36 The Office of the Clerk was also consulted on the Rewrite Bill and they advise it is compliant with Standing Orders.

#### **Consultation on the design of the Rewrite Bill**

- 37 MSD worked closely with the Parliamentary Counsel Office on the design of the Rewrite Bill. A sub-group of the Legislation Design and Advisory Committee was consulted on the overall balance between primary and delegated legislation and other legislative features.
- 38 Other organisations MSD engaged with include Crown Law, the Law Commission and particularly Sir Grant Hammond (President), the National Beneficiary Advocacy Consultancy Group, the Social Security Appeal Authority chair, the Human Rights Commission, the Government Chief Privacy Officer, Office of the Privacy Commissioner and Buddle Findlay (a private law firm).

#### **Consultation on the new policy being introduced**

- 39 Grandparents Raising Grandchildren Trust was consulted on the changes allowing single people caring for someone else's child and receiving an Orphan's or Unsupported Child's Benefit to receive Sole Parent Support.

#### **Binding on the Crown**

- 40 The Social Security Act 1964 and the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990 are not currently binding on the Crown. Section 27 of the Interpretation Act 1999 provides that "No enactment binds the Crown unless the enactment expressly provides that the Crown is bound by the enactment".
- 41 The general principle is that the Crown should be bound by Acts unless the application of a particular Act to the Crown would impair the efficient functioning of the Government (CO (02) 4). There are several accepted exemptions for when an Act does not have to be binding on the Crown, none of which apply in this case.
- 42 I propose the Rewrite Bill will be binding on the Crown meaning that all three resulting Acts will be binding on the Crown.

#### **Creating new agencies or amending law relating to existing agencies**

- 43 Not applicable.

## Allocation of decision making powers

- 44 The Rewrite Bill complies with the criteria and procedures set out in the Legislation Advisory Committee report, *LAC Guidelines: Guidelines on Process and Content of Legislation* with respect to decision-making powers.

## Associated regulations

- 45 Achieving the appropriate balance between primary and delegated legislation is an integral part of the design of this Bill. The Bill reflects a shift in the balance between primary and delegated legislation, with some of the detail from the Act moving to regulations.
- 46 Decisions on which provisions (and which parts of the provisions) should be shifted to regulations and other delegated legislation were based on the following key principles:
- creating consistency where there are existing regulations so that there is a standard approach to what is included in regulations (for example, exemptions from various policies, overseas absence, and supplementary assistance)
  - removing unnecessary detail from the primary legislation (such as administration, provisions that relate to procedure, and the mechanics of implementing a policy)
  - the need for some provisions to be flexible and responsive to changes in policy, processes, and terminology (for example, rural assistance payments activated when there is a natural disaster).
- 47 The empowering provisions to allow delegated legislation to be made will come into effect earlier than the rest of the new legislation, on the day after Royal assent. This allows for the required regulations, rules and Ministerial directions to be made and come into effect at the same time as the new Act.

## Other instruments

- 48 The current Act confers power on me to issue Directions to the Chief Executive and establish and approve welfare programmes. The Rewrite Bill re-enacts these powers. Under the Legislation Act 2012, directions and welfare programmes will generally be disallowable instruments that are not legislative instruments.

## Definition of Minister and department

- 49 The Rewrite Bill includes the existing definitions of **Minister** and **Chief Executive**. The definition of **responsible department** has been updated in line with current drafting practice.

## Commencement of legislation

- 50 The Rewrite Bill will come into force on 3 July 2017 except the empowering provisions to allow delegated legislation to be made which will come into effect the day after Royal assent.
- 51 The Rewrite Bill has been drafted to reflect other upcoming legislative changes (including; legislation passed but yet to come into effect; and legislation that is still before the House) such as the:

- Social Security (Extension of Young Persons Services and Remedial Matters) Amendment Bill and
- Social Security Amendment Act 2015 (split from the Support for Children in Hardship Bill) commencing on 1 April 2016.

### Parliamentary stages

- 52 I propose the Rewrite Bill should be introduced to the House by Monday 28 March 2016 and passed by November 2016. It should be referred to the Social Services Select Committee with an expected report back date of September 2016. I anticipate the Select Committee process will take six months given the importance of social security legislation to New Zealanders.

### Recommendations

- 53 I recommend that the Committee:

- 1 **note** I have submitted a bid for the Social Security Legislation Rewrite Bill to be given priority 3 on the 2016 legislation programme (to be passed if possible in the year);
- 2 **note** that in June 2013, Cabinet agreed the Social Security Act 1964 be rewritten so that it is more coherent, accessible, readable and easier to understand [CAB Min (13) 21/6 refers];
- 3 **note** that policy decisions for the amendments in the Social Security Legislation Rewrite Bill were taken by Cabinet in June 2015 [SOC Min (15) 12/1 refers] and February 2016 [SOC-16-MIN-0004 refers];
- 4 **note** The Social Security Legislation Rewrite Bill will become three separate Acts, the Social Security Act, Residential Care and Disability Support Services Act; and the Artificial Limb Service Act;
- 5 **agree** that the three Acts resulting from the Social Security Legislation Rewrite Bill be binding on the Crown;
- 6 **approve** the Social Security Legislation Rewrite Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 7 **agree** that the Bill be introduced by 28 March 2016;

8 **agree** that the government propose that the Bill be:

8.1 **referred** to the Social Services Select Committee for consideration;

8.2 **reported** back by the Social Services Select Committee by September 2016;

8.3 **enacted** by November 2016.



Hon Anne Tolley  
Minister for Social Development

3, 3, 16.

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OFFICIAL INFORMATION ACT

# Departmental Disclosure Statement

## Social Security Legislation Rewrite Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

### Attention: Limits on scope of disclosure statement

This Bill is predominantly a technical revision or consolidation of existing legislation to improve clarity and navigability. Most of the Bill therefore does not change the effect of existing law. For ease of use, information provided in this disclosure statement about the content of this Bill is, unless otherwise indicated, limited to those provisions that involve a substantive change to the law. This includes changes to the law to introduce new policy or to address minor and technical changes as listed in Schedule 11 (Identified changes in legislation) of the Bill.

This disclosure statement was prepared by the Ministry of Social Development.

The Ministry of Social Development certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

[Date finalised XX February 2016].

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## Part One: General Policy Statement

### Overview

#### This Bill:

- repeals and replaces the Social Security Act 1964 and the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990
- provides an improved legislative structure
- reduces the level of detail in primary legislation, to enhance clarity, coherency, and consistency.

A small number of policy changes are included to support service delivery.

#### Objective

All legislation should be accessible: available, navigable, and clear. Legislation is clear if it is suitably readable and easy to understand. However, the Social Security Act 1964 is over 50 years old. Since it was enacted, it has been regularly and intensively amended. This has made it increasingly piecemeal, awkward, disjointed, and incoherent.

The Bill aims to improve accessibility by setting out clearly the existing requirements for eligibility, obligations, sanctions, and rights to review and appeal decisions, and how assistance is delivered. It also shifts the residential care and disability support services provisions into a stand-alone Act so that they are easier to access by or for people requiring that care or those services.

#### Legislative features

Since the Social Security Act 1964 is very detailed, amendment Acts have been needed to implement even minor changes in policy, or to enable more efficient administrative practice.

This Bill updates the drafting style and language. The Bill's structure also groups provisions in ways and locations that are clearer, more logical, and easier to follow.

The Bill also achieves greater consistency with other enactments with respect to the level of detail that is included in primary legislation and delegated legislation. Significant policy, matters relating to human rights and freedoms, rights of appeal, provisions that vary common law, and provisions that confer economic rights (such as eligibility) are in primary legislation. Matters relating to detail and administration will be more appropriately located in delegated legislation to provide an appropriate degree of flexibility and responsiveness to changes in society.

#### Policy change

This Bill changes some policy. Most of the policy changes are to enable improvements to frontline practice, and to align with modern service delivery.

More support for investing in better long-term outcomes for people receiving or needing financial assistance through the social security system has been added to the principles section. This will ensure that decisions on how services are delivered are transparent.

The existing orphan's benefit and unsupported child's benefit are merged into the supported child's payment. This payment will continue to support children and young people who have no parental support.

The settings for Sole Parent Support are changed so that single people paid the Supported Child Payment for care of a child under the age of 14 can be paid a single rate of Sole Parent Support and have that child taken into account when work obligations are set.

The emergency benefit will be renamed exceptional circumstances benefit, to reflect better it is for people who genuinely need assistance but do not qualify for a statutory benefit. To improve consistency with other statutory benefits, the Bill introduces the discretion to apply work preparation, part-time work obligations, or full-time work obligations, and associated sanctions, to a person receiving the exceptional circumstances benefit, if MSD determines the person has capacity. This Bill also confirms that the maximum rate must not exceed that of the analogous main benefit in each case, to clarify that higher rate of New Zealand Superannuation or Veteran's Pension must not be paid.

This Bill also introduces a new power to make regulations specifying groups of beneficiaries whose benefit instalment can (with, or without, good cause shown case-by-case) be redirected without their consent.

This Bill repeals the provision preventing both parents in split care situations (where both parent's care for at least one child each – rather than sharing the same child's care between them) from receiving Sole Parent Support. Instead, both parents will be eligible for Sole Parent Support and subject to the obligations and sanctions of that benefit. This approach recognises that both parents in a split care situations are essentially sole parents.

The Bill also makes some minor and technical changes where the current wording does not well support the policy intention, including correcting previous drafting errors or omissions and removing redundant provisions.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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### Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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### Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Policy changes proposed as part of the Social Security Act 1964 Rewrite, MSD, 2015.</p> <p>Additional Policy changes proposed as part of the Social Security Act 1964 Rewrite, MSD, 2016.</p> <p>Both RISs are accessible at <a href="http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/">http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/</a> and can also be found and downloaded at <a href="http://www.treasury.govt.nz/publications/informationreleases/ris">http://www.treasury.govt.nz/publications/informationreleases/ris</a></p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>The Regulatory Impact Analysis Team (RIAT) has reviewed the RISs prepared by MSD and associated supporting material, and considers that the information and analysis summarised in both RISs meet the quality assurance criteria.</p> <p>Additional comments include:</p> <p><i>Policy changes proposed as part of the Social Security Act 1964 Rewrite</i></p> <p>"The Regulatory Impact Analysis Team (RIAT) has reviewed the RIS prepared by the Ministry of Social Development and associated supporting material, and considers that the information and analysis summarised in the RIS meets the quality assurance criteria.</p> <p>Although the conclusion in the RIS as regards the treatment of people who are totally blind is not in line with the proposal in the Cabinet paper, the RIS contains sufficient evidence and analysis to enable an informed decision to be made on this, as on other aspects of the proposed rewrite at this stage. RIAT notes that further consideration will be given to this point in the context of the revised Disability Action Plan"</p> <p><i>Additional Policy changes proposed as part of the Social Security Act 1964 Rewrite</i></p> <p>We note that both of the issues discussed in this RIS were also considered in a RIS presented to SOC in June 2015 (SOC Min (15)12/1 refers). The Ministry's identification of the problem being addressed and its analysis of the likely impacts of each option are almost identical to when they were last considered. Consultation with the disability sector has been limited, meaning that the stakeholder reaction to removing provisions giving advantageous treatment to totally blind people cannot be fully anticipated.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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#### Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
This information (including limitations) is set out in the RISs for the rewrite of the Social Security Act 1964 and is available on the MSD website at <a href="http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/">http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/</a>	
See Policy changes proposed as part of the Social Security Act 1964 Rewrite pages 34-38.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
The level of effective compliance or non-compliance is unaffected by the changes in this Bill and is inherent in all social assistance administration.	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

**3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?**

MSD, including their legal team, has scanned international obligations and identified only one area to be managed.

New Zealand has Reciprocal Agreements with 10 countries. Agreements help former residents of one country access certain benefits and pensions under the other countries social security system. Two such agreements, with the Republic of Ireland and the Hellenic Republic (Greece), include provisions on Orphan's Benefit.

As noted in Part 1, the eligibility criteria for Orphan's Benefit is being changed to exclude step-parents. Step-parents covered by these reciprocal agreements will continue to receive Orphans Benefit until they are amended.

### Consistency with the government's Treaty of Waitangi obligations

**3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?**

No separate formal steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi, as the provisions of the Bill apply generally to the New Zealand public. Access to benefits and other assistance is in line with the third article of the Treaty of Waitangi which confers the same rights and duties of citizenship for Māori as other people.

### Consistency with the New Zealand Bill of Rights Act 1990

**3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?**

YES

Advice provided to the Attorney-General by Crown Law is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights> ".

## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>NO</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>

The Bill enables applicants for Supported Living Payment (on the grounds of caring for a person who requires full-time care and attention) to appeal a decision to decline their application on medical grounds to a Medical Appeal Board (instead of the Social Security Appeals Authority). This is appropriate since the Medical Appeal Board is best placed to consider the issues involved, given its specialist knowledge. It is also consistent with the approach taken to all other appeals on medical grounds (see section 375(1)(b) and row 11 of the table in section 390 *Right of appeal on medical grounds*).

The Bill also contains minor amendments to provide flexibility in terms of where Benefits Review Committee (BRC) hearings can be held. The BRC provides an informal setting for clients to review decisions made by MSD before appealing (if the issue remains unresolved) to the Social Security Appeals Authority. The current Act requires a BRC to be convened where the decision was made, which sometimes causes issues (for example when clients have moved to a different part of the country since the decision was made). The Bill allows the hearing to take place with the office the client is currently working with (see Section 372 *Benefits review committee* and Clause 2(a) of Schedule 7 *Membership*).

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
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The Ministry of Justice (MOJ) were consulted on these provisions and provided the following feedback:

*"A tribunal is a judicial body that operates independently of the Executive. Consequently, the Social Security Appeal Authority (SSAA) is a tribunal. Members are appointed by the Governor-General. Its decisions are binding on MSD and are appealable to the High Court on a question of law with subsequent appeals possible to the Court of Appeal and the Supreme Court. The Benefits Review Committees and the Medical Appeal Board are internal review bodies rather than tribunals because they are not independent of the Executive. Two of the three BRC members are MSD employees. All members can be dismissed by the Minister. Their decisions can be appealed to the Authority. All of the members of the Board are appointed by the Chief Executive and can be dismissed by the Chief Executive. Their decisions bind the Chief Executive and some but not all of their decisions can be appealed to the Authority. MOJ supports the proposal to allow appeals to the SSAA against Board decisions to decline Supported Living Payment applications for natural justice reasons".*

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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## External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Specific consultation was undertaken regarding the creation of a single Sole Parent Support for carers of children for whom Orphan's and Unsupported Child's Benefit is paid.</p> <p>Information on the external consultation is in the <i>Additional Policy changes proposed as part of the Social Security Act 1964 Rewrite</i> RIS which is accessible at <a href="http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/">http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/</a> and can also be found and downloaded at <a href="http://www.treasury.govt.nz/publications/informationreleases/ris">http://www.treasury.govt.nz/publications/informationreleases/ris</a></p> <p>On 28 May 2014, the former Minister for Social Development issued a media release on the intention to rewrite the Act. MSD also that day published on its website the Cabinet paper and CAB Min (13) 21/6. A dedicated email address was set up so members of the public could contact the MSD with any queries.</p> <p>Since 2014, MSD has been running specific targeted engagement including:</p> <ul style="list-style-type: none"> <li>• the National Beneficiaries Advocates Consultative Group (NBACG). The group provided advice on fixes and clarifications to the Act and were kept informed about legislative design and new policy initiatives (as stated in the Cabinet Minute). Rewrite Team officials also attend the group's quarterly meetings with MSD. A sub-group of the NBACG reviewed the Rewrite Bill</li> <li>• the Chair of the Social Security Appeal Authority</li> <li>• The Crown experts in legislation: the Law Commission, Crown Law, a sub-group of the Legislative Design and Advice Committee and the Parliamentary Counsel Office</li> <li>• Grandparents Raising Grandchildren Trust</li> </ul>	

## Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>Regular feedback was provided on operational design and development from officials within MSD, particularly Service Delivery (who are responsible for service delivery to youth, working age and senior beneficiaries, students and social housing).</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
---	----

### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>This Bill includes a number of minor and technical amendments to align with policy and practice and to correct previous drafting errors or omissions. Some of these amendments have retrospective effect to ensure that MSD's practice is lawful from the point at which the drafting error occurred. No clients will be adversely affected by these changes.</p> <p>More detailed information is included in Appendix Three.</p>	

### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
<p>The Bill does not make any substantive changes in relation to offences.</p>	

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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### Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
<p>The Bill does not make any substantive changes to the Social Security Appeal Authority provisions. There are minor and technical changes as discussed in section 3.4 above. The Bill re-structures all the existing review and appeal provisions into a new part: <i>Part 7 Reviews and appeals</i>.</p>	

## Powers to make delegated legislation

**4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?**

YES

There are no new Henry VIII clauses as a result of the rewrite.

*Clause 432 Orders in Council: mandatory annual CPI adjustment of rates of certain benefits* has been consequentially amended due to the Legislation Act 2012.

Section 47B(2) (annual confirmable instruments) and Schedule 2 (confirmable instruments) of the Legislation Act 2012 do not include mandatory annual CPI adjustment of rates orders made under section 432 because the making of these orders is required by law.

**4.8. Does this Bill create or amend any other powers to make delegated legislation?**

YES

Achieving the appropriate balance between primary and delegated legislation is an integral part of the design of this Bill. Following the LAC guidelines and the principles agreed by Cabinet [CAB Min (13) 21/6 refers] a shift in the balance between primary and delegated legislation has resulted, with some of the detail from the Act moving to regulations.

Decisions on which provisions (and which parts of the provisions) should be shifted to regulations and other delegated legislation were based on the following key principles:

- creating consistency where there are existing regulations and the need for a standard approach to what is included in regulations (for example, exemptions from various policies, overseas absence, and supplementary assistance)
- removing unnecessary detail from the primary legislation (such as administration, procedures, and the mechanics of implementing a policy)
- the need for some provisions to be flexible and responsive to changes in policy, processes, and terminology (for example, immigration, health, and education).

The empowering provisions to allow delegated legislation to be made will come into effect earlier than the rest of the new legislation, on the day after Royal assent. This lets the required regulations, rules and Ministerial directions to be made and come into effect at the same time as the new Act.

The current Act confers power to the Minister to issue Directions to the Chief Executive and establish and approve welfare programmes. The Bill re-enacts these powers. In general, under the Legislation Act 2012 directions and welfare programmes will be disallowable instruments which are not legislative instruments.

New regulation making powers in the Bill include:

- *Section 400 Regulations: residential requirement* – allows regulations to provide detail on when a person meets the residential requirement; or must be treated as if they satisfy the requirements; or is not required to comply with residential requirements.
  - *Section 401 Regulations: income exemption* (the purpose of which is in clause 9 of Schedule 3 (exclusion of amounts, items, payments, or income from specified source, declared not to be income)) – puts all "income exemptions" in one place.
  - *Section 402 Regulations: accommodation supplement* – allows regulations to include definitions; asset requirements; base rates; formula for assessing base rates; income charging; and rounding rules relating to Accommodation Supplement.
  - *Section 406 Regulations: funeral grants* – allows regulations to set out various categories; sets conditions for receipt; prescribes rates; and periods of payment for funeral grants.
  - *Section 410 Regulations: specific obligations, work-test obligations, and deferrals of, or exemptions from, specified obligations* – allows regulations to set out detail around drug testing; deferral of work obligations; exemptions from various obligations; and the process around exemptions.
  - *Section 412 Regulations: factors affecting benefits: insurance recovery* – allows regulations to make grants repayable if a specified insurance payment is received; to provide certain insurance payments reduce costs to a person; are charged as income against the benefit; are a debt to the Crown; and are recoverable.
  - *Section 413 Regulations: factors affecting benefits: overseas pensions* – moves direct deductions provisions to regulations alongside other provisions relating to the administration of the overseas pension policy. Direct deductions allow MSD to reduce a person's New Zealand pension by the amount of qualifying overseas pension.
  - *Section 419 Regulations: exemptions from, and calculations of, stand-down* – moves detail of circumstances when an exemption to a stand-down is applied from primary legislation. This regulation-making power allows regulation to identify the circumstances and classes of clients who are not subject to the stand-down period.
- Each of these regulation-making powers satisfies at least one of the following criteria:
- Matters of detail for which it is not appropriate to utilise parliamentary time
  - Unforeseen matters that may be required to implement and administer the Act
  - Flexibility in how the Act is applied and matters that may need to be frequently changed.

#### Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO

## Appendix Three: Further Information Relating to Part Four

### Retrospective effect - question 4.3

#### Does this Bill affect rights, freedoms, or impose obligations, retrospectively?

This Bill includes a number of minor and technical amendments to align with policy and practice and to correct previous drafting errors or omissions. Some of these amendments have retrospective effect to ensure that MSD's practice is lawful from the point at which the drafting error occurred. No clients will be adversely affected by these changes.

#### Backdating of payments when entirely to the benefit of the client

- Changes are made for sole parents with a youngest dependent child aged over 14 years who have lost the support of their spouses or partners due to imprisonment, ensuring they can:
    - receive the sole parent rate of Jobseeker Support rather than half of the married rate (see clauses 1(e) and (f) and 6 of Part 1 (Jobseeker support) of Schedule 4 (rates of benefits)).
    - have their benefit backdated for up to 28 days from the date of application as is provided to sole parents receiving Sole Parent Support<sup>1</sup> (see Section 296(2)(d)).
- Before welfare reform changes in July 2013 this was set out in the Act but a drafting omission inadvertently did not preserve that policy setting. It was never intended that these parents be treated differently. MSD's practice has been to continue to apply the previous settings in line with the policy intent. The Rewrite Bill will validate the rate paid to these clients since July 2013 (see Schedule 1 clause 9 Jobseeker support: validation of payments when spouse's or partner's regular support lost due to sentence of imprisonment, etc).
- Certain clients are permitted to take up full-time temporary employment and continue to receive a benefit (as long as the income does not fully abate the rate). Due to a drafting omission sole parents receiving Jobseeker Support were unintentionally omitted from the list of affected clients when grandparenting provisions were made for the 2013 welfare reforms. MSD's practice has been to treat sole parents receiving Jobseeker Support the same way as other clients, in line with the policy intent. The Rewrite Bill will validate the rate paid to these clients since July 2013 (see Schedule 1 clause 10 Jobseeker support: validation of eligibility if temporarily engaging in fulltime employment with income less than would fully abate benefit).

#### Validating matters that were generally understood and intended to be lawful

- Since 2013 Youth Service clients have been able to report a change in circumstances to their service provider (instead of MSD). A drafting error in 2015 had the effect that changes could be reported to any type of service provider. This was never the intention and practice has not changed. No client has been affected by this error (see Schedule 1 clause 45 Young persons' service providers: actions between 15 July 2013 and changeover).
- Accommodation Supplement provides assistance for people with high accommodation costs. Rates are based on their costs, the area they live in (with set maxima), their family make-up and income. A wording change in the provision that defines accommodation supplement areas had the unintended consequence of requiring MSD to amend the areas whenever the Government Statistician made a change to the definition of geographic areas. That impact was highlighted by a Social Security Appeal Authority decision. This

<sup>1</sup> Eligibility to Sole Parent Support ends when the youngest dependent child turns 14 years of age. These clients are automatically transferred to Jobseeker Support.

approach is unsuitable as the Government Statistician does not consider accommodation costs in the way boundaries are drawn. MSD had understood that accommodation supplement areas would only be changed after a thorough review including factors such as median rentals. Retrospective amendments allow the original intent to be kept. There will be no change to clients' current levels of accommodation supplement. The Bill ensures clients who have a different rate as a result of an appeal are protected by grandparenting provisions (see *Schedule 1 clause 53 Areas for purposes of accommodation supplement*).

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**MINISTRY OF SOCIAL  
DEVELOPMENT**  
TE MANATŪ WHAKAHIATO ORA

## Social Security Act Rewrite: Cabinet Legislation Committee paper for your approval

**Date:** 25 February 2016

**Report no.:** REP/16/02/154

**Security level:** IN CONFIDENCE

**Priority:** Medium

### Action Sought

**Hon Anne Tolley**

Minister for Social Development

Approve the Cabinet paper and agree to  
definition correction

2 March 2016

### Contact for telephone discussion

Name	Position	Telephone	1st Contact
Wendy Illingworth	Director, Rewrite	04 910 9805 029 200 6380	<input checked="" type="checkbox"/>
Ann Reeves	Principal Policy Analyst, Rewrite Team	04 978 4179 029 200 8568	

**Other departments consulted:** Inland Revenue, Ministries of Health, Education, Justice, Business, Innovation and Employment, Ministry for Pacific Peoples, Ministry for Women, the Treasury, Te Puni Kokiri, Accident Compensation Commission, State Services Commission

### Minister's office comments

- ☐ Noted
- ☐ Seen
- ☐ Approved
- ☐ Needs change
- ☐ Withdrawn
- ☐ Not seen by Minister
- ☐ Overtaken by events
- ☐ Referred to (specify)

#### Comments

Reprovided  
with signed  
cover report. Sorry  
this was not included in  
earlier returned copy. KTF  
and signed  
Cabinet  
paper.

**Date received from MSD**

25 FEB 2016

**Date returned to MSD**

18.3.2016

29.3.2016.



# Report

**Date:** 25 February 2016

**Security Level:** IN CONFIDENCE

**To:** Hon Anne Tolley, Minister for Social Development

## **Social Security Act Rewrite: Cabinet Legislation Committee paper for your approval**

### **Purpose of the report**

- 1 We seek your:
  - agreement to the correction of the definition of *health practitioners* in the Social Security Act 1964 as part of the rewrite
  - approval of the attached paper *Social Security Legislation Rewrite Bill: Approval for Introduction*.
- 2 The paper is due to be lodged by 10 am on Thursday, 3 March 2016, so it can be considered at the Cabinet Legislation Committee (LEG) meeting on Wednesday, 9 March 2016.

### **Executive summary**

- 3 The attached Cabinet paper seeks approval for the Social Security Legislation Rewrite Bill (the Bill) to be introduced to the House by 28 March 2016.
- 4 The Bill is largely policy neutral, setting out existing policy in a new, logical structure. Two pieces of legislation, the Social Security Act 1964 and the Social Welfare (Reciprocity Agreements and New Zealand Artificial Limb Service) Act 1990 will be repealed. Reciprocity provisions will be brought together in the new Social Security Act. The New Zealand Artificial Limb Service provisions and provisions on residential care and disability support services will become two separate stand-alone pieces of legislation.
- 5 The Bill includes a small number of policy changes agreed by Cabinet. There are also some minor and technical changes approved by you under Cabinet's delegated authority.
- 6 A correction to the definition of *health practitioner*, to exclude former practitioners, has been made in the Bill. We seek your agreement to this change. Former practitioners are not asked to perform any of the functions set out in the Social Security Act for health practitioners, and it would be inappropriate for them to do so.
- 7 We have revised the timeline for the Bill. It is still on track to be passed by the end of 2016.

## Recommended actions

It is recommended that you:

- 1 **note** that a 2003 change to the Social Security Act 1964 (the Act) incorrectly included former practitioners in the definition of health practitioner  

☒ Yes / ☐ No
- 2 **note** that Ministry of Health and Ministry of Social Development officials agree that it would be inappropriate to use former practitioners for purposes that are set out in the Act for health practitioners and our practice is to use only current practitioners  

☒ Yes / ☐ No
- 3 **note** that you can agree to the correction of the definition under the authority Cabinet has delegated for you to make technical and minor policy changes required for the drafting of the Bill [SOC Min (15) 12/1 refers]  

☒ Yes / ☐ No
- 4 **agree** that the definition of health practitioner in the Act be amended through the Rewrite so that it excludes former practitioners  

AT ☒ Agree / ☐ Disagree
- 5 **note** the attached Cabinet paper *Social Security Legislation Rewrite Bill: Approval for Introduction* will need to be lodged in CabNet by 10 am on 3 March 2016, so it can be considered at the 9 March 2016 LEG meeting  

☒ Yes / ☐ No
- 6 **approve** the attached Cabinet paper for lodgement in CabNet.  

AT ☒ Agree / ☐ Disagree

  
Sacha O'Dea  
General Manager  
Ageing, Disability and International

25/2/16  
Date

  
Hon Anne Tolley  
Minister for Social Development

3-3-16  
Date

File ref: Objective A8684279; REP/16/2/158

## **The Cabinet paper seeks approval for the Bill to be introduced to the House**

- 8 The Rewrite of Social Security Legislation Bill (the Bill) is ready for introduction to the House, subject to Cabinet approval. The attached Cabinet paper seeks approval for introduction of the Bill on 28 March 2016.
- 9 A copy of the current draft of the Bill is enclosed. Minor flaws in the draft may be corrected before the meeting. A final version of the Bill will be provided to LEG by Parliamentary Counsel Office.

## **The Bill rewrites and updates two existing pieces of legislation**

- 10 The Bill is largely a policy neutral rewrite of current policy in modern drafting language with a new coherent structure. It rewrites the Social Security Act 1964 (the Act) and the Social Welfare (Reciprocity Agreements and New Zealand Artificial Limb Service) Act 1990. The provisions relating to reciprocity agreements are split between the two Acts and will be combined in the new Social Security Act, with some of the administrative detail moved into regulations.
- 11 At the Committee of the whole House stage, the Bill will be split into three separate pieces of legislation:
  - the Social Security Act 2016
  - the Residential Care and Disability Support Services Act 2016
  - the Artificial Limb Service Act 2016.
- 12 The policy settings in the Bill include some changes that have been recently, or are soon to be, enacted that will be in force before the Bill is passed (for example the provisions of the Social Security (Extension of Young Persons Services and Remedial Matters) Amendment Bill, including the changes you propose to introduce to that Bill by a Supplementary Order Paper).

## **Modern drafting techniques used in the Bill**

- 13 New features in the Bill, that are part of modern drafting practice, include:
  - terms are defined in a dictionary in a schedule near the back (schedule 2) instead of definitions appearing at the front of the legislation
  - a comprehensive index appears at the front of the Bill, and each Part has its own index to guide readers through the legislation – that adds to the length of the Bill but makes it more accessible to readers
  - some new terms are used – for example “work gap” instead of unemployment; and “MSD” instead of the chief executive – MSD is defined as “the responsible department”.

## **Policy decisions made over a series of Cabinet meetings are reflected in the Bill**

*In 2013 Cabinet agreed to a largely policy-neutral rewrite of the Social Security Act and a framework for its structure*

- 14 On 24 June 2013, Cabinet agreed to a largely policy neutral rewrite of the Act to improve coherence, clarity and accessibility. Six policy areas were identified for possible policy changes. Officials were also asked to advise on ways of reducing human rights risks associated with re-enacting existing provisions in the Act [CAB Min (13) 21/6 refers].
- 15 Cabinet agreed that key elements, including main benefit eligibility, obligations and sanctions, would be retained in the Act. Some of the administrative detail would move into delegated legislation that can be changed more quickly than primary legislation.

*In June 2015 decisions were made on the policy areas previously identified by Cabinet, with the aim of improving efficiency and service delivery*

16 In June 2015, Cabinet agreed that as part of the rewrite [SOC Min (15) 12/1 refers]:

- a regulation-making power will be introduced to identify specific client circumstances where compulsory redirection of benefit payments is appropriate, in order to ensure positive outcomes for clients
- Orphan's and Unsupported Child's benefits will be merged into a single benefit named *Supported Child's Payment*. The policy settings will be aligned so that step-parents would not be eligible (grand-parenting provisions will protect the entitlement of step-parents granted Orphan's Benefit prior to the change in legislation)
- Emergency Benefit will be renamed *Exceptional Circumstances Benefit* and be paid only at a main benefit rate (with grand-parenting protection for any recipient being paid at the New Zealand Superannuation or Veterans Pension rate prior to the change)
- case managers will be given discretion to apply work or work preparation obligations to a person granted the Exceptional Circumstances Benefit, if the person has the capacity to meet the obligation
- both parents in split care situations (where each parent cares for at least one dependent child from the former relationship) will be eligible for Sole Parent Support
- objectives of the Investment Approach will be included in the overarching purpose and principles of the Act
- a provision allowing MSD to require a person granted an Emergency Benefit to receive medical or other treatment, that has never been used and is likely to be in breach of human rights legislation, will be removed.

*A further policy change was agreed in February 2016*

17 In February 2016, Cabinet agreed that a single rate of Sole Parent Support would be established [SOC-16-MIN-004 refers]. Single carers who are paid the Orphan's or Unsupported Child's benefit (to be merged into Supported Child's Payment) will be able to get the right work obligations set and the right rate of benefit paid to them as a result. Currently they either:

- get the single rate of benefit paid through Jobseeker Support and have full-time work obligations; or
- are paid an Emergency Benefit at the single rate generally with no work obligations set; or
- must give up the Orphan's or Unsupported Child's Benefit and include the child in their benefit to claim a sole parent rate of benefit with work obligations set appropriately taking the child into account.

### **You have made minor and technical policy decisions under the authority delegated by Cabinet**

18 The appendix to this paper sets out the decisions you have made under the delegated authority Cabinet gave you to make technical and minor policy changes to finalise draft legislation [SOC Min (15) 12/1 refers].

19 The decisions are consistent with Cabinet's policy intent. Existing operational practice is also consistent with the decisions, so there is no fiscal impact. The decisions are beneficial to clients with two exceptions:

- clarification that when benefit payments stop because of an outstanding warrant to arrest and a risk to public safety, that includes stopping supplementary assistance granted to a non-beneficiary with children (this is an exception to the usual protection of half the financial assistance paid to families with children)

- an amendment to the definition of areas for Accommodation Supplement purposes, so that the area boundaries do not change every time the Government Statistician moves the statistical boundary. The changes to statistical boundaries would otherwise have led to some people having increases and others reductions in their rate of Accommodation Supplement.

### **Your agreement is needed for the definition of 'health practitioner' to be corrected in the Bill**

- 20 In 2003, a change was made to registration processes in the health sector. Changes to legislation to support the changed process included a consequential change to the Act - the words *registered health professional* in the Act were replaced with the term *health practitioner*. A definition for the term *health practitioner* was included, with reference to the Health Practitioners Competence Assurance Act 2003 and states that *health practitioner* includes "a former health practitioner".
- 21 It appears that no consideration was given at that time to whether it was appropriate for former practitioners to be included in the definition in the Act. Under the Health Practitioners Competence Assurance Act 2003 a former practitioner is no longer registered. Former practitioners are included in provisions in that Act in the context of legal actions and procedures (such as surrender of a practising certificate) that can apply to them.
- 22 Our practice is to only use or accept current health practitioners for the purposes specified in the Act. Examples of specified purposes are issuing medical certificates to support applications for Jobseeker Support on the grounds of a health condition, injury or disability, and providing treatment and rehabilitation services. We have consulted with Ministry of Health officials who agree with us that it would be inappropriate to use former health practitioners for these purposes.
- 23 We instructed Parliamentary Counsel Office (PCO) to remove the reference to former practitioners from the definition in the draft Bill. That has been done.
- 24 Although we considered this change to be a correction of a drafting error, PCO has advised that this change is a policy change and it is listed in the Bill as such. Accordingly we seek your approval of the correction, under the delegated decision-making authority given to you by Cabinet.

### **We consulted other agencies and have included the Treasury feedback in the Cabinet paper**

- 25 We circulated a draft of the attached Cabinet paper to other relevant government agencies so they could provide feedback.
- 26 The Treasury asked us to include a statement on the financial implications of the rewrite, drawing together the statements set out in the series of policy papers Cabinet had considered. That is not required in LEG papers, but we agreed it would be helpful. A statement summarising the overall financial implications, noting that implementation costs will be absorbed within current baselines, is included in the Cabinet paper.

### **Our disclosure statement is now also attached to the Cabinet paper**

- 27 MSD is required to prepare a disclosure statement for the Bill. We consulted the Treasury in the course of preparing the statement and have incorporated the feedback we received. MSD's draft disclosure statement is attached to the Cabinet paper. As is the case with the draft Bill, minor flaws may be corrected in the draft statement before it is finalised and lodged in CabNet.

### **Human rights consistency issue**

- 28 The Attorney-General will make the final determination on whether the "blind provisions" that will be re-enacted in the Bill are consistent with the New Zealand Bill of Rights Act 1990. Cabinet has agreed that these provisions will continue, regardless of that determination [SOC-16-MIN-004 refers].

- 29 If the Attorney-General finds these provisions to be inconsistent with the New Zealand Bill of Rights Act, we will provide you with advice on the process to follow on introduction of the Bill.

### Next steps

- 30 The proposed timing for the Bill to be enacted, revised following the need for additional work as a result of the recent policy Cabinet decisions, is set out in the table below:

Milestone	Date
<i>Bill of Rights Act vetting complete</i>	<i>3 March 2016</i>
Cabinet Legislation Committee	9 March 2016
Cabinet confirmation	14 March 2016
<i>Recess 21 – 25 March</i>	
Introduction of the Bill	By 28 March 2016
First reading and referral to Select Committee	From 31 March 2016
Select Committee	Six months to September 2016
Second reading	October 2016
Committee of whole House	October/November 2016
Third reading	November 2016
Royal Assent	December 2016
Commencement	July 2017

- 31 An aide memoire to support your presentation to LEG will be provided to your office by Friday, 4 March 2016.
- 32 We will also provide you with draft speech notes and briefing notes for the first reading of the Bill by 17 March 2016.

## Minor and Technical decisions

The decisions made under Cabinet's delegated authority ensure that provisions drafted for the Bill:

- clarify that sole parents whose youngest dependent child is aged over 14 years and who lost the support of their partners due to imprisonment:
  - receive the sole parent rate of Jobseeker Support rather than half of the married rate
  - can have their benefit backdated for up to 28 days from the date of application as is provided to all Sole Parent Support recipients
- allow decisions on medical grounds to cancel or decline Supported Living Payment (on the grounds of caring for a patient requiring care) to be appealed to the Medical Appeal Board that has the appropriate expertise to review such decisions
- amend service provider provisions to ensure the original intention is maintained including clarifying that a client's ability to report changes in circumstances to their service provider (rather than MSD itself) only applies in respect of Youth Service providers
- amend overseas absence provisions to ensure the original intention is maintained including:
  - clarifying that supplementary assistance paid to New Zealand Superannuation clients, Veterans Pension clients, and non-beneficiaries are not benefits for the purposes of section 77 (Effect of absence of beneficiary from New Zealand: provisions)
  - clarifying that clients can be absent from New Zealand and paid any benefit for 28 days in total in any 52 week period even where they transfer between benefits
  - clarifying that a client who has been granted an approved travel reason can have a deferral from their work obligations for the period of the approved travel
  - clarifying that a work-tested sole parent support client with an exemption from all of their work obligations under section 102A (full exemption), is allowed to travel and continue to receive their benefit for up to four weeks in any 52-week period without an approved travel reason (subject to other restrictions on overseas absence)
- repeal the War Serviceman's Dependents Allowance, as entitlements for veterans and any dependent family sit rightly within the Veteran's Support Act 2014 rather than the Social Security Act
- remove the provision that Accommodation Supplement areas are defined by the Government Statistician, but:
  - validate payments that have been made based on the unadjusted areas
  - protect anyone who has had their Accommodation Supplement rate increased as a result of a successful legal challenge to have the area adjustments applied to their situation. No reductions in Accommodation Supplement rates have occurred as a result of the statistical boundary changes despite some changes to area boundaries that would result in reductions
- clarify that clients with children who are receiving supplementary assistance (such as the Accommodation Supplement) but not a main benefit, and who have an outstanding warrant to arrest and are a risk to public safety, must have all of their assistance stopped immediately rather than retaining half of it
- replace the outdated term 'shared custody' with 'shared care'

- clarify that sanctioned work-tested beneficiaries continue to receive a reduced rate of benefit unless they cease to be work-tested beneficiaries
- clarify that the 50 percent benefit protection for people with dependent children who are subject to the 13-week non-entitlement period applies when a benefit has not yet been granted, not just when it has been cancelled
- clarify that the discretion to not pay Disability Allowance or pay it at a reduced rate when a client is receiving other similar assistance only applies to an overseas pension or periodical payment if it is made for the same purpose
- changes to Benefits Review Committee provisions to better support clients, which will:
  - for clients who have moved since the decision was made, allow a Benefits Review Committee to be established in an office close to the client's current home
  - allow the community representative to be a resident or closely connected with the office where the Committee will be held
- ensure the *special income exemption in respect of sick benefits from friendly or like society* is available to all clients receiving a main benefit by including Supported Living Payment (on the grounds of caring for a patient requiring care) in the list of benefits
- remove an outdated provision related to declarations
- clarify that *health practitioner* means only current health practitioners.

Three further minor and technical changes you have agreed are to be introduced to the Social Security (Extension of Young Persons Services and Remedial Matters) Amendment Bill by Supplementary Order Paper. These changes will:

- replace the mandatory requirement that all services provided by contracted service providers must be specified in regulations with provisions that only make it mandatory for services provided to young persons to be specified in regulations (so that doing so is optional in all other cases)
- ensure that a Youth Support Payment is paid for a minimum 6 months even if the client becomes eligible for another benefit during that time, unless the benefit involved is Supported Living Payment on ground of restricted work capacity
- clarify that a young person must provide all the information required to set up money management within 20 days, and will be sanctioned if he or she fails to do so.

Chair  
Cabinet Legislation Committee

## **SOCIAL SECURITY LEGISLATION REWRITE BILL: APPROVAL FOR INTRODUCTION**

### **Proposal**

- 1 This paper seeks approval to introduce the Social Security Legislation Rewrite Bill (the Rewrite Bill) to the House of Representatives.
- 2 The Social Security Act 1964 (the Act) is a high profile piece of legislation. It establishes New Zealanders' fundamental legal entitlements to social assistance, delivered through the benefit system.
- 3 In June 2013, Cabinet agreed the Act be rewritten so that it is more coherent, accessible, readable and easier to understand. Cabinet also asked that the rewrite consider a small number of policy changes and proposals to mitigate human rights risks arising from re-enacting existing policy [CAB Min (13) 21/6 refers].
- 4 The Rewrite Bill will:
  - repeal and replace the Social Security Act 1964 and the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990 with rewritten Acts
  - increase clarity and consistency of language and provide an improved and more logical structure to the social security legislation. This includes moving some of the current detail into delegated legislation
  - introduce a small number of policy changes to improve frontline efficiency and enable modern service delivery
  - mitigate a human rights risk by repealing an unused existing anomalous provision.

### **Policy**

#### **Rewriting existing provisions**

*The Rewrite Bill improves the clarity and consistency of existing provisions*

- 5 The Act is over 50 years old and has had multiple and piecemeal amendments and reforms making it hard to follow and risky to continuously amend. Over the last five years, there have been significant and far-reaching welfare reforms. The reforms moved social security to a more active system which is work-focused for adults and education-focused for young people. These welfare reforms have been included in the Act alongside hundreds of other amendments made over time.
- 6 The Rewrite Bill:
  - provides greater clarity, transparency and coherence: the Act is easier for the general public and practitioners to read and understand
  - provides greater consistency in the level of detail provided in the Act and in subordinate legislation: flexibility helps to future-proof the legislation

- updates the Act in line with modern practice: modernising the drafting style and removing legislative barriers to efficient, modern service delivery.
- 7 An example of increasing clarity is the insertion of a new principle that the Ministry of Social Development (MSD) can identify assistance, support, and services under the Act to help achieve the best possible outcome for people at risk of long-term welfare dependency. This supports an investment approach to guide decisions on how interventions, supports, and services are delivered.
  - 8 Re-enacting existing provisions opens them up to scrutiny and debate. This will likely lead to some policy settings that have already been considered and endorsed by Parliament being “re-litigated”.

*The new structure is more logical and intuitive, and future-proofs legislation*

- 9 Cabinet also agreed that the Rewrite Bill have a structure based on the following principles [CAB Min (13) 21/6 refers]:
  - main benefit eligibility, obligations, and sanctions are set out in detailed provisions in primary legislation
  - supplementary assistance set out with broad parameters in primary legislation, with further detail in regulations
  - hardship and emergency assistance enabled through flexibility and discretion in primary legislation, with further detail in regulations and/or welfare programmes
  - simplified provisions in primary legislation for general, technical, and administrative provisions
  - retaining rates of payments, income and means tests in the Schedules to the Act.
- 10 The Rewrite Bill keeps the broad eligibility criteria and discretion in primary legislation, but includes new regulation-making powers to allow some of the more detailed provisions in the current Act to be moved into regulations. This allows MSD to be responsive and adaptive to changes in society.
- 11 An example of a new regulation-making power is for overseas absence provisions. The general rule that benefits are not payable while a person is absent from New Zealand is retained in primary legislation but exceptions to that rule can be set out in regulations.

*The Rewrite Bill will become three separate Acts*

- 12 The Act currently includes provisions relating to distinct subject matter that would be better dealt with as stand-alone legislation.
- 13 The Minister of Health and I have agreed that, at the Committee of the Whole House stage, the residential care and home-based disability support provisions should be separated into a stand-alone Act.
- 14 The provisions relating to reciprocity agreements and artificial limb services are currently split between two Acts. Reciprocity provisions will be combined in the new Social Security Act (with some of the administrative detail moved into regulations). Artificial limb service provisions will be combined and become a separate stand-alone Act.

15 The resulting new Acts will be:

- Social Security Act
- Residential Care and Disability Support Services Act
- Artificial Limb Service Act.

**A small number of policy changes will be introduced through the Rewrite Bill**

16 The Rewrite Bill includes a small number of policy changes that Cabinet has agreed to improve frontline efficiency and enable modern service delivery [CAB Min (13) 21/6, SOC-15-MIN-0007 and SOC-16-MIN-0004 refer].

*Supporting more efficient and effective use of redirections of benefit payments*

17 Cabinet agreed to introduce a regulation-making power to identify specific client circumstances where redirection will be mandatory, without the need to confirm 'good cause' for every client [SOC Min (15) 12/1 refers]. Clients who are social housing tenants are the first circumstance planned for mandatory redirection to cover social housing rent.

*Updating Orphan's and Unsupported Child's Benefit legislation*

18 Cabinet agreed to [SOC Min (15) 12/1 refers]:

- merge Orphan's and Unsupported Child's Benefits, and:
  - name the newly merged benefit *Supported Child's Payment*
  - align the policy settings so that step-parents will not be eligible for the Supported Child's Payment (they are currently eligible for Orphan's Benefit but not for Unsupported Child's Benefit), with grandparenting provisions for step-parents currently receiving Orphan's Benefit.

19 Cabinet also agreed to [SOC-16-MIN-0004 refers]:

- ensure automated processes to align the work obligations of some Orphan's and Unsupported Child's Benefit carers on benefit with those of other beneficiaries with children in their care by extending eligibility for Sole Parent Support to single Orphan's and Unsupported Child's Benefit carers:
  - introduce a single rate of Sole Parent Support for these caregivers that is the same as the single rate of Jobseeker Support so they are paid the appropriate benefit rate<sup>1</sup>
  - align all other settings (including full-time income test, weekly benefit, commencement date and child support obligations<sup>2</sup>) to the settings for single caregivers receiving Jobseeker Support.

*Changes to the Emergency Benefit provisions*

20 Cabinet agreed to [SOC Min (15) 12/1 refers]:

- rename the benefit as the *Exceptional Circumstances Benefit* to more accurately reflect its purpose

<sup>1</sup> These clients will continue to receive newly created Supported Child's Payment.

<sup>2</sup> Currently only Unsupported Child's Benefit clients have an obligation to apply for a formula assessment of child support - Orphan's Benefit clients do not. This setting will be continued in the newly merged benefit.

- make it clear that the maximum rate payable is that of the relevant main benefit under the Act (so it is not paid at the higher New Zealand Superannuation or Veteran's Pension rates) with grandparenting provisions to protect anyone being paid at the higher rate at the time the legislation changes
- introduce discretion to apply work or work preparation obligations and associated sanctions to align with other working age benefits
- allow both parents in split care<sup>3</sup> situations (as distinct from shared care) to be eligible for Sole Parent Support, rather than preserving the current work-around that pays one parent Sole Parent Support and the other parent Emergency Benefit.

#### *Implementation of the policy changes and rewritten provisions*

- 21 Some of the policy changes, and changes from rewriting the Act<sup>4</sup>, involve implementation costs such as IT enhancements and communications costs (including changes to application forms, brochures etc). All costs will be met or managed within baseline without fiscal implications.

#### **Human rights matters arising from the re-enactment of existing legislation**

- 22 To improve compliance with human rights legislation, Cabinet agreed to remove the unused and outdated provision allowing Emergency Benefit to be granted on the condition that the person complies with requirements to undergo medical or other treatment [SOC Min (15) 12/1 refers].

#### **I have made some minor and technical decisions**

- 23 In June 2015, Cabinet authorised me to make minor and technical policy changes to finalise draft legislation in keeping with the overall aims of the rewrite [SOC Min (15) 12/1 refers]. The Rewrite Bill reflects decisions I have made consistent with Cabinet's policy intent, including correcting previous drafting errors or omissions, outdated processes, and removing redundant provisions.

#### **Other changes included in the Rewrite Bill**

- 24 The Rewrite Bill includes consequential amendments to other legislation to align with changes made in the Bill. Transitional provisions are included to provide clarity and certainty about the legal position once the Act is repealed and replaced.

#### **Regulatory impact analysis**

- 25 A Regulatory Impact Statement was prepared in accordance with the necessary requirements and was submitted on both occasions when Cabinet approval was sought for the policy changes.

<sup>3</sup> Split care arises where parents are living apart and each parent has care of at least one child of the relationship and both apply for Sole Parent Support.

<sup>4</sup> An example when rewriting the Act will require changes is when MSD request information from employers or banks. Letters include the section of the Act that requires them to provide information so they can understand their roles and responsibilities. These references will need to be updated.

## Compliance

26 The Rewrite Bill complies with each of the following:

- the principles of the Treaty of Waitangi
- the disclosure statement requirements. A disclosure statement has been prepared and is attached to this paper. Given that this Bill largely re-enacts existing policy and law, the disclosure statement focuses on policy changes agreed by Cabinet and minor and technical changes that have been included. Treasury has agreed to this approach.
- the principles and guidelines set out in the Privacy Act 1993. The Government Chief Privacy Officer was consulted during the development of the Rewrite Bill, and the Office of the Privacy Commissioner was provided with an earlier version of it and given an opportunity to comment. Both advised that they had no concerns.
- relevant international standards and obligations
- the LAC Guidelines on the Process and Content of Legislation include a general rule that legislation should be prospective, but provide circumstances where retrospective legislation can be appropriate. A number of technical errors are being addressed in the Bill where retrospective effect is appropriate. Additional analysis is provided in the attached disclosure statement.

## Compliance with human rights legislation

- 27 The Rewrite Bill generally complies with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. An area of previous concern has been addressed and remedied with the Rewrite Bill (see paragraph 22 about changes to Emergency Benefit settings).
- 28 There is however one area where the Rewrite Bill may not comply with human rights legislation. There are provisions (dating back to 1924) that give advantageous treatment to totally blind people, compared to other disabled people.
- 29 In February 2016, Cabinet decided to continue the advantageous provisions for the totally blind whether or not these provisions breach human rights legislation [SOC-16-MIN-0004 refers].
- 30 Ministry of Justice officials advise the provisions appear to be inconsistent with the right to freedom from discrimination affirmed in section 19 of the New Zealand Bill of Rights Act 1990 and are unlikely to be justifiable under section 5 of that Act. Even if the provisions are found to be inconsistent with the New Zealand Bill of Rights Act, it will still be lawful under the rewritten Act to provide the advantages only to blind people.
- 31 Final advice from the Attorney-General will be available at the Committee meeting.

## Consultation

- 32 MSD consulted with the Ministries of Health, Education, Justice, Business, Innovation and Employment, the Ministries for Women's, and Pacific Peoples; Inland Revenue, the Treasury, Te Puni Kōkiri, Accident Compensation Corporation and State Services Commission during the development of the Rewrite Bill. The Department of Prime Minister and Cabinet was informed.

- 33 Inland Revenue has undertaken to continue to work closely with MSD on the revenue, legislative and administrative implications arising from the proposals in the Rewrite Bill having regard also to its own Business Transformation programme.
- 34 MSD worked with the Ministry of Health to provide joint advice on the placement of the residential care provisions. The New Zealand Artificial Limb Service supported a separate stand-alone Act for the limb service provisions.
- 35 On 28 May 2014, the former Minister for Social Development issued a media release on the intention to rewrite the Act. MSD also that day published on its website the Cabinet paper and CAB Min (13) 21/6. A dedicated email address was set up so members of the public could contact the Ministry.
- 36 The Office of the Clerk was also consulted on the Rewrite Bill and they advise it is compliant with Standing Orders.

#### **Consultation on the design of the Rewrite Bill**

- 37 MSD worked closely with the Parliamentary Counsel Office on the design of the Rewrite Bill. A sub-group of the Legislation Design and Advisory Committee was consulted on the overall balance between primary and delegated legislation and other legislative features.
- 38 Other organisations MSD engaged with include Crown Law, the Law Commission and particularly Sir Grant Hammond (President), the National Beneficiary Advocacy Consultancy Group, the Social Security Appeal Authority chair, the Human Rights Commission, the Government Chief Privacy Officer, Office of the Privacy Commissioner and Buddle Findlay (a private law firm).

#### **Consultation on the new policy being introduced**

- 39 Grandparents Raising Grandchildren Trust was consulted on the changes allowing single people caring for someone else's child and receiving an Orphan's or Unsupported Child's Benefit to receive Sole Parent Support.

#### **Binding on the Crown**

- 40 The Social Security Act 1964 and the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990 are not currently binding on the Crown. Section 27 of the Interpretation Act 1999 provides that "No enactment binds the Crown unless the enactment expressly provides that the Crown is bound by the enactment".
- 41 The general principle is that the Crown should be bound by Acts unless the application of a particular Act to the Crown would impair the efficient functioning of the Government (CO (02) 4). There are several accepted exemptions for when an Act does not have to be binding on the Crown, none of which apply in this case.
- 42 I propose the Rewrite Bill will be binding on the Crown meaning that all three resulting Acts will be binding on the Crown.

#### **Creating new agencies or amending law relating to existing agencies**

- 43 Not applicable.

## Allocation of decision making powers

- 44 The Rewrite Bill complies with the criteria and procedures set out in the Legislation Advisory Committee report, *LAC Guidelines: Guidelines on Process and Content of Legislation* with respect to decision-making powers.

## Associated regulations

- 45 Achieving the appropriate balance between primary and delegated legislation is an integral part of the design of this Bill. The Bill reflects a shift in the balance between primary and delegated legislation, with some of the detail from the Act moving to regulations.
- 46 Decisions on which provisions (and which parts of the provisions) should be shifted to regulations and other delegated legislation were based on the following key principles:
- creating consistency where there are existing regulations so that there is a standard approach to what is included in regulations (for example, exemptions from various policies, overseas absence, and supplementary assistance)
  - removing unnecessary detail from the primary legislation (such as administration, provisions that relate to procedure, and the mechanics of implementing a policy)
  - the need for some provisions to be flexible and responsive to changes in policy, processes, and terminology (for example, rural assistance payments activated when there is a natural disaster).
- 47 The empowering provisions to allow delegated legislation to be made will come into effect earlier than the rest of the new legislation, on the day after Royal assent. This allows for the required regulations, rules and Ministerial directions to be made and come into effect at the same time as the new Act.

## Other instruments

- 48 The current Act confers power on me to issue Directions to the Chief Executive and establish and approve welfare programmes. The Rewrite Bill re-enacts these powers. Under the Legislation Act 2012, directions and welfare programmes will generally be disallowable instruments that are not legislative instruments.

## Definition of Minister and department

- 49 The Rewrite Bill includes the existing definitions of **Minister** and **Chief Executive**. The definition of **responsible department** has been updated in line with current drafting practice.

## Commencement of legislation

- 50 The Rewrite Bill will come into force on 3 July 2017 except the empowering provisions to allow delegated legislation to be made which will come into effect the day after Royal assent.
- 51 The Rewrite Bill has been drafted to reflect other upcoming legislative changes (including; legislation passed but yet to come into effect; and legislation that is still before the House) such as the:

- Social Security (Extension of Young Persons Services and Remedial Matters) Amendment Bill and
- Social Security Amendment Act 2015 (split from the Support for Children in Hardship Bill) commencing on 1 April 2016.

### Parliamentary stages

- 52 I propose the Rewrite Bill should be introduced to the House by Monday 28 March 2016 and passed by November 2016. It should be referred to the Social Services Select Committee with an expected report back date of September 2016. I anticipate the Select Committee process will take six months given the importance of social security legislation to New Zealanders.

### Recommendations

- 53 I recommend that the Committee:

- 1 **note** I have submitted a bid for the Social Security Legislation Rewrite Bill to be given priority 3 on the 2016 legislation programme (to be passed if possible in the year);
- 2 **note** that in June 2013, Cabinet agreed the Social Security Act 1964 be rewritten so that it is more coherent, accessible, readable and easier to understand [CAB Min (13) 21/6 refers];
- 3 **note** that policy decisions for the amendments in the Social Security Legislation Rewrite Bill were taken by Cabinet in June 2015 [SOC Min (15) 12/1 refers] and February 2016 [SOC-16-MIN-0004 refers];
- 4 **note** The Social Security Legislation Rewrite Bill will become three separate Acts, the Social Security Act, Residential Care and Disability Support Services Act; and the Artificial Limb Service Act;
- 5 **agree** that the three Acts resulting from the Social Security Legislation Rewrite Bill be binding on the Crown;
- 6 **approve** the Social Security Legislation Rewrite Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 7 **agree** that the Bill be introduced by 28 March 2016;

8 **agree** that the government propose that the Bill be:

8.1 **referred** to the Social Services Select Committee for consideration;

8.2 **reported** back by the Social Services Select Committee by September 2016;

8.3 **enacted** by November 2016.

  
Hon Anne Tolley  
Minister for Social Development

3, 3, 16.

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

# Departmental Disclosure Statement

## Social Security Legislation Rewrite Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

### Attention: Limits on scope of disclosure statement

This Bill is predominantly a technical revision or consolidation of existing legislation to improve clarity and navigability. Most of the Bill therefore does not change the effect of existing law. For ease of use, information provided in this disclosure statement about the content of this Bill is, unless otherwise indicated, limited to those provisions that involve a substantive change to the law. This includes changes to the law to introduce new policy or to address minor and technical changes as listed in Schedule 11 (Identified changes in legislation) of the Bill.

This disclosure statement was prepared by the Ministry of Social Development.

The Ministry of Social Development certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

[Date finalised XX February 2016].

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## Part One: General Policy Statement

### Overview

#### This Bill:

- repeals and replaces the Social Security Act 1964 and the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990
- provides an improved legislative structure
- reduces the level of detail in primary legislation, to enhance clarity, coherency, and consistency.

A small number of policy changes are included to support service delivery.

### Objective

All legislation should be accessible: available, navigable, and clear. Legislation is clear if it is suitably readable and easy to understand. However, the Social Security Act 1964 is over 50 years old. Since it was enacted, it has been regularly and intensively amended. This has made it increasingly piecemeal, awkward, disjointed, and incoherent.

The Bill aims to improve accessibility by setting out clearly the existing requirements for eligibility, obligations, sanctions, and rights to review and appeal decisions, and how assistance is delivered. It also shifts the residential care and disability support services provisions into a stand-alone Act so that they are easier to access by or for people requiring that care or those services.

### Legislative features

Since the Social Security Act 1964 is very detailed, amendment Acts have been needed to implement even minor changes in policy, or to enable more efficient administrative practice.

This Bill updates the drafting style and language. The Bill's structure also groups provisions in ways and locations that are clearer, more logical, and easier to follow.

The Bill also achieves greater consistency with other enactments with respect to the level of detail that is included in primary legislation and delegated legislation. Significant policy, matters relating to human rights and freedoms, rights of appeal, provisions that vary common law, and provisions that confer economic rights (such as eligibility) are in primary legislation. Matters relating to detail and administration will be more appropriately located in delegated legislation to provide an appropriate degree of flexibility and responsiveness to changes in society.

### Policy change

This Bill changes some policy. Most of the policy changes are to enable improvements to frontline practice, and to align with modern service delivery.

More support for investing in better long-term outcomes for people receiving or needing financial assistance through the social security system has been added to the principles section. This will ensure that decisions on how services are delivered are transparent.

The existing orphan's benefit and unsupported child's benefit are merged into the supported child's payment. This payment will continue to support children and young people who have no parental support.

The settings for Sole Parent Support are changed so that single people paid the Supported Child Payment for care of a child under the age of 14 can be paid a single rate of Sole Parent Support and have that child taken into account when work obligations are set.

The emergency benefit will be renamed exceptional circumstances benefit, to reflect better it is for people who genuinely need assistance but do not qualify for a statutory benefit. To improve consistency with other statutory benefits, the Bill introduces the discretion to apply work preparation, part-time work obligations, or full-time work obligations, and associated sanctions, to a person receiving the exceptional circumstances benefit, if MSD determines the person has capacity. This Bill also confirms that the maximum rate must not exceed that of the analogous main benefit in each case, to clarify that higher rate of New Zealand Superannuation or Veteran's Pension must not be paid.

This Bill also introduces a new power to make regulations specifying groups of beneficiaries whose benefit instalment can (with, or without, good cause shown case-by-case) be redirected without their consent.

This Bill repeals the provision preventing both parents in split care situations (where both parent's care for at least one child each – rather than sharing the same child's care between them) from receiving Sole Parent Support. Instead, both parents will be eligible for Sole Parent Support and subject to the obligations and sanctions of that benefit. This approach recognises that both parents in a split care situations are essentially sole parents.

The Bill also makes some minor and technical changes where the current wording does not well support the policy intention, including correcting previous drafting errors or omissions and removing redundant provisions.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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### Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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### Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Policy changes proposed as part of the Social Security Act 1964 Rewrite, MSD, 2015.</p> <p>Additional Policy changes proposed as part of the Social Security Act 1964 Rewrite, MSD, 2016.</p> <p>Both RISs are accessible at <a href="http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/">http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/</a> and can also be found and downloaded at <a href="http://www.treasury.govt.nz/publications/informationreleases/ris">http://www.treasury.govt.nz/publications/informationreleases/ris</a></p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>The Regulatory Impact Analysis Team (RIAT) has reviewed the RISs prepared by MSD and associated supporting material, and considers that the information and analysis summarised in both RISs meet the quality assurance criteria.</p> <p>Additional comments include:</p> <p><i>Policy changes proposed as part of the Social Security Act 1964 Rewrite</i></p> <p>"The Regulatory Impact Analysis Team (RIAT) has reviewed the RIS prepared by the Ministry of Social Development and associated supporting material, and considers that the information and analysis summarised in the RIS meets the quality assurance criteria.</p> <p>Although the conclusion in the RIS as regards the treatment of people who are totally blind is not in line with the proposal in the Cabinet paper, the RIS contains sufficient evidence and analysis to enable an informed decision to be made on this, as on other aspects of the proposed rewrite at this stage. RIAT notes that further consideration will be given to this point in the context of the revised Disability Action Plan"</p> <p><i>Additional Policy changes proposed as part of the Social Security Act 1964 Rewrite</i></p> <p>We note that both of the issues discussed in this RIS were also considered in a RIS presented to SOC in June 2015 (SOC Min (15)12/1 refers). The Ministry's identification of the problem being addressed and its analysis of the likely impacts of each option are almost identical to when they were last considered. Consultation with the disability sector has been limited, meaning that the stakeholder reaction to removing provisions giving advantageous treatment to totally blind people cannot be fully anticipated.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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#### Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
This information (including limitations) is set out in the RISs for the rewrite of the Social Security Act 1964 and is available on the MSD website at <a href="http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/">http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/</a>	
See Policy changes proposed as part of the Social Security Act 1964 Rewrite pages 34-38.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
The level of effective compliance or non-compliance is unaffected by the changes in this Bill and is inherent in all social assistance administration.	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

**3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?**

MSD, including their legal team, has scanned international obligations and identified only one area to be managed.

New Zealand has Reciprocal Agreements with 10 countries. Agreements help former residents of one country access certain benefits and pensions under the other countries social security system. Two such agreements, with the Republic of Ireland and the Hellenic Republic (Greece), include provisions on Orphan's Benefit.

As noted in Part 1, the eligibility criteria for Orphan's Benefit is being changed to exclude step-parents. Step-parents covered by these reciprocal agreements will continue to receive Orphans Benefit until they are amended.

### Consistency with the government's Treaty of Waitangi obligations

**3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?**

No separate formal steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi, as the provisions of the Bill apply generally to the New Zealand public. Access to benefits and other assistance is in line with the third article of the Treaty of Waitangi which confers the same rights and duties of citizenship for Māori as other people.

### Consistency with the New Zealand Bill of Rights Act 1990

**3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?**

YES

Advice provided to the Attorney-General by Crown Law is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights> ".

## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>NO</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>

The Bill enables applicants for Supported Living Payment (on the grounds of caring for a person who requires full-time care and attention) to appeal a decision to decline their application on medical grounds to a Medical Appeal Board (instead of the Social Security Appeals Authority). This is appropriate since the Medical Appeal Board is best placed to consider the issues involved, given its specialist knowledge. It is also consistent with the approach taken to all other appeals on medical grounds (see section 375(1)(b) and row 11 of the table in section 390 *Right of appeal on medical grounds*).

The Bill also contains minor amendments to provide flexibility in terms of where Benefits Review Committee (BRC) hearings can be held. The BRC provides an informal setting for clients to review decisions made by MSD before appealing (if the issue remains unresolved) to the Social Security Appeals Authority. The current Act requires a BRC to be convened where the decision was made, which sometimes causes issues (for example when clients have moved to a different part of the country since the decision was made). The Bill allows the hearing to take place with the office the client is currently working with (see Section 372 *Benefits review committee* and Clause 2(a) of Schedule 7 *Membership*).

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
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The Ministry of Justice (MOJ) were consulted on these provisions and provided the following feedback:

*"A tribunal is a judicial body that operates independently of the Executive. Consequently, the Social Security Appeal Authority (SSAA) is a tribunal. Members are appointed by the Governor-General. Its decisions are binding on MSD and are appealable to the High Court on a question of law with subsequent appeals possible to the Court of Appeal and the Supreme Court. The Benefits Review Committees and the Medical Appeal Board are internal review bodies rather than tribunals because they are not independent of the Executive. Two of the three BRC members are MSD employees. All members can be dismissed by the Minister. Their decisions can be appealed to the Authority. All of the members of the Board are appointed by the Chief Executive and can be dismissed by the Chief Executive. Their decisions bind the Chief Executive and some but not all of their decisions can be appealed to the Authority. MOJ supports the proposal to allow appeals to the SSAA against Board decisions to decline Supported Living Payment applications for natural justice reasons".*

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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## External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Specific consultation was undertaken regarding the creation of a single Sole Parent Support for carers of children for whom Orphan's and Unsupported Child's Benefit is paid.</p> <p>Information on the external consultation is in the <i>Additional Policy changes proposed as part of the Social Security Act 1964 Rewrite</i> RIS which is accessible at <a href="http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/">http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/</a> and can also be found and downloaded at <a href="http://www.treasury.govt.nz/publications/informationreleases/ris">http://www.treasury.govt.nz/publications/informationreleases/ris</a></p> <p>On 28 May 2014, the former Minister for Social Development issued a media release on the intention to rewrite the Act. MSD also that day published on its website the Cabinet paper and CAB Min (13) 21/6. A dedicated email address was set up so members of the public could contact the MSD with any queries.</p> <p>Since 2014, MSD has been running specific targeted engagement including:</p> <ul style="list-style-type: none"> <li>• the National Beneficiaries Advocates Consultative Group (NBACG). The group provided advice on fixes and clarifications to the Act and were kept informed about legislative design and new policy initiatives (as stated in the Cabinet Minute). Rewrite Team officials also attend the group's quarterly meetings with MSD. A sub-group of the NBACG reviewed the Rewrite Bill</li> <li>• the Chair of the Social Security Appeal Authority</li> <li>• The Crown experts in legislation: the Law Commission, Crown Law, a sub-group of the Legislative Design and Advice Committee and the Parliamentary Counsel Office</li> <li>• Grandparents Raising Grandchildren Trust</li> </ul>	

## Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>Regular feedback was provided on operational design and development from officials within MSD, particularly Service Delivery (who are responsible for service delivery to youth, working age and senior beneficiaries, students and social housing).</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>This Bill includes a number of minor and technical amendments to align with policy and practice and to correct previous drafting errors or omissions. Some of these amendments have retrospective effect to ensure that MSD's practice is lawful from the point at which the drafting error occurred. No clients will be adversely affected by these changes.</p> <p>More detailed information is included in Appendix Three.</p>	

### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
<p>The Bill does not make any substantive changes in relation to offences.</p>	

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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### Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
<p>The Bill does not make any substantive changes to the Social Security Appeal Authority provisions. There are minor and technical changes as discussed in section 3.4 above. The Bill re-structures all the existing review and appeal provisions into a new part: <i>Part 7 Reviews and appeals</i>.</p>	

## Powers to make delegated legislation

**4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?**

YES

There are no new Henry VIII clauses as a result of the rewrite.

Clause 432 *Orders in Council: mandatory annual CPI adjustment of rates of certain benefits* has been consequentially amended due to the Legislation Act 2012.

Section 47B(2) (annual confirmable instruments) and Schedule 2 (confirmable instruments) of the Legislation Act 2012 do not include mandatory annual CPI adjustment of rates orders made under section 432 because the making of these orders is required by law.

**4.8. Does this Bill create or amend any other powers to make delegated legislation?**

YES

Achieving the appropriate balance between primary and delegated legislation is an integral part of the design of this Bill. Following the LAC guidelines and the principles agreed by Cabinet [CAB Min (13) 21/6 refers] a shift in the balance between primary and delegated legislation has resulted, with some of the detail from the Act moving to regulations.

Decisions on which provisions (and which parts of the provisions) should be shifted to regulations and other delegated legislation were based on the following key principles:

- creating consistency where there are existing regulations and the need for a standard approach to what is included in regulations (for example, exemptions from various policies, overseas absence, and supplementary assistance)
- removing unnecessary detail from the primary legislation (such as administration, procedures, and the mechanics of implementing a policy)
- the need for some provisions to be flexible and responsive to changes in policy, processes, and terminology (for example, immigration, health, and education).

The empowering provisions to allow delegated legislation to be made will come into effect earlier than the rest of the new legislation, on the day after Royal assent. This lets the required regulations, rules and Ministerial directions to be made and come into effect at the same time as the new Act.

The current Act confers power to the Minister to issue Directions to the Chief Executive and establish and approve welfare programmes. The Bill re-enacts these powers. In general, under the Legislation Act 2012 directions and welfare programmes will be disallowable instruments which are not legislative instruments.

New regulation making powers in the Bill include:

- *Section 400 Regulations: residential requirement* – allows regulations to provide detail on when a person meets the residential requirement; or must be treated as if they satisfy the requirements; or is not required to comply with residential requirements.
  - *Section 401 Regulations: income exemption* (the purpose of which is in clause 9 of Schedule 3 (exclusion of amounts, items, payments, or income from specified source, declared not to be income)) – puts all "income exemptions" in one place.
  - *Section 402 Regulations: accommodation supplement* – allows regulations to include definitions; asset requirements; base rates; formula for assessing base rates; income charging; and rounding rules relating to Accommodation Supplement.
  - *Section 406 Regulations: funeral grants* – allows regulations to set out various categories; sets conditions for receipt; prescribes rates; and periods of payment for funeral grants.
  - *Section 410 Regulations: specific obligations, work-test obligations, and deferrals of, or exemptions from, specified obligations* – allows regulations to set out detail around drug testing; deferral of work obligations; exemptions from various obligations; and the process around exemptions.
  - *Section 412 Regulations: factors affecting benefits: insurance recovery* – allows regulations to make grants repayable if a specified insurance payment is received; to provide certain insurance payments reduce costs to a person; are charged as income against the benefit; are a debt to the Crown; and are recoverable.
  - *Section 413 Regulations: factors affecting benefits: overseas pensions* – moves direct deductions provisions to regulations alongside other provisions relating to the administration of the overseas pension policy. Direct deductions allow MSD to reduce a person's New Zealand pension by the amount of qualifying overseas pension.
  - *Section 419 Regulations: exemptions from, and calculations of, stand-down* – moves detail of circumstances when an exemption to a stand-down is applied from primary legislation. This regulation-making power allows regulation to identify the circumstances and classes of clients who are not subject to the stand-down period.
- Each of these regulation-making powers satisfies at least one of the following criteria:
- Matters of detail for which it is not appropriate to utilise parliamentary time
  - Unforeseen matters that may be required to implement and administer the Act
  - Flexibility in how the Act is applied and matters that may need to be frequently changed.

#### Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO

## Appendix Three: Further Information Relating to Part Four

### Retrospective effect - question 4.3

#### Does this Bill affect rights, freedoms, or impose obligations, retrospectively?

This Bill includes a number of minor and technical amendments to align with policy and practice and to correct previous drafting errors or omissions. Some of these amendments have retrospective effect to ensure that MSD's practice is lawful from the point at which the drafting error occurred. No clients will be adversely affected by these changes.

#### Backdating of payments when entirely to the benefit of the client

- Changes are made for sole parents with a youngest dependent child aged over 14 years who have lost the support of their spouses or partners due to imprisonment, ensuring they can:
    - receive the sole parent rate of Jobseeker Support rather than half of the married rate (see clauses 1(e) and (f) and 6 of Part 1 (Jobseeker support) of Schedule 4 (rates of benefits)).
    - have their benefit backdated for up to 28 days from the date of application as is provided to sole parents receiving Sole Parent Support<sup>1</sup> (see Section 296(2)(d)).
- Before welfare reform changes in July 2013 this was set out in the Act but a drafting omission inadvertently did not preserve that policy setting. It was never intended that these parents be treated differently. MSD's practice has been to continue to apply the previous settings in line with the policy intent. The Rewrite Bill will validate the rate paid to these clients since July 2013 (see Schedule 1 clause 9 Jobseeker support: validation of payments when spouse's or partner's regular support lost due to sentence of imprisonment, etc).
- Certain clients are permitted to take up full-time temporary employment and continue to receive a benefit (as long as the income does not fully abate the rate). Due to a drafting omission sole parents receiving Jobseeker Support were unintentionally omitted from the list of affected clients when grandparenting provisions were made for the 2013 welfare reforms. MSD's practice has been to treat sole parents receiving Jobseeker Support the same way as other clients, in line with the policy intent. The Rewrite Bill will validate the rate paid to these clients since July 2013 (see Schedule 1 clause 10 Jobseeker support: validation of eligibility if temporarily engaging in fulltime employment with income less than would fully abate benefit).

#### Validating matters that were generally understood and intended to be lawful

- Since 2013 Youth Service clients have been able to report a change in circumstances to their service provider (instead of MSD). A drafting error in 2015 had the effect that changes could be reported to any type of service provider. This was never the intention and practice has not changed. No client has been affected by this error (see Schedule 1 clause 45 Young persons' service providers: actions between 15 July 2013 and changeover).
- Accommodation Supplement provides assistance for people with high accommodation costs. Rates are based on their costs, the area they live in (with set maxima), their family make-up and income. A wording change in the provision that defines accommodation supplement areas had the unintended consequence of requiring MSD to amend the areas whenever the Government Statistician made a change to the definition of geographic areas. That impact was highlighted by a Social Security Appeal Authority decision. This

<sup>1</sup> Eligibility to Sole Parent Support ends when the youngest dependent child turns 14 years of age. These clients are automatically transferred to Jobseeker Support.

approach is unsuitable as the Government Statistician does not consider accommodation costs in the way boundaries are drawn. MSD had understood that accommodation supplement areas would only be changed after a thorough review including factors such as median rentals. Retrospective amendments allow the original intent to be kept. There will be no change to clients' current levels of accommodation supplement. The Bill ensures clients who have a different rate as a result of an appeal are protected by grandparenting provisions (see *Schedule 1 clause 53 Areas for purposes of accommodation supplement*).

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**MINISTRY OF SOCIAL  
DEVELOPMENT**  
TE MANATU WHAKAHIATO ORA

**Cabinet Paper: Progressing the Social Security Legislation Rewrite Bill      Cabinet**

**Date:** 8 February 2018

**Report no.:** REP/18/1/114

**Security level:** In Confidence

**Priority:** Routine

**For consideration by Cabinet on 12 February 2018**

**Current Stage of Paper**

For submission to Cabinet

By 9 February 2018

**Action Sought**

Hon Carmel Sepuloni

*Social Development, Disability  
Issues*

Agree to the recommendations in the cover  
report and to submit the Cabinet paper to  
Cabinet

By 9 February 2018

**Contact for telephone discussion**

Name	Position	Telephone	1st Contact
Fiona Carter-Giddings	General Manager, Employment and Income Support Policy	s9(2)(a)	<input checked="" type="checkbox"/>
Bede Hogan	Policy Manager, Employment and Income Support Policy		

**Report prepared by:** s9(2)(a), Senior Policy Analyst

**Other departments consulted:** DPMC, ACC, SSC, the Ministries of Education, Health, Justice, Pacific Peoples,  
Business, Innovation and Employment, Women, Te Puni Kōkiri, and the Treasury.

**Minister's office comments**

- ☐ Noted
- ☐ Seen
- ☐ Approved
- ☐ Needs change
- ☐ Withdrawn
- ☐ Not seen by Minister
- ☐ Overtaken by events
- ☐ Referred to (specify)

**Comments**

**Date received from MSD**

**Date returned to MSD**



# Report

**Date:** 8 February 2018

**Security Level:** IN CONFIDENCE

**To:** Hon Carmel Sepuloni, Minister for Social Development

## Cabinet Paper: Progressing the Social Security Legislation Rewrite Bill

### Purpose of the report

- 1 This report seeks your agreement to submit the attached Cabinet paper "Progressing the Social Security Legislation Rewrite Bill" to Cabinet so it can be considered at the next meeting on Monday 12 February 2018. This approach is required so that the Social Security Rewrite Bill (the Rewrite Bill) can be progressed in the sitting week beginning 13 February 2018. Your decision is also sought for new commencement dates for the Rewrite Bill.

### Recommended actions

It is recommended that you:

- 1 **note** that you have previously agreed to progress a policy-neutral Social Security Legislation Rewrite Bill which includes a number of fixes and clarifications and minor policy changes [REP/17/11/1097 and REP/17/11/1165 refer]
- 2 **note** that a Cabinet paper and Supplementary Order Paper have been drafted to reflect your instructions and agency consultation has been completed on the draft Cabinet paper
- 3 **note** that since the Social Security Legislation Rewrite Bill did not progress in the term of the last Parliament, the commencement dates currently within the Bill need to be amended
- 4 **agree** that the Social Security Legislation Rewrite Bill's commencement dates be amended so that:
  - 4.1 the regulation-making provisions come into force on the day after Royal Assent
  - 4.2 the remaining provisions in the Bill come into force on 26 November 2018

**Agree / Disagree**

**Agree / Disagree**

- 5 **agree** to submit the Cabinet paper "Progressing the Social Security Legislation Rewrite Bill" to Cabinet Office via CabNet on Friday 9 February 2018.

**Agree / Disagree**



Fiona Carter-Giddings  
General Manager  
Employment and Income Support Policy

8/02/2018

Date

Hon Carmel Sepuloni  
Minister for Social Development

Date

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## **You have previously agreed that you want to progress a policy-neutral Social Security Legislation Rewrite Bill**

- 2 You have made a number of decisions on the Rewrite Bill, including removing new policy changes from the Rewrite Bill and adding three additional fixes by Supplementary Order Paper (SOP) [REP/17/11/1097 refers]. At a meeting with officials on 27 November 2017 you agreed to proceed with a policy-neutral rewrite of the Social Security Act 1964 (SSA).
- 3 You then confirmed this decision to proceed with a policy-neutral rewrite of the SSA and the inclusion of a number of fixes, clarifications and additional changes, including minor policy changes [REP/17/11/1165 refers].

### ***Current status of the Social Security Legislation Rewrite Bill***

- 4 As at 8 February 2018, the Rewrite Bill is currently awaiting its second reading. It will then proceed to Committee of the whole House (Committee stage). Your office has indicated that you wish to progress the bill in the sitting week beginning 13 February 2018.

## **A Cabinet paper has been drafted to reflect this agreement...**

- 5 The Ministry for Social Development (MSD) has prepared a draft Cabinet paper that seeks approval for the release of a SOP that amends the Rewrite Bill. Cabinet agreement is also sought to make changes to commencement dates contained within the Rewrite Bill. MSD has undertaken agency consultation on the Cabinet paper and no substantive comments were received.

## **... however, a further decision on commencement dates is required for the Cabinet paper**

- 6 The Rewrite Bill will commence on two dates. Currently, some provisions, such as for regulation-making, were expected to commence on 1 January 2017 and the majority of the provisions on 3 July 2017. Given that the Rewrite Bill did not progress in the term of the last Parliament, these commencement dates need to be updated.
- 7 The two-step commencement was proposed to allow for necessary consequential amendments to be made to regulations so they can have the same commencement date as the Bill. Additionally, this will allow for system and operational changes to be made and for communications with clients to occur. Therefore it is proposed that:
  - the commencement date for regulation-making provisions is amended to be the day after Royal Assent
  - the commencement date for the remaining provisions in the Rewrite Bill is amended to 26 November 2018.

## **Progressing the Cabinet paper and Social Security Legislation Rewrite Bill**

- 8 Officials understand that you plan to progress the Rewrite Bill through the House in the sitting week beginning 13 February 2018. For this deadline to be met, the Cabinet paper will need to be considered at the Cabinet on Monday 12 February 2018.

## **Other matters**

- 9 On 2 February 2018, MSD provided you and the Minister of Housing and Urban Development, with advice on a historical misalignment issue between Government Statistician boundaries and the Accommodation Supplement (AS) Area boundaries [REP 18/2/154 refers]. That report noted that because AS Area boundaries had not always been updated as required, this created a misalignment issue. The report sought an indication from you on possible approaches to address the AS historical alignment issue. Your office has indicated that you wish to remove the provision currently contained in the Rewrite Bill to validate past decisions on AS and receive advice on alternative options for addressing the AS historical misalignment issue.

MSD has updated the Cabinet paper to this effect and is working with PCO on amending the SOP.

- 10 MSD notes that you will not be progressing with the SOP for the Rewrite Bill that you released while in opposition. You may wish to note this if your colleagues query you about this matter. You will also need to inform the chairperson of the Committee of the whole House during the debate that you no longer intend to move the amendments contained within that SOP.
- 11 We have also provided your office with examples of the four minor policy changes still included in the Rewrite Bill.

### **Next steps**

- 12 MSD will lodge the paper through CabNet on Friday 9 February 2018. The Cabinet paper will then need to be approved by you through your office.
- 13 You will be provided with an Aide Memoire to support the consideration of the Cabinet paper at Cabinet by 9 February 2018.

File ref: REP/18/1/114

Author: s9(2)(a), Senior Policy Analyst, Employment and Income Support

Responsible manager: Bede Hogan, Policy Manager, Employment and Income Support

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Chair  
Cabinet

## **PROGRESSING THE SOCIAL SECURITY LEGISLATION REWRITE BILL**

### **Proposal**

- 1 I seek the approval of Cabinet for the release of a Supplementary Order Paper (SOP) that amends the Social Security Legislation Rewrite Bill (the Rewrite Bill). The SOP removes policy changes currently within the Bill. This is required to progress a policy-neutral rewrite of the Social Security Act 1964 (the SSA).

### **Executive summary**

- 2 The SSA sets entitlements to social assistance, which are delivered through the benefit system. However, due to frequent amendments and changes over time, the SSA has become fragmented and difficult to navigate. Under the last National-led Government work was initiated to rewrite the SSA to make it more fit for purpose.
- 3 Cabinet agreed that the SSA should be rewritten so that it would be more coherent, accessible and easier to understand [CAB Min (13) 21/6 recommendation 3 refers]. Cabinet also agreed to seven policy changes and these were incorporated into the Rewrite Bill [CAB Min (15) 19/1, SOC Min (15) 12/1 and SOC-16-MIN-0004 refer]. These policy changes covered a range of matters, from embedding the objectives of the Investment Approach in the overarching principles of the SSA through to a new regulation-making power to identify specific client circumstances where compulsory redirection of benefit payments is appropriate.
- 4 I am proposing to progress a policy-neutral Rewrite Bill and that the policy changes currently within the Rewrite Bill are removed through a SOP. This approach will ensure the issues identified with the SSA are addressed promptly and the focus remains on improving the legislative framework through a new Act. Any future policy changes could be considered through the overhaul of the welfare system, which will be progressed this year. The overhaul aims to ensure the welfare system is fair and accessible, aligns with the labour market and supports people to reach their potential.
- 5 Cabinet's agreement is also sought to amend the commencement dates in the Rewrite Bill so that specified provisions such as those for regulation-making come into force on the day after Royal Assent and the remaining provisions in the Rewrite Bill come into force on 26 November 2018. This will allow changes to Regulations and the SSA to commence at the same time as well as necessary operational and system changes to be made.

### **Background**

#### **The Social Security Act sets New Zealanders' entitlements to social assistance**

- 6 The SSA establishes New Zealanders' fundamental legal entitlements to social assistance, delivered through the benefit system. The purpose and principles of the SSA emphasise sustainable employment and providing social and financial support to people for whom work is not appropriate or who, for some reason, are not able to work for a period of time.

## **The Social Security Act 1964 has become fragmented and hard to understand over time**

- 7 After more than 50 years of amendments and repeals, including more than 150 amending Acts, the SSA has become fragmented, hard to understand and difficult to navigate. Only four sections of the SSA are unchanged from the original enactment. Frequent reform of the SSA has led to ambiguity and inconsistencies within the legislative framework and has made it hard to follow and risky to continually amend. Under the last National-led Government work was initiated to rewrite the SSA to make it more fit for purpose.

## **Development of the Social Security Rewrite Bill and key decisions**

- 8 On 15 June 2013, Cabinet agreed that the SSA should be rewritten so that it would be more coherent, accessible and easier to understand [CAB Min (13) 21/6 refers]. Subsequently, on 8 June 2015 and 17 February 2016, Cabinet agreed to seven policy changes (discussed further below) and these were incorporated into the Rewrite Bill [CAB Min (15) 19/1, SOC Min (15) 12/1 and SOC-16-MIN-0004 refer]. Cabinet also agreed that minor and technical changes could be made in order to achieve a coherent and durable Act. The Minister for Social Development was delegated authority to make minor and technical policy changes or transitional arrangements required, to finalise draft legislation in a manner consistent with the overall aims of the Rewrite Bill [SOC Min (15) 12/1 recommendation 29 refers].
- 9 I have identified an opportunity to promptly progress the Rewrite Bill and I am therefore seeking policy and legislative decisions concurrently. This approach will allow for much-needed policy-neutral changes to the social security legislative framework to be completed.
- 10 The Rewrite Bill was considered at Cabinet Legislation Committee on 8 March 2016 [CAB LEG (16) MIN 0026 refers], was then introduced to the House on 17 March 2016, and read for the first time and referred to the Social Services Committee on 10 May 2016. The Committee reported back on 14 September 2016. The Rewrite Bill is due to have its second reading in the sitting week beginning 13 February 2018.

## **The Social Security Legislation Rewrite Bill rewrites and restructures the Social Security Act 1964**

- 11 The Rewrite Bill rewrites and restructures the SSA, changes the balance between primary and delegated legislation, fixes and clarifies issues with existing legislation and contains a number of policy changes agreed to by the previous National-led government.
- 12 The Rewrite Bill provides a more logical structure for the future Act, modernises the language used, improves consistency, re-numbers provisions and re-enacts the legislation in a more accessible and understandable form. This approach provides an opportunity for greater clarity, transparency and coherence and updates the SSA in line with modern practice.

## **The Social Security Legislation Rewrite Bill rebalances primary and delegated legislation**

- 13 Under the Rewrite Bill, there is a rebalancing between primary and delegated legislation with detail moving from the Act into regulations without making any policy changes. This was a principles-based approach to where provisions should sit, based on:
  - main benefit eligibility, obligations, and sanctions set out in detailed provisions in primary legislation
  - supplementary assistance set out with broad parameters in primary legislation, with further detail in regulations

- hardship and emergency assistance enabled through flexibility and discretion in primary legislation, with further detail in regulations and/or welfare programmes
- simplified provisions in primary legislation for general, technical, and administrative provisions
- retaining rates of payments, income and means tests in the Schedules to the SSA.

14 These changes seek to create consistency where there are existing regulations. The changes also seek to take a standard approach to what is included in regulations. This approach removes unnecessary detail from the primary legislation (such as administration, procedures and the mechanics of implementing a policy). It will allow appropriate provisions to be flexible and responsive to changes in policy, processes, and terminology (for example immigration, health, and education). Appendix 1 sets out what provisions will be moved from primary legislation to regulations.

#### **The Social Security Legislation Rewrite Bill includes fixes, clarifications, and minor and technical changes**

- 15 The Rewrite Bill includes fixes and clarifications to manage legal risk. Because the SSA is more than 50 years old and has undergone substantial changes, there are ambiguities and inconsistencies. These issues present legal risks, including the risk of inconsistent treatment of clients and increased risk of legal challenge (to the Benefit Review Committee, Social Security Appeal Authority, and appeals to the High Court). The Rewrite Bill fixes a number of issues to retain the original policy intent, while ensuring the legislative framework supports current policy and practice.
- 16 I am authorised, in consultation with other Ministers as appropriate, to make technical and minor policy changes, including any consequential changes or transitional arrangements required, to finalise draft legislation in keeping with the overall aims of the rewrite [SOC Min (15) 12/1 recommendation 29 refers]. I propose that four further changes be made. Three of these changes are fixes and clarifications to be included in the Rewrite Bill. Three of these changes include clarifying that:
- clients are able to notify the Ministry of Social Development (MSD) of their overseas absence due to humanitarian reasons as soon as is reasonably practicable, including after returning to New Zealand, and still have their benefit backdated. The wording of the provision is ambiguous and open to interpretation and the amended provisions have been drafted to remove doubt
  - as originally intended, the maximum limit for advance payment of benefit should not include supplementary benefits. The wording of the provision is ambiguous and open to interpretation. The amended provision will be drafted to remove doubt.
  - the cost of evidential drug tests cannot be reimbursed to employers when it was unnecessary because the client waived the need for evidential testing. Due to provisions being drafted too broadly, clients are being put in debt to reimburse the cost of unnecessary tests.
- 17 The fourth change is to remove a validation provision for addressing a historical misalignment issue between Government Statistician boundaries and the Accommodation Supplement Areas from the Rewrite Bill. The Minister of Housing and Urban Development and I will receive further advice on options for addressing this issue.
- 18 Finally, the upcoming changes to the Accommodation Supplement and the Winter Energy Payment from the Families Package will be included in the Rewrite Bill.

**The Social Security Legislation Rewrite Bill also contains seven policy changes that were agreed to by the previous National-led Government**

19 The Rewrite Bill currently contains the following seven policy changes [CAB Min (15) 19/1, SOC Min (15) 12/1 and SOC-16-MIN-0004 refer]:

- a new regulation-making power to identify specific client circumstances where compulsory redirection of benefit payments is appropriate [SOC Min (15) 12/1 recommendations 2 - 4 refers];
- merging the Orphan's and Unsupported Child's benefits into a single benefit named Supported Child's Payment. The policy settings would be aligned so that step-parents would not be eligible (grand-parenting provisions will protect the entitlement of step-parents granted Orphan's Benefit prior to the change in legislation) [SOC Min (15) 12/1 recommendations 8 - 11 refers];
- renaming the Emergency Benefit as the Exceptional Circumstances Benefit [SOC Min (15) 12/1 recommendation 13 refers];
- case managers being given discretion to apply work or work preparation obligations to a person granted the Exceptional Circumstances Benefit (Emergency Benefit), if the person has the capacity to meet the obligation [SOC Min (15) 12/1 recommendation 17 refers];
- both parents in split care situations (where each parent cares for at least one dependent child from the former relationship) to be eligible for Sole Parent Support [SOC Min (15) 12/1 recommendation 18 refers];
- including the objectives of the Investment Approach in the overarching principles of the Act [SOC Min (15) 12/1 recommendation 22 refers];
- a single rate of Sole Parent Support for single carers who are paid the Supported Child's Payment (Orphan's and Unsupported Child's benefits) [SOC Min (15) 12/1 recommendations 9 refers].

**Removing policy changes from the Social Security Legislation Rewrite Bill to make it policy-neutral**

20 I consider that the Rewrite Bill needs to focus on achieving a stable and understandable social security legislative framework. I therefore propose that the seven policy changes currently within the Rewrite Bill be removed to make it policy-neutral. Pursuing a policy-neutral Rewrite Bill will address the issues that were identified with the SSA and this will:

- make the legislative regime more understandable
- enact much needed fixes and clarifications
- make the social security framework more efficient through changing the balance between primary and delegated legislation.

21 In short, the Rewrite Bill will create a fit for purpose legislative framework. Removing policy changes from the Rewrite Bill will ensure that the focus is on improving the legislative and social security framework.

22 I also note that a policy-neutral Rewrite Bill was supported in the minority Select Committee views from the New Zealand Labour Party and the Green Party of Aotearoa New Zealand.

*Future policy changes can be addressed through an overhaul of welfare system settings*

- 23 Any future policy changes could be considered through the overhaul of the welfare system, which will be progressed this year. The overhaul aims to ensure the welfare system is fair and accessible, aligns with the labour market and supports people to reach their potential.
- 24 I have directed MSD to work with Treasury and Inland Revenue to prepare a Cabinet paper for March 2018 seeking agreement to establish the EAG and Terms of Reference for the overhaul.
- 25 I consider that progressing a policy-neutral Rewrite Bill will provide a solid legislative platform for future work on the overhaul of welfare settings.

## **Consultation**

- 26 The Department of the Prime Minister and Cabinet, the Accident Compensation Corporation, the Ministries of Education, Health, Pacific Peoples, Business, Innovation and Employment, Women, Te Puni Kōkiri, the State Services Commission and the Treasury have been consulted.

## **Financial implications**

- 27 There are no financial implications from the proposals in this paper.

## **Human rights implications**

- 28 Two matters were identified with human rights implications. First, to improve compliance with human rights legislation, the Rewrite Bill does not include the existing outdated and unused provision allowing Emergency Benefit to be granted on the condition that the person complies with requirements to undergo medical or other treatment. This provision has been removed in the Rewrite Bill to align with Section 11 of the New Zealand Bill of Rights Act 1990 (BORA), which states "Everyone has the right to refuse to undergo any medical treatment".
- 29 Second, the SSA provides preferential treatment to people who are blind compared with the treatment of other people with other forms of disability or health condition. This preferential treatment includes automatic eligibility to benefit, additional income exemption, a subsidy on earnings from employment and no 'hours of work' test. In February 2016, Cabinet decided to continue the advantageous provisions for the totally blind whether or not these provisions breach human rights legislation [SOC-16-MIN-0004 recommendation 5 refers].
- 30 On 8 March 2016, the Attorney-General presented a report to Parliament under section 7 of BORA that concluded that the advantageous treatment of the totally blind appears to be inconsistent with section 19 of BORA. These advantageous provisions are historic and date back to 1924. Cabinet has previously agreed that the provisions be re-enacted, consistent with a policy-neutral rewrite of the SSA. Given my intent to progress a policy-neutral Rewrite Bill, and that the Select Committee also recommended no change after hearing submissions, I therefore propose to retain the current provisions relating to the treatment of people who are blind.
- 31 The Ministry of Justice had no comments on the SOP from a human rights perspective.

## **Regulatory impact and compliance cost statement**

- 32 Two Regulatory Impact Statements (RIS) for the policy changes currently contained with the Rewrite Bill accompanied a previous Cabinet paper. These RISs have been published on MSD's and Treasury's website.<sup>1</sup>

## **Gender implications**

- 33 There are no gender implications from the proposals in this paper.

## **Disability perspective**

- 34 An issue relating to the preferential treatment of people who are blind compared to other people with other forms of disability or health condition is discussed under the Human Rights implications section of this paper.
- 35 There are otherwise no disability implications from the proposals in this paper.

## **Publicity**

- 36 I will work with officials to consider options for publishing this paper on the MSD website.

## **Compliance**

- 37 The SOP complies with each of the following:
- 37.1 the principles of the Treaty of Waitangi
  - 37.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993, except as discussed above
  - 37.3 the principles and guidelines set out in the Privacy Act 1993
  - 37.4 relevant international standards and obligations
  - 37.5 Legislation Advisory Committee Guidelines; Guidelines on Process and Content of Legislation, published by the Legislation Design and Advisory Committee.

## **Allocation of decision making powers**

- 38 The SOP does not allocate decision making powers between the executive, the courts, or tribunals.

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<sup>1</sup> The RISs comprise:

- Policy changes proposed as part of the Rewrite of Social Security Act 1964, published online at: <http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/regulatory-impact-statements/policy-changes-proposed-as-part-of-the-rewrite-of-social-security-act-1964.pdf>.
- Additional policy options proposed as part of the Social Security Act 1964 Rewrite, published online at: <http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/regulatory-impact-statements/additional-policy-options-proposed-as-part-of-the-social-security-act-1964-rewrite.pdf>.

## **Binding on the Crown**

39 The Rewrite Bill is binding on the Crown [LEG-16-MIN-0026 recommendation 5 refers].

## **Creating new agencies or amending law relating to existing agencies**

40 Not applicable.

## **Associated regulations**

41 The SOP does not make proposals regarding associated regulations in the Rewrite Bill.

## **Other instruments**

42 The SOP does not make changes in terms of other instruments

## **Definition of Minister and department**

43 The SOP makes no changes to the definitions of Minister or department. There are definitions of Minister and responsible department in the Rewrite Bill.

## **Commencement of legislation**

44 The Rewrite Bill in its current form has two commencement dates. Some provisions, such as for regulation-making, were expected to commence on 1 January 2017, with most provisions to come into force on 3 July 2017. Because the Rewrite Bill did not progress in the term of the last Parliament, these commencement dates need to be updated. The two step commencement was to allow for the same commencement date as the Bill. I therefore propose that:

- the commencement date for specified provisions such as those for regulation-making be amended to be the day after Royal Assent
- the commencement date for the remaining of the provisions in the Rewrite Bill be amended to 26 November 2018.

## **Parliamentary Stages**

45 The Rewrite Bill is currently waiting for its second reading. The SOP to amend the Rewrite Bill will be tabled following Cabinet approval and in the House prior to the Committee of the whole House (Committee Stage) stage. It is anticipated that the Committee Stage for the Rewrite Bill will be held in the sitting week beginning 13 February 2018.

## Recommendations

46 It is recommended that Cabinet:

- 1 **note** that the Social Security Act 1964 sets entitlements to social assistance and its purpose and principles emphasise sustainable employment and providing social and financial support to people for whom work is not appropriate or who, for some reason, are not able to work for a time;
- 2 **note** that, due to frequent changes and amendments, the Social Security Act 1964 has become fragmented and hard to understand;
- 3 **note** that the Social Security Legislation Rewrite Bill rewrites and restructures the Social Security Act 1964, changes the balance between primary and delegated legislation, fixes and clarifies issues with existing legislation and contains a number of policy changes agreed by the previous National-led government;

### Progressing a policy-neutral rewrite of the Social Security Act 1964

- 4 **note** that to progress a policy-neutral rewrite of the Social Security Act 1964, the policy changes currently contained within the Social Security Legislation Rewrite Bill will need to be removed;
- 5 **note** that on 15 June 2013 Cabinet agreed that the rewrite include consideration of policy changes aimed at removing legislative barriers to frontline efficiency and modern service delivery, including legislative support for the investment approach [CAB Min (13) 21/6 recommendation 6.1 refers];
- 6 **note** that on 3 June 2015 Cabinet Social Policy Committee agreed that [SOC Min (15) 12/1 refers]:
  - 6.1 "the Rewrite Act introduce a regulation making power to identify specific client circumstances where compulsory redirection of benefit payments is appropriate in order to ensure positive outcomes for clients [recommendations 2 – 4 refer];
  - 6.2 the Orphan's and Unsupported Child benefits be merged into a single benefit in the Rewrite Act [recommendations 8 – 11 refers];
  - 6.3 the Emergency Benefit be renamed the Exceptional Circumstances Benefit [recommendation 13 refers]
  - 6.4 the Rewrite Act introduce a discretion to apply part-time or full-time work test obligations or work preparation obligations, and the associated sanctions policy, to an Emergency Benefit client where the Chief Executive determines they have capacity to seek, undertake, and be available for part-time or full-time work, or if not, to prepare for work [recommendation 17 refers];
  - 6.5 the Rewrite Act allow both parents in split care situations to be eligible for Sole Parent Support [recommendation 18 refers];
- 7 **note** that on 17 February 2016 the Cabinet Social Policy Committee agreed to matters relating to access to Sole Parent Support for single carers receiving Orphan's Benefit or Unsupported Child's Benefit, including introducing a single rate of Sole Parent Support (which was to be the same as the single rate of Jobseeker Support) to allow these carers

to receive an appropriate rate of benefit while continuing to receive payment of Orphan's Benefit or Unsupported Child's Benefit [SOC-16-MIN-0004 recommendation 9 refers];

- 8 **rescind** the decisions referred to in recommendations 5, 6 and 7 of this paper and amend the Social Security Legislation Rewrite Bill accordingly;

#### **Minor and technical policy changes**

- 9 **agree** that the following minor and technical policy changes be made to the Social Security Legislation Rewrite Bill:

- 9.1 clients are able to notify the Ministry of Social Development of their overseas absence due to humanitarian reasons as soon as is reasonably practicable, including after returning to New Zealand, and still have their benefit backdated;
- 9.2 as originally intended, the maximum limit for advance payment of benefit should not include supplementary benefits;
- 9.3 the cost of evidential drug tests cannot be reimbursed to employers when it was unnecessary because the client waived the need for evidential testing;
- 9.4 a validation provision for addressing a historical misalignment issue between Government Statistician boundaries and the Accommodation Supplement Areas is removed;

#### **Legislative Implications**

- 10 **approve** the release of the accompanying Supplementary Order Paper;
- 11 **agree** that the Social Security Legislation Rewrite Bill's commencement dates be amended so that:
- 11.1 specified provisions, such as those for regulation-making, come into force on the day after Royal Assent
  - 11.2 the remaining provisions in the Rewrite Bill come into force on 26 November 2018;
- 12 **note** that I will work with officials to consider options for publishing this paper on the Ministry of Social Development's website.

Hon Carmel Sepuloni  
Minister for Social Development

## Appendix 1 — Provisions moved from primary legislation to regulations

- **Residential requirements** – stipulating when a person meets the requirements or does not have to do so.
- **Accommodation supplement** – rates, costs covered, assets requirement, etc.
- **Disability allowance – special categories of eligibility** – this relates to the exceptions from the eligibility requirement that the disability must be likely to last more than 6 months at the time an application is made.
- **Funeral grants** – including eligibility and amounts.
- **Obligations in relation to dependent children** (currently called social obligations) – refining the obligations, e.g. hours of attendance required.
- **Insurance recovery** – including what insurance cover affects rates of benefit and how overpayments are recovered.
- **Work obligations** – including refining the requirements for drug tests, how the results of tests can be used and how work tests can be deferred.
- **Pre-benefit activities** – types of activities and who can be required to undertake them.
- **Absence from New Zealand** – who must notify MSD of absence, and exceptions to it.
- **Application for benefit** – process for applying and assessing applications.
- **Benefits granted not taking into account insurance payments** – suspending, cancelling or varying benefit.
- **Stand downs** – including calculation of stand down period and exemptions.
- **Payments** – including redirection, provisional payment and apportionment.
- **Payments during an epidemic** – including entitlement and rates.
- **Debts and deductions** – including what should be treated as a debt to the Crown, exceptions to the duty to recover debt, rates and method of recovery and District Court powers.
- **Notices**
- **Further provisions on deductions** – debt deduction notices.
- **Reciprocity and mutual assistance agreements** including processes that apply before MSD can initiate adverse action on the basis of information provided by overseas countries.
- **Procedure and powers for reviews and appeals** – including the types of orders that can be made, and the evidence that can be heard.



## Advancing the Social Security Legislation Rewrite Bill

Date: 14 November 2017  
Security level: IN CONFIDENCE

Report no.: REP/17/11/1097  
Priority: Medium

### Action Sought

**Hon Carmel Sepuloni**

Confirm a policy-neutral rewrite of the Social Security Act 1964 20 November 2017

### Contact for telephone discussion

Name	Position	Telephone
Simon MacPherson	Deputy Chief Executive, Policy	s9(2)(a)
Bede Hogan	Policy Manager, Income Support	

Report prepared by: s9(2)(a), Senior Policy Analyst

### Minister's office comments

- ☐ Noted
- ☐ Seen
- ☐ Approved
- ☐ Needs change
- ☐ Withdrawn
- ☐ Not seen by Minister
- ☐ Overtaken by events
- ☐ Referred to (specify)

### Comments

Date received from MSD

Date returned to MSD



# Report

**Date:** 14 November 2017

**Security Level:** IN CONFIDENCE

**To:** Hon Carmel Sepuloni, Minister for Social Development

## Advancing the Social Security Legislation Rewrite Bill

### Purpose of the report

- 1 This report provides you with a summary of the current scope of the Social Security Legislation Rewrite Bill (Rewrite Bill), seeks confirmation of the on-going scope of the Bill, and provides you with advice on how to make changes should you chose to do so.

### Executive summary

- 2 The Rewrite Bill has been reinstated and is awaiting its second reading. You have expressed support for a policy-neutral rewrite but not the new policy changes in the Rewrite Bill.
- 3 The Rewrite Bill currently:
  - 3.1 rewrites and restructures the Social Security Act 1964
  - 3.2 changes the balance between primary and delegated legislation by relocating some of the Act's content into regulations
  - 3.3 fixes and clarifies issues with existing legislation (such as previous drafting errors or omissions), removes ambiguity and repeals a discriminatory provision
  - 3.4 contains a number of policy changes agreed by the previous government.
- 4 You could proceed with any combination of the components of the Rewrite Bill, though the Ministry of Social Development (MSD) recommends you proceed with the rewrite and restructure, rebalance and fixes only (paragraphs 3.1, 3.2 and 3.3). This would ensure the benefits of a rewrite are realised and provide a solid legislative platform for an overhaul of the welfare settings.
- 5 Cabinet has agreed additional fixes you may wish to include in the Rewrite Bill to ensure that the new Social Security Act is as fit-for-purpose as it can be.

### Recommended actions

It is recommended that you:

- 1 **note** that the Social Security Legislation Rewrite Bill has been reinstated into the House, awaiting its second reading

#### *The rewrite of the Social Security Act*

- 2 **note** that the Social Security Legislation Rewrite Bill rewrites and restructures the Social Security Act 1964, and changes the balance between primary and delegated legislation

- 3 **confirm** that the Social Security Legislation Rewrite Bill should proceed with the rewrite and restructure components as drafted

**Yes / No**

- 4 **agree** that the Social Security Legislation Rewrite Bill should proceed with the change in balance between primary and delegated legislation as drafted

**Agree / Disagree**

*Making changes to provisions to manage risk*

- 5 **note** that the Social Security Legislation Rewrite Bill includes minor and technical fixes to provisions that present risks, including the inconsistent treatment of clients and the increased risk of legal challenge

- 6 **agree** that the Social Security Legislation Rewrite Bill retain the fixes as drafted

**Agree / Disagree**

- 7 **note** that Cabinet has agreed additional fixes to the Social Security Act 1964

- 8 **agree** that the following additional fixes be included in the Social Security Legislation Rewrite Bill by supplementary order paper:

- 8.1 clarifying that clients are able to notify the Ministry of Social Development of their overseas absence due to humanitarian reasons as soon as is reasonably practicable, including after returning to New Zealand, and still have their benefit backdated

**Agree / Disagree**

- 8.2 clarifying that, as originally intended, the maximum limit for advance payment of benefit should not include supplementary benefits

**Agree / Disagree**

- 8.3 clarifying that the cost of evidential drug tests cannot be reimbursed to employers when it was unnecessary because the client waived the need for evidential testing

**Agree / Disagree**

*Removing the new policy changes from the Social Security Legislation Rewrite Bill*

- 9 **note** that there are seven new policy changes currently included in the Social Security Legislation Rewrite Bill, which could be removed by supplementary order paper with Cabinet Legislation Committee approval

- 10 **agree** to propose to the Cabinet Legislation Committee the removal of the new policy changes from the Social Security Legislation Rewrite Bill to maintain a policy-neutral rewrite

**Agree / Disagree**

- 11 **indicate** which, if any, of the new policy proposals you would like further advice on as part of the on-going work and legislation programme, if you agree to recommendation 10:

11.1 a regulation-making power to identify specific client circumstances where compulsory redirection of benefit payments is appropriate, in order to ensure positive outcomes for clients

**Yes / No**

11.2 merging the Orphan's and Unsupported Child's benefits into a single benefit named Supported Child's Payment. The policy settings would be aligned so that step-parents would not be eligible (with grand-parenting provisions to protect the entitlement of step-parents granted Orphan's Benefit prior to the change in legislation)

**Yes / No**

11.3 Emergency Benefit being renamed Exceptional Circumstances Benefit

**Yes / No**

11.4 case managers having discretion to apply work or work preparation obligations to a person granted the Exceptional Circumstances Benefit (Emergency Benefit), if the person has the capacity to meet the obligation

**Yes / No**

11.5 both parents in split care situations (where each parent cares for at least one dependent child from the former relationship) being eligible for Sole Parent Support

**Yes / No**

11.6 objectives of the Investment Approach being included in the overarching principles of the Act

**Yes / No**

11.7 a single rate of Sole Parent Support being established for single carers who are paid the Supported Child's Payment (Orphan's and Unsupported Child's benefits)

**Yes / No**

*Your supplementary order paper released on 26 September 2016*

12 **indicate** that you wish to dis-continue with the supplementary order paper you released on 26 September 2016 to maintain a policy-neutral rewrite

**Yes / No**

*Next steps*

- 13 **note** that the Ministry of Social Development will provide you advice on the proposed phasing of changes to welfare settings, by 17 November 2017
- 14 **note** that the Ministry of Social Development will provide you advice on policy proposals that were in the pipeline for your consideration, by the end of November 2017
- 15 **note** that, depending on decisions you make, the Ministry of Social Development will provide you with further technical advice on advancing the Social Security Legislation Rewrite Bill, by the end of November 2017
- 16 **note** that the Ministry of Social Development can provide more information if needed and is available to discuss the proposals in this report.



Fiona Carter-Giddings  
General Manager  
Employment and Income Support Policy

14/11/2017  
Date

Hon Carmel Sepuloni  
Minister for Social Development

Date

## **The Social Security Act 1964 establishes New Zealanders' fundamental entitlements to social assistance delivered through the benefit system**

- 6 The Social Security Act 1964 (1964 Act) establishes New Zealanders' fundamental legal entitlements to social assistance, delivered through the benefit system. Its purpose is to assist those who are vulnerable according to their circumstances, and it sets out rules and principles for targeting that assistance.
- 7 The Social Security Legislation Rewrite Bill (Rewrite Bill):
  - 7.1 rewrites and restructures the 1964 Act
  - 7.2 changes the balance between primary and delegated legislation by relocating some of the Act's content into regulations
  - 7.3 fixes and clarifies issues with existing legislation (such as previous drafting errors or omissions), removes ambiguity and repeals a discriminatory provision
  - 7.4 contains a number of policy changes agreed by the previous government.

## **Rewriting, restructuring and rebalancing social security legislation**

- 8 After more than 50 years of amendments and repeals, including more than 150 amending Acts, the legislation has become fragmented, hard to understand and difficult to navigate – in other words it is not fit for purpose.

### *Rewriting social security legislation to make it easier to understand*

- 9 The rewrite of the 1964 Act aims to make social security legislation clearer and more accessible. The Rewrite Bill rewrites the current policy in modern drafting style, includes more explanation and guidance, and uses tables and examples to make provisions easier to understand. The language is simplified to make it more straightforward to the reader.
- 10 Modern language replaces some of the terms in the 1964 Act. For example:
  - the term 'health condition' replaces the term 'sickness' in the phrase 'sickness, injury or disability'. Many people with health conditions that may impact on their work capacity do not regard themselves as sick. The term 'health condition' is now more commonly used in practice and supports a focus on capacity rather than incapacity
  - the term 'shared custody' is updated to 'shared care' to be consistent with other statutes such as the Child Support Act 1991.
- 11 As a 'tidy-up', some obsolete and redundant provisions are not being rewritten into the new Act, such as the War Serviceman's Dependents Allowance and statutory declaration provisions.

### *Restructuring social security legislation to make it easier to find things*

- 12 The new Social Security Act set out in the Rewrite Bill looks very different to the 1964 Act. It has a logical structure and flow. In the 1964 Act the various main benefits are separated and supplementary assistance is in seven different parts. Assistance for young people is 'tacked on' at the end. By contrast, the Rewrite Bill has all the financial assistance provisions grouped together near the front of the Bill in Part 2.
- 13 The Rewrite Bill has the most important provisions at the front including main benefit eligibility, obligations, and sanctions. General, technical, and administrative provisions are located towards the end of the Bill. There is a full contents table at the start of the Bill and further contents tables are provided for each Part and Schedule of provisions.
- 14 The Rewrite Bill repeals and replaces the Social Security Act 1964 and the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990 with three rewritten Acts:

- Residential Care and Disability Support Services Act
- Artificial Limb Service Act
- Social Security Act.

15 MSD seeks your confirmation that the rewrite and restructure components be retained as part of the Rewrite Bill.

## **Rebalancing social security legislation to make it consistent and easier to work with**

16 Primary and delegated legislation are being rebalanced with detail moving from the Act into regulations. The purpose of these changes is to:

- create consistency where there are existing regulations and the need for a standard approach to what is included in regulations (for example, exemptions from various policies, overseas absence, and supplementary assistance)
- remove unnecessary detail from the primary legislation (such as administration, procedures, and the mechanics of implementing a policy)
- allow appropriate provisions to be flexible and responsive to changes in policy, processes, and terminology (for example, immigration, health, and education).

For a list of the provisions being moved from primary legislation to regulations see Appendix 1.

17 In the Select Committee report the New Zealand Labour Party minority view expresses concern that the "increased ability for the Government to make and amend regulations as proposed in this bill is disconcerting as it considerably reduces the space for public accountability and scrutiny".

18 A principled approach was taken, using the Legislation Advisory Committee guidelines to identify what should be moved out of the Act and what should stay in it. The following principles were used:

- main benefit eligibility, obligations, and sanctions are set out in detailed provisions in primary legislation
- supplementary assistance set out with broad parameters in primary legislation, with further detail in regulations
- hardship and emergency assistance enabled through flexibility and discretion in primary legislation, with further detail in regulations and/or welfare programmes
- simplified provisions in primary legislation for general, technical, and administrative provisions
- retaining rates of payments, income and means tests in the Schedules to the Act.

MSD also consulted directly with the Legislation Design and Advisory Committee on the appropriate balance between primary and delegated legislation.

19 MSD recommends the rebalancing between primary and delegated legislation be retained as part of the Rewrite Bill, and are happy to discuss this further.

### *Social security regulations have also been rewritten and restructured*

20 MSD and the Parliamentary Counsel Office (PCO) have worked together to consolidate and rewrite social security regulations, including those provisions that have been moved out of the Act.

## Making fixes to provisions to manage risk

- 21 With an Act that is more than 50 years old, where only 4 sections are unchanged and one section has been changed 292 times, there were bound to be drafting errors and omissions, ambiguity and inconsistencies. These issues present risks including inconsistent treatment of clients and increased risk of legal challenge (to the Benefit Review Committee, Social Security Appeal Authority, and appeals to the High Court).
- 22 The Rewrite Bill fixes and clarifies a number of issues to restore the original policy intent while ensuring legislation supports current policy and practice. These are mostly minor and technical changes. For example:
- fixing that parents with partners in prison receive the sole parent rate of Jobseeker Support and that the '28 day rule'<sup>1</sup> applies to them, as was the policy before the 2013 welfare reforms collapsed seven benefits into three benefits (known as the benefit collapse). This was a drafting omission that has been operationalised as intended, so the legislation should be updated to reflect the original policy intent.
  - clarifying that all sole parents on Jobseeker Support can undertake 'temporary full-time employment' and not just those with children younger than 14 years old (as was the case before the benefit collapse). The wording of the provision is ambiguous and open to interpretation. The amended provision has been drafted to remove doubt.
  - aligning medical appeals by allowing appeals against decisions by MSD to decline or cancel Supported Living Payment (on grounds of caring for another person) to be heard by a Medical Appeal Board (MAB). This is the only health-related decision that cannot be reviewed by a MAB. The amended provision improves consistency.
- 23 To improve compliance with human rights legislation the Rewrite Bill does not include an existing outdated and unused provision allowing Emergency Benefit to be granted on the condition that the person complies with requirements to undergo medical or other treatment. Section 11 of the New Zealand Bill of Rights Act 1990 states "Everyone has the right to refuse to undergo any medical treatment" so the provision has been removed in the Rewrite Bill.
- 24 For a list of the fixes in the Rewrite Bill see Appendix 2.
- 25 MSD recommends the fixes be retained as part of the Rewrite Bill.

*Cabinet has agreed additional fixes that could be included in the Rewrite Bill by supplementary order paper*

- 26 There are three additional fixes to the 1964 Act that Cabinet has agreed to<sup>2</sup>:
- clarifying that clients are able to notify MSD of their overseas absence due to humanitarian reasons as soon as is reasonably practicable, including after returning to New Zealand, and still have their benefit backdated. The wording of the provision is ambiguous and open to interpretation. The amended provisions have been drafted to remove doubt.

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<sup>1</sup> If a person is entitled to a benefit the start date (known as the commencement date) is generally a date after they have applied for it and following any stand-down period that might apply. However, some people can have their benefit payments backdated by up to 28 days before the application date, provided they were eligible over that period and any benefit stand-down has ended. This is known as the '28 day rule'.

<sup>2</sup> These changes had been proposed for inclusion in the proposed Social Assistance (Electronic, Remedial and Other Matters) Amendment Bill.

- clarifying that, as originally intended, the maximum limit for advance payment of benefit should not include supplementary benefits. The wording of the provision is ambiguous and open to interpretation. The amended provision will be drafted to remove doubt.
  - clarifying that the cost of evidential drug tests cannot be reimbursed<sup>3</sup> to employers when it was unnecessary because the client waived the need for evidential testing. Due to provisions being drafted too broadly clients are being put in debt to reimburse the cost of unnecessary tests.
- 27 MSD recommend that these additional fixes be included in the Rewrite Bill by supplementary order paper (SOP) to ensure that the new Social Security Act is as fit-for-purpose as it can be.

## **There are a number of policy changes in the Rewrite Bill**

28 New policy changes that are included in the Rewrite Bill are:

- a regulation-making power to identify specific client circumstances where compulsory redirection of benefit payments is appropriate, in order to ensure positive outcomes for clients
  - Orphan's and Unsupported Child's benefits merged into a single benefit named *Supported Child's Payment*. The policy settings would be aligned so that step-parents would not be eligible (grand-parenting provisions will protect the entitlement of step-parents granted Orphan's Benefit prior to the change in legislation)
  - Emergency Benefit renamed *Exceptional Circumstances Benefit*
  - case managers given discretion to apply work or work preparation obligations to a person granted the Exceptional Circumstances Benefit (Emergency Benefit), if the person has the capacity to meet the obligation
  - both parents in split care situations (where each parent cares for at least one dependent child from the former relationship) to be eligible for Sole Parent Support
  - objectives of the Investment Approach included in the overarching principles of the Act
  - a single rate of Sole Parent Support for single carers who are paid the Supported Child's Payment (Orphan's and Unsupported Child's benefits). This might fit with your review of work obligations for beneficiaries with young children.
- 29 MSD recommend that the new policy be removed from the Rewrite Bill to ensure a policy-neutral rewrite. We ask you to indicate which, if any, of the new policy proposals you would like further advice on as part of the on-going work and legislation programme, if you agree to remove them from the Rewrite Bill.

### *Other policy proposals that were in the pipeline*

- 30 There were further policy changes agreed by Cabinet that were intended to be included in the Rewrite Bill, or another appropriate legislative vehicle<sup>4</sup>. MSD will provide a separate report on those proposals and place them within the wider context of legislative changes needed to achieve your manifesto commitments.

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<sup>3</sup> Work and Income can reimburse a potential employer for the cost of failed drug test, which in turn becomes a debt to the client.

<sup>4</sup> The proposed Social Assistance (Electronic, Remedial and Other Matters) Amendment Bill.

## **The Rewrite Bill is awaiting a second reading before the House**

- 31 The Rewrite Bill was introduced to the House on 17 March 2016 and was read for the first time and referred to the Social Services Committee on 10 May 2016. The Committee reported back on 14 September 2016, with recommended improvements. There were minority reports from both the New Zealand Labour Party and the Green Party of Aotearoa New Zealand. Both minority reports supported a policy-neutral rewrite but not the new policy included in the Bill.
- 32 An SOP has been drafted to fix minor drafting errors and change the commencement date (which is currently 3 July 2017). A further SOP has been drafted to separate the Rewrite Bill into three separate Acts, known as a break-up SOP. These are now your SOPs as member in charge of the Bill.

*You released an SOP on 26 September 2016 proposing further amendments to the Rewrite Bill*

- 33 By releasing the SOP you provided notice of your intention to move that the amendments set out in it be considered when the Bill is considered by the Committee of the whole House. You can continue with your SOP as originally intended or you could inform the chairperson of the Committee during the debate that you no longer intend to move the amendments concerned.
- 34 MSD recommend that you do not continue with the 26 September SOP in order to keep the rewrite policy-neutral. The proposals could be included in the on-going policy work and legislation programme to deliver your manifesto commitments.

## **The Rewrite Bill could be progressed through the House in one month given a high enough priority, but there are other steps that need to happen as well**

- 35 Given a high priority and allowing three weeks for completion of consideration in the House and a week for Royal assent, the Rewrite Bill could progress through the House and be enacted within a month. You could proceed with the second reading straight away. MSD would provide you with draft speech notes, a draft press release and support in the House.
- 36 But there are also other steps that will need to be completed to get through each stage, such as:
- getting Cabinet Legislation Committee approval to remove components from the Rewrite Bill prior to the Committee of the whole House stage
  - drafting for the SOP (see paragraph 32) to remove components and/or include fixes prior to the Committee of the whole House stage
  - redrafting the Rewrite Bill to reflect decisions made.
- 37 Once the Bill is enacted, regulations can be made to replace the provisions being moved from the Act. Implementation will be planned to come into effect on commencement date. We will provide you with more advice on this by the end of November, once you have made decisions.

## **Building a solid legislative platform for an overhaul of the welfare settings**

- 38 The 100 day programme and social development manifesto proposals will likely require amendment to the Social Security Act. You will shortly receive advice on how to make some of the proposed changes and a proposed on-going policy work and legislation programme.
- 39 You have also expressed support for a policy-neutral rewrite but not the new policy changes in the Bill.
- 40 MSD's recommended approach is to progress the Social Security Legislation Rewrite Bill, with the rewrite and restructure, rebalance and fixes only, and without including

any of your manifesto proposals. The previous government's new policy provisions can be removed by SOP at the Committee of the whole House stage following approval from the Cabinet Legislation Committee<sup>5</sup>. This ensures the benefits of a rewrite are realised without proposals that may conflict with your forward policy agenda.

- 41 We also recommend that the additional fixes are included in the Rewrite Bill to ensure that new Social Security Act is as fit-for-purpose as it can be. This can be done by SOP.
- 42 There may be some of the new policy proposals that you wish to take up as part of the overhaul of the welfare system. We can provide you with advice on any of the proposals you indicate.

### Next steps

- 43 In order to remove the new policy from the Rewrite Bill MSD will draft a paper to the Cabinet Legislation Committee seeking approval to remove the new policy from the Rewrite Bill. PCO will then amend the SOP to the Bill.
- 44 MSD will provide you with further advice, depending on decisions you make, on:
  - technical elements to advancing the Rewrite Bill – such as the timing of your paper to the Cabinet Legislation Committee
  - when the parts of the Bill should commence – currently the empowering provisions to allow delegated legislation to be made will come into effect earlier than the rest of the new legislation, on the day after Royal assent. This allows the required regulations, rules and Ministerial directions to be made and come into effect at the same time as the new Act. This will take into account the time Service Delivery would require to implement the changes
  - the process to make the new Social Security regulations and amended welfare programmes (legislative references only) in order to complete the rewrite.
- 45 If you indicate you want further advice on any of the new policy proposals from the Rewrite Bill or those that were already in the pipeline, MSD will provide that advice within the wider context of legislative changes needed to achieve your manifesto commitments and the overhaul of the welfare system.

File ref: REP/17/11/1097

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Responsible manager: Bede Hogan, Policy Manager, Income Support Policy

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<sup>5</sup> The process for making policy changes to a bill after introduction is outlined in paragraphs 7.72-7.77 of the Cabinet Manual and, at the Committee of the whole House stage in Standing Orders 306-308.

## Appendix 1 – Provisions moved from primary legislation to regulations

- **Residential requirements** – stipulating when a person meets the requirements or does not have to do so
- **Accommodation supplement** – rates, costs covered, assets requirement, areas etc
- **Disability allowance – special categories of eligibility** – this relates to the exceptions from the eligibility requirement that the disability must be likely to last more than 6 months at the time an application is made
- **Funeral grants** – including eligibility and amounts
- **Obligations in relation to dependent children** – refining the obligations eg hours of attendance required
- **Insurance recovery** – including what insurance cover affects rates of benefit and how overpayments are recovered
- **Work obligations** – including refining the requirements for drug tests, how the results of tests can be used and how work tests can be deferred
- **Pre-benefit activities** – types of activities and who can be required to undertake them
- **Absence from New Zealand** – who must notify MSD of absence, and exceptions to it
- **Application for benefit** – process for applying and assessing applications
- **Benefits granted not taking into account insurance payments** – suspending, cancelling or varying benefit
- **Stand downs** – including calculation of stand down period and exemptions
- **Payments** – including redirection, provisional payment and apportionment
- **Payments during an epidemic** – including entitlement and rates
- **Debts and deductions** – including what should be treated as a debt to the Crown, exceptions to the duty to recover debt, rates and method of recovery and District Court powers
- **Notices**
- **Further provisions on deductions** – debt deduction notices
- **Reciprocity and mutual assistance agreements** including processes that apply before MSD can initiate adverse action on the basis of information provided by overseas countries
- **Procedure and powers for reviews and appeals** – including the types of orders that can be made, and the evidence that can be heard.

## Appendix 2 – Fixes in the Rewrite Bill

### *Validating current practice – no implementation required*

- removing the provision allowing Emergency Benefit to be granted on the condition that the person complies with requirements to undergo medical or other treatment.
- clarifying that sole parents with a youngest dependent child aged over 14 years who have lost the support of their spouses or partners due to imprisonment:
  - receive the sole parent rate of Jobseeker Support rather than the lower amount of half of the married rate
  - can have their benefit backdated for up to 28 days from the date of application as is provided to all Sole Parent Support recipients
- clarifying that all sole parents on Jobseeker Support can undertake temporary full-time employment
- making amendments to overseas absence provisions to ensure the original intention is maintained:
  - clarifying that supplementary assistance paid to New Zealand Superannuation clients, Veterans Pension clients, and non-beneficiaries are not benefits for the purposes of section 77 (Effect of absence of beneficiary from New Zealand: provisions)
  - clarifying that clients can be absent from New Zealand and paid any benefit for 28 days in total in any 52 week period even where they transfer between benefits
  - clarifying that a client who has been granted an approved travel reason can have a deferral from their work obligations for the period of the approved travel
  - clarifying that a work-tested sole parent support client with an exemption from all of their work obligations under section 102A (full exemption), is allowed to travel and continue to receive their benefit for up to four weeks in any 52-week period without an approved travel reason (subject to other restrictions on overseas absence)
- clarifying that clients with children who are receiving supplementary assistance (such as the Accommodation Supplement) but not a main benefit, and who have an outstanding warrant to arrest and are a risk to public safety, must have all of their assistance stopped immediately rather than retaining 50 percent of it
- making amendments to the service provider provisions to ensure the original intention is maintained:
  - clarifying that a client's ability to report changes in circumstances to their service provider (rather than MSD itself) only applies in respect of Youth Service providers
  - replacing the mandatory requirement that all services provided by contracted service providers must be specified in regulations with provisions that only make it mandatory for services provided to young persons to be specified in regulations (so that doing so is optional in all other cases)
- ensuring the *special income exemption in respect of sick benefits from friendly or like society* is available to all clients receiving a main benefit by including Supported Living Payment (on the grounds of caring for a patient requiring care) in the list of benefits
- removing the provision that Accommodation Supplement areas are defined by the Government Statistician:
  - validating payments made at the non-adjusted rates

- protecting anyone who has had their Accommodation Supplement area changed as a result of a successful legal challenge to apply the legal interpretation of the Accommodation Supplement boundaries to their situation<sup>6</sup>
- clarifying that *health practitioner* means only current health practitioners.
- clarifying that the 50 percent protection for people with dependent children who are subject to the 13-week non-entitlement period applies when a benefit has not yet been granted (and not just when it has been cancelled)
- clarifying that sanctioned work-tested beneficiaries continue to receive a reduced rate of benefit unless they cease to be work-tested beneficiaries
- clarifying the waivers to the initial stand-down for groups who would suffer hardship without the waiver, including:
  - refugees<sup>7</sup> leaving the Mangere Refugee Resettlement Centre
  - Youth Service applicants who are meeting their obligations<sup>8</sup>

*Can be implemented with a practice change only*

- allowing decisions on medical grounds to cancel or decline Supported Living Payment (on the grounds of caring for a patient requiring care) to be appealed to the Medical Appeal Board
- replacing the outdated term 'shared custody' with 'shared care'
- clarifying that the discretion to not pay Disability Allowance or pay it at a reduced rate because a client is receiving other similar assistance only applies to an overseas pension or periodical payment if it is made for the same purpose
- changing Benefits Review Committee provisions to better support a client's ability to review decisions:
  - allowing a Benefits Review Committee to be established in an office where the currently lives when they have moved from where the decision was made
  - allowing the community representative to be resident or closely connected with the office where the Committee will be held
- clarifying that Emergency Benefit is only at a main benefit rate (with grand-parenting protection for any recipient being paid at the New Zealand Superannuation or Veterans Pension rate prior to the change)

*Removing obsolete provisions – no implementation required*

- repealing the War Serviceman's Dependents Allowance as entitlements for veterans and any dependent family sit rightly within the Veteran's Support Act 2014 rather than the Social Security Act
- removing an outdated provision related to declarations.

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<sup>6</sup> You will receive a separate briefing on the Accommodation Supplement boundary issue.

<sup>7</sup> All references to refugees in this paper include protected persons as defined in the Immigration Act 2009.

<sup>8</sup> The Youth Service obligations relate to secondary or tertiary education, and approved training or work-based learning leading to a NCEA level 2 qualification or an equivalent or higher qualification.



# Report

**Date:** 15 December 2017

**Security Level:** IN CONFIDENCE

**To:** Hon Carmel Sepuloni, Minister for Social Development

## **A policy-neutral rewrite of the Social Security Act 1964**

### **Purpose of the report**

- 1 This report:
  - 1.1 sets out what a policy-neutral rewrite looks like and how it will affect clients, and
  - 1.2 seeks final decisions on the scope of the Social Security Legislation Rewrite Bill (Rewrite Bill) moving forward.
- 2 This report forms part of the further advice on the process for changing legislation.

### **Executive summary**

- 3 The government has committed to a number of welfare setting changes to modernise the system so it aligns with the labour market and is fair and accessible. To achieve this you have agreed in principle to a twin track approach. The Rewrite Bill sits within track one (progressed over the next 6 to 18 months) and can build a solid legislative foundation for overhauling the welfare system.
- 4 The Rewrite Bill currently:
  - 4.1 rewrites and restructures the Social Security Act 1964 (1964 Act)
  - 4.2 changes the balance between primary and delegated legislation by relocating some of the 1964 Act's content into regulations
  - 4.3 fixes and clarifies issues with existing legislation (such as previous drafting errors or omissions), removes ambiguity and repeals a discriminatory provision
  - 4.4 contains a number of policy changes agreed by the previous government.
- 5 At the Officials meeting on 27 November 2017 you agreed to proceed with a policy-neutral rewrite. In REP/17/11/1097 *Advancing the Social Security Legislation Rewrite Bill* you agreed to make the following changes to the Rewrite Bill:
  - 5.1 the removal of the new policy changes (para 4.4)
  - 5.2 the inclusion of three additional fixes by supplementary order paper (SOP).
- 6 The Ministry of Social Development (MSD) has reviewed the Rewrite Bill to identify any further policy changes, and identified three fixes and clarifications (para 4.3) that make minor policy changes as well as one of the additional fixes (para 5.2) to be included in the Bill. We recommend these continue in the Rewrite Bill as they are minor and will have a positive impact on clients.
- 7 Changes to the Rewrite Bill can be included in a draft SOP that already includes technical amendments (such as minor drafting errors) and changes the commencement date (which is currently 3 July 2017). Due to the significance of social security legislation and the complexity of the Rewrite Bill the changes will need agreement by the appropriate Cabinet policy committee. The SOP needs to be approved by Cabinet Legislation Committee (LEG).

- 8 There are two options for the next step to advance the Rewrite Bill and MSD seek to confirm your preference to proceed to second reading as a matter of process while preparing changes to the Rewrite Bill SOP.

## Recommended actions

It is recommended that you:

- 1 **note** that the Social Security Legislation Rewrite Bill has been reinstated into the House, awaiting its second reading

### *Decisions you have recently made*

- 2 **note** that in REP/17/11/1097 *Advancing the Social Security Legislation Rewrite Bill* you agreed to the removal of the new policy changes from the Rewrite Bill and the inclusion of three additional fixes by supplementary order paper
- 3 **note** that at a meeting with Officials on 27 November 2017 you agreed to proceed with a policy-neutral rewrite of the Social Security Act 1964

### *A policy-neutral rewrite of the Social Security Act 1964*

- 4 **note** that the Social Security Legislation Rewrite Bill rewrites and restructures the Social Security Act 1964, and changes the balance between primary and delegated legislation
- 5 **agree** that the Social Security Legislation Rewrite Bill should proceed with the change in balance between primary and delegated legislation as drafted

**Agree / Disagree**

### *Making changes to provisions to manage legal risk*

- 6 **note** that the Social Security Legislation Rewrite Bill includes minor and technical fixes and clarifications to provisions that present legal risks, including the risks of inconsistent treatment of clients and increased legal challenge
- 7 **note** the majority of the fixes and clarifications in the Social Security Legislation Rewrite Bill do not make policy changes
- 8 **note** that three of the fixes and clarifications currently in the Social Security Legislation Rewrite Bill, and a proposed additional fix related to the reimbursement of the cost of evidential drug tests, are minor policy changes that will have a positive impact on clients
- 9 **agree that the Social Security Legislation Rewrite Bill either**
- 9.1 retain all the fixes and clarifications as drafted and the additional fixes, including the minor policy changes (preferred option)

**Agree / Disagree**

**or**

- 9.2 retain fixes and clarifications except for the minor policy changes identified, which can be removed by supplementary order paper

**Agree / Disagree**

*Next steps for advancing the Social Security Legislation Rewrite Bill*

- 10 **note** there are two options for the next step to advance the Social Security Legislation Rewrite Bill; you could either proceed to second reading or refer changes in a supplementary order paper to a select committee to consider
- 11 **confirm** you wish to proceed to second reading as a matter of process, while preparing to make changes to the Social Security Legislation Rewrite Bill by supplementary order paper.

**Yes / No**



Fiona Carter-Giddings  
General Manager  
Employment and Income Support Policy

15/12/2017

Date

Hon Carmel Sepuloni  
Minister for Social Development

Date

## **The government has committed to a number of welfare setting changes to modernise the system so it aligns with the labour market and is fair and accessible**

- 9 Overhauling the welfare system will have significant legislative, policy, financial and delivery implications. You have agreed in principle to a twin track approach that includes what could be done now and over the next 18 months (track one) and what could be done over the long-term (track two) [REP/17/11/1134 refers].
- 10 The Rewrite Bill sits within track one and can build a solid legislative foundation for overhauling the welfare system.

## **The previous government undertook to rewrite the 1964 Act so that it is more coherent, accessible, readable and easier to understand**

- 11 The Rewrite Bill currently:
  - 11.1 rewrites and restructures the 1964 Act
  - 11.2 changes the balance between primary and delegated legislation by relocating some of the Act's content into regulations
  - 11.3 fixes and clarifies issues with existing legislation (such as previous drafting errors or omissions), removes ambiguity and repeals a discriminatory provision
  - 11.4 contains a number of policy changes agreed by the previous government.
- 12 The Rewrite Bill was introduced into the House in March 2016 and has completed the select committee process. The Rewrite Bill has been reinstated as business in the House and is awaiting a second reading. A revision-tracked version of the Rewrite Bill is published on the [legislation.govt.nz](http://legislation.govt.nz) website including amendments as recommended by the Social Services Committee (Committee).

## **You have agreed to advance a policy-neutral rewrite and remove the new policy proposals from the Rewrite Bill**

- 13 At the Officials' meeting on 27 November 2017 you agreed to proceed with a policy-neutral rewrite. In REP/17/11/1097 *Advancing the Social Security Legislation Rewrite Bill* you agreed to make the following changes to the Rewrite Bill:
  - 13.1 the removal of the new policy changes (para 11.4)
  - 13.2 the inclusion of three additional fixes by SOP.

## **What a policy-neutral rewrite looks like and how it impacts clients**

### **A policy-neutral rewrite includes rewriting and restructuring social security legislation**

- 14 New Zealanders should be able to read the Social Security Act and have a reasonable understanding of their entitlement to social assistance, and what they need to do in return. The Rewrite Bill completely revises the 1964 Act, modernises the language, provides a more logical structure, improves consistency, re-numbers the provisions and re-enacts it in a more accessible and understandable form.
- 15 The rewrite provides an opportunity for:
  - greater clarity, transparency and coherence: the new Act will be easier for clients, the general public and practitioners to read and understand
  - greater consistency in the level of detail provided in the Act and in subordinate legislation (such as regulations): de-clutters the Act
  - updating the Act in line with modern practice: updates the drafting style.

- 16 A table outlining and analysing the rewrite and restructure component of the Rewrite Bill (para 11.1) including client impacts is included in Appendix 1.

*The rebalancing between primary and delegated legislation does not involve policy changes*

- 17 Primary and delegated legislation are being rebalanced with detail moving from the Act into regulations without making any policy changes. The purpose of these changes is to:
- create consistency where there are existing regulations and the need for a standard approach to what is included in regulations (for example, exemptions from various policies, overseas absence, and supplementary assistance)
  - remove unnecessary detail from the primary legislation (such as administration, procedures, and the mechanics of implementing a policy)
  - allow appropriate provisions to be flexible and responsive to changes in policy, processes, and terminology (for example, immigration, health, and education).
- 18 While rebalancing legislation does not involve making any policy changes it may still attract some criticism. The New Zealand Labour Party minority report expressed concern about increased regulation-making powers reducing public accountability and scrutiny, a view also expressed by some submitters to the Committee.
- 19 MSD recommends the rebalancing between primary and delegated legislation be retained as part of the Rewrite Bill as drafted. In addition to the improvements outlined above there are a number of safeguards in place.
- 20 Regulations are made by Order in Council and must be approved by Cabinet and the Executive Council and publicly notified in the New Zealand Gazette at least 28 days before they come into force (with limited exceptions). The 28-day rule reflects the principle that law should be publicly available and capable of being ascertained before it comes into force.
- 21 The Regulations Review Committee examines all regulations after they are made. They consider whether it should draw the regulations to the attention of the House on any of a number of grounds relating to basic legal or constitutional principle.
- 22 The Regulations Review Committee examined the regulation-making powers in the Rewrite Bill and considered "that the drafting of the bill, in general, has taken a balanced approach".
- 23 A table outlining and analysing the rebalancing component of the Rewrite Bill (para 11.2) including client impacts is included in Appendix 2.
- 24 If you do not wish to proceed with the rebalancing component the draft SOP would be amended to re-include provisions that are not in the Rewrite Bill presently and remove the additional regulation-making powers. Parliamentary Counsel Office (PCO) have indicated that changing this component of the Bill will greatly increase the complexity of the drafting required and would likely extend the time needed.

*Social security regulations have also been rewritten and restructured*

- 25 MSD and the PCO have worked together to consolidate and rewrite social security regulations, including the drafting of the new regulations for provisions that are moved out of the Act by the Rewrite Bill. You will receive further advice on progressing these regulations as the Rewrite Bill progresses through the House.

**Making fixes and clarifications to manage legal risk**

- 26 With an Act that is more than 50 years old, where only four sections are unchanged and one section changed 292 times, there were bound to be drafting errors and omissions, ambiguity and inconsistencies. These issues present legal risks including the risk of inconsistent treatment of clients and increased risk of challenge (to the Benefit Review Committee, Social Security Appeal Authority, and appeals to the High Court).

- 27 The Rewrite Bill fixes a number of issues to retain the original policy intent, while ensuring legislation supports current policy and practice. For example, prior to the 2013 welfare reforms a parent with dependent children whose partner was in prison received a sole parent rate of benefit. When the new benefit categories were introduced the legislation supported this policy for Sole Parent Support but not for Jobseeker Support. This was a drafting omission, and policy and practice was implemented as intended. The Rewrite Bill fixes this issue to ensure that paying Jobseeker Support clients a sole parent rate of benefit is lawful. These fixes ensure legislation supports current policy and practice, but do not change policy.
- 28 To improve compliance with human rights legislation the Rewrite Bill does not include an existing outdated and unused provision allowing Emergency Benefit to be granted on the condition that the person complies with requirements to undergo medical or other treatment. Section 11 of New Zealand Bill of Rights Act 1990 (BORA) states "Everyone has the right to refuse to undergo any medical treatment" so the provision has been removed in the Rewrite Bill. This fix was approved by Cabinet in the context of addressing human rights issues arising from the re-enactment of existing legislation [SOC Min (15) 12/1 refers]. MSD recommends this fix be retained in the Rewrite Bill.
- 29 A table outlining the fixes and clarifications in the Rewrite Bill (para 11.3) including client impacts is included in Appendix 3, as well as the three additional fixes (para 13.2) you agreed in REP/17/11/1097.

*Four fixes and clarifications are minor policy changes that will have a positive impact on clients*

- 30 MSD has reviewed the Rewrite Bill and identified a small number of fixes and clarifications that are minor policy changes (including the human rights issue discussed in paragraph 28) and the additional fix related to drug testing that you agreed in REP/17/11/1097:

Fixes and clarifications – policy changes	Client impact	Comment
<p>Allowing decisions on medical grounds to cancel or decline Supported Living Payment (caring for a patient requiring care) to be appealed to the Medical Appeal Board (MAB).</p> <p>Currently the decision can only be reviewed by a Benefit Review Committee or appealed to the Social Security Appeal Authority.</p> <p>The MAB has the expertise to hear appeals on medical grounds, being comprised of medical practitioners or other people with appropriate expertise. It is also already used for all other appeals against decisions made on medical grounds under the Act.</p>	Positive	Allows appeals to be heard by medical experts and aligns all medical-related reviews to a MAB
<p>Changing Benefit Review Committee provisions to better support a client's ability to review decisions:</p> <ul style="list-style-type: none"> <li>allowing a Benefit Review Committee to be established in an office where the client currently lives when they have moved from where the decision was made</li> <li>removing the requirement that the community representative be resident or closely connected with the office where the Committee will be held. Each region has a pool of community representatives, rather than a person resident in, or closely connected to, a particular office.</li> </ul>	Positive	Allows the option for hearings to be undertaken where a client lives rather than being restricted to where the decision was originally made
<p>Removing the provision allowing Emergency Benefit to be granted on the condition that the person complies with requirements to undergo medical or other treatment (addresses a human rights issue discussed at para 28).</p>	Positive	Clients cannot be compelled to undergo medical treatment in line with BORA

Clarifying that the cost of evidential drug tests cannot be reimbursed<sup>1</sup> to employers when it was unnecessary because the client waived the need for evidential testing. Due to provisions being drafted too broadly clients are being put in debt to reimburse the cost of unnecessary tests (to be added to the Bill).

Positive      Clients will not be incurring unnecessary debt

- 31 These policy changes are all minor and will have a positive impact for clients. MSD recommends all the fixes and clarifications and additional fixes be part of the Rewrite Bill, including the minor policy changes.
- 32 If you decide the Rewrite Bill should not include the four minor policy changes MSD will look for the next appropriate legislative vehicle to make the changes. MSD is looking at whether there is a need for an amendment bill in 2018 and will provide further advice early next year.

## There are some other potential risks going forward

- 33 A policy-neutral rewrite of existing legislation means that the current policy is re-enacted as it was, which in itself may involve risk. For example the previous government chose to retain the advantageous treatment<sup>2</sup> of people who are totally blind, compared with the treatment of other people with disabilities. This decision led to a section 7 (BORA) report from the Attorney-General who considered retaining the policy as discriminatory. It is possible that there will be calls to extend the advantageous treatment to all people with disabilities.
- 34 Making the rewrite policy-neutral reduces the risk of existing policies being debated and scrutinised through the remaining Parliamentary processes, but does not remove the risk entirely.

## Next steps for advancing the Rewrite Bill

### Making changes to the Rewrite Bill by supplementary order paper

- 35 Changes to the Rewrite Bill can be made by amending a SOP already drafted to fix minor drafting errors and change the commencement date (which is currently 3 July 2017). A further SOP has been drafted to separate the Rewrite Bill into three separate Bills, known as a break-up SOP. As the member in charge of the Rewrite Bill, these and any further government SOPs will be in your name.
- 36 Due to the significance of social security legislation and the complexity of the Rewrite Bill, agreement to changes is required from the appropriate Cabinet policy committee.
- 37 MSD will instruct PCO to amend the draft SOP to remove the new policy proposals from the Rewrite Bill and add the three additional fixes, plus any other changes you make in this paper<sup>3</sup>.

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<sup>1</sup> Work and Income can reimburse a potential employer for the cost of failed drug test, which in turn becomes a debt to the client.

<sup>2</sup> Totally blind people: can be granted Supported Living Payment (SLP) without having to establish that they are permanently and severely limited in their capacity to work; regularly work 15 hours a week (or more) and still receive SLP; have their personal earnings exempt from the income test; and receive an additional allowance of 25% of their personal earnings up to \$18,266.04 a year for a client with a partner, or \$20,568.07 a year for a single client (as at 1 April 2017).

<sup>3</sup> The SOP will also include two technical changes; the benefit rates that have changed since the Bill was drafted and to the way benefit rates are described for beneficiaries with children.

- 38 MSD will prepare a paper for you to submit seeking Cabinet policy committee agreement to make changes to the Rewrite Bill, and another seeking Cabinet Legislation Committee (LEG) approval of the SOP.
- 39 The SOP is released following the second reading of the Rewrite Bill and before the Committee of the whole House stage.

### **There are two options for the next step for advancing the Rewrite Bill**

- 40 The Rewrite Bill is currently awaiting second reading. MSD has been working with the Legislation Coordinator in the Cabinet Office on the next step to advance the Rewrite Bill. There are two options for a way forward. You have indicated a preference for proceeding straight to second reading.

#### *Proceeding to second reading as a matter of process while preparing to make changes to the Rewrite Bill by supplementary order paper*

- 41 The second reading of a bill starts with the main debate on the amendments recommended by the committee. There are then two votes; on any select committee amendments made by a majority, and that the bill be read a second time.

#### *Voting on select committee recommendations made by a majority*

- 42 The Committee considered the Rewrite Bill and all recommendations for amendments to the Bill were made by a majority. For the most part the recommendations make drafting improvements rather than policy changes.
- 43 For the Rewrite Bill the majority was the National Party, with minority views from the New Zealand Labour Party and Green Party of Aotearoa New Zealand. Your decision to remove the new policy proposals is consistent with the Labour and Green Party minority views.
- 44 At the conclusion of the debate, the Speaker puts a question that the amendments recommended by the Committee by majority be agreed to<sup>4</sup>. The most expedient way forward is for you to vote for the amendments as a matter of process, having signalled your intention to make changes during the debate.
- 45 If you do not want to vote for the recommendations of the majority, you could vote against them and the Bill would revert to the version that was introduced to the House. The improvements could be re-included in the Rewrite Bill by SOP, though this would add significant complexity to the drafting.
- 46 There is no need to decide which way you wish to vote at this stage. If you choose to go ahead with this option MSD will provide your Office with draft speech notes and a draft press release. A decision can be made then.

#### *Voting that the Rewrite Bill be read a second time*

- 47 Following the vote on the recommendations of the Committee the Speaker puts a further question, that the bill be now read a second time. This vote must be in favour for the Rewrite Bill to proceed to the committee of the whole House stage.

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<sup>4</sup> Standing order 298.

*Referring changes in a supplementary order paper to the Social Services and Community Committee for further consideration*

- 48 A Minister can invite a select committee to consider (and consult publicly on) changes set out in a SOP, especially where the proposed changes are extensive or significant, with the approval of the House or the Business Committee. The Rewrite Bill has already been considered by the Committee, with public submissions heard. Roughly half of submitters who commented on the new policy proposals were opposed.
- 49 MSD do not recommend this option as there would be limited value added to the process and it would extend the timeline significantly. Guidelines recommend allowing six months for a select committee process, with a minimum of four months in special circumstances. The appropriate Cabinet policy committee will need to have agreed to make the changes to the Rewrite Bill, and LEG will have approved the SOP before the select committee could consider the SOP.

### **Other legislation stages and processes**

- 50 A high-level overview of the steps to be completed for the Rewrite Bill to pass is included in Appendix 4.

### **Tying all the legislation changes together**

- 51 The Leader of the House has called for submissions (bids) from Ministers for the 2018 Legislation Programme<sup>5</sup>, which are due to the Cabinet Office by 26 January 2018. MSD is preparing two bids related to amending the Social Security Act:
- 51.1 Social Security Legislation Rewrite Bill
- 51.2 an amendment bill for other proposals to be progressed. MSD will provide further advice on what could be included in this bill early next year.
- 52 We are working closely with PCO to develop the bids and plan out a legislation agenda for the year ahead, considering priorities and resourcing. You will receive an initial report on all the MSD related bids including the Rewrite Bill by the end of December 2017.

### **Further advice you will receive by the end of February 2018**

- 53 Further advice we will provide includes:
- 53.1 an indicative timeline for advancing the Rewrite Bill once its priority on the 2018 Legislation Programme is assigned, and following decisions in this report
- 53.2 discussion of an Accommodation Supplement boundary issue that is currently a fix in the Rewrite Bill and which is partially addressed in the Families Package (see Appendix 3)
- 53.3 policy items that could be included in an amendment bill in 2018.

File ref: REP/17/11/1165

Author: <sup>s9(2)(a)</sup> Senior Policy Analyst, Income Support Policy

Responsible manager: Bede Hogan, Policy Manager, Income Support Policy

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<sup>5</sup> Cabinet Office circular CO (17) 11 2018 *Legislation Programme: Requirements for Submitting Bids*, issued 27 November 2017.

## Appendix 1 – The rewrite and restructure of the Rewrite Bill

Rewrite and restructure	Client impact	Comment
<p><b>Rewrite</b> includes:</p> <ul style="list-style-type: none"> <li>• modern drafting style</li> <li>• more explanation and guidance</li> <li>• includes examples and tables</li> <li>• simplified language – ‘plain English’</li> <li>• tidy-up of redundant and obsolete provisions</li> </ul>	<p>Positive</p>	<p>Will be:</p> <ul style="list-style-type: none"> <li>• easier to understand</li> <li>• easier to read</li> <li>• more accessibility</li> <li>• clearer and more coherent</li> </ul> <p><b>Also</b></p> <ul style="list-style-type: none"> <li>• existing provisions are re-enacted without change</li> <li>• the Bill confirms<sup>6</sup> that (except for specified exceptions) the rewritten provisions are intended to have the same effect as the corresponding former (current) provisions in the Act</li> </ul>
<p><b>Restructure</b> includes:</p> <ul style="list-style-type: none"> <li>• a more logical structure – related topics are in the same part eg all financial assistance is in Part 2, instead of 7 different parts currently</li> <li>• improved flow – the most important provisions are at the front (eligibility, obligations and sanctions) with general, technical and administrative provisions towards the back</li> <li>• a dictionary in a Schedule to avoid interrupting the flow of the more important first parts of the Bill</li> <li>• a full contents table at the start of the Bill and further contents tables for each Part and Schedule</li> <li>• repeals and replaces the Social Security Act 1964 and the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990 with three rewritten Acts: <ul style="list-style-type: none"> <li>◦ Residential Care and Disability Support Services Act</li> <li>◦ Artificial Limb Service Act</li> <li>◦ Social Security Act</li> </ul> </li> </ul>	<p>Positive</p>	<p>Will be:</p> <ul style="list-style-type: none"> <li>• easier to find things (eg eligibility provisions)</li> <li>• streamlined as it reduces 22 disjointed parts to 8 logical parts eg administration is currently split over 6 different parts throughout the 1964 Act whereas the Rewrite Bill has it all in one part</li> <li>• easier to use, navigate and understand</li> <li>• fit for purpose with residential care and disability support services, artificial limb services, and social security each having its own Act</li> </ul>

<sup>6</sup> Clause 9(3). If there is any doubt about the meaning of the new provision, the former provision must be used to determine the correct meaning, see clause 9(5).

## Appendix 2 – The rebalance between primary and delegated legislation in the Rewrite Bill

Rebalance	Client impact	Comment
<p><b>Rebalance</b> includes:</p> <ul style="list-style-type: none"> <li>• 'lifting and shifting' some provisions from primary legislation into regulations</li> <li>• a principle-based approach to where provisions should sit, based on: <ul style="list-style-type: none"> <li>◦ main benefit eligibility, obligations, and sanctions set out in detailed provisions in primary legislation</li> <li>◦ supplementary assistance set out with broad parameters in primary legislation, with further detail in regulations</li> <li>◦ hardship and emergency assistance enabled through flexibility and discretion in primary legislation, with further detail in regulations and/or welfare programmes</li> <li>◦ simplified provisions in primary legislation for general, technical, and administrative provisions</li> <li>◦ retaining rates of payments, income and means tests in the Schedules to the Act</li> </ul> </li> </ul> <p><b>Note</b> the rewrite does not introduce any new Henry VIII clauses (empowering provisions that enable delegated legislation to override, suspend or amend primary legislation)<sup>7</sup>, or move any provisions into tertiary legislation (eg welfare programmes).</p> <p>The Rewrite Bill rewrites two existing provisions in the Bill which enable benefit rates and some other amounts set out in the Schedules to be changed by Order in Council, but only where the changes would effectively benefit clients.</p>	<p>Neutral</p>	<p>Will be:</p> <ul style="list-style-type: none"> <li>• policy-neutral as provisions are re-enacted as they were in the 1964 Act</li> <li>• more balanced with detail moved into regulations such as administration, procedures, and the mechanics of implementing a policy</li> <li>• more consistent with other enactments in the level of detail in primary and delegated legislation</li> </ul> <p><b>Also</b></p> <ul style="list-style-type: none"> <li>• provides a standard approach to what is included in regulations (for example, exemptions from various policies, overseas absence, and supplementary assistance)</li> <li>• allows appropriate provisions to be flexible and responsive to changes in policy, processes, and terminology (for example, immigration, health, and education)</li> </ul> <p><b>Note</b> regulations are made by Order in Council and must be approved by Cabinet and the Executive Council and must be publically gazetted.</p>

<sup>7</sup> Section 13.5 Legislation Advisory Committee Guidelines: Guidelines on Process and Content of Legislation (2014 edition): <http://www.ldac.org.nz/assets/documents/LAC-Guidelines-2014.pdf> retrieved 29 November 2017.

## Appendix 3 – Fixes and clarifications included in the Rewrite Bill

Fix	Client impact	Comment
Removing the provision allowing Emergency Benefit to be granted on the condition that the person complies with requirements to undergo medical or other treatment	Positive	Clients cannot be compelled to undergo medical treatment in line with the Bill of Rights Act
<p>Clarifying that sole parents with a youngest dependent child aged over 14 years who have lost the support of their spouses or partners due to imprisonment:</p> <ul style="list-style-type: none"> <li>receive the sole parent rate of Jobseeker Support rather than the lower amount of half of the married rate</li> <li>can have their benefit backdated for up to 28 days from the date of application as is provided to all Sole Parent Support recipients</li> </ul>	Positive	While this is current policy and practice, bringing legislation in line protects entitlement for clients
Clarifying that all sole parents on Jobseeker Support can undertake temporary full-time employment	Positive	While this is current policy and practice, bringing legislation in line protects entitlement for clients
<p>Making amendments to overseas absence provisions to ensure the original intention is maintained:</p> <ul style="list-style-type: none"> <li>clarifying that supplementary assistance paid to New Zealand Superannuation clients, Veterans Pension clients, and non-beneficiaries are not benefits for the purposes of section 77 (Effect of absence of beneficiary from New Zealand: provisions)</li> <li>clarifying that clients can be absent from New Zealand and paid any benefit for 28 days in total in any 52 week period even where they transfer between benefits</li> <li>clarifying that a client who has been granted an approved travel reason can have a deferral from their work obligations for the period of the approved travel</li> <li>clarifying that a work-tested Sole Parent Support client with an exemption from all of their work obligations under section 102A (full exemption), is allowed to travel and continue to receive their benefit for up to four weeks in any 52-week period without an approved travel reason (subject to other restrictions on overseas absence)</li> </ul>	Positive	While this is current policy and practice, bringing legislation in line protects entitlement for clients
Clarifying that Emergency Benefit is only at a main benefit rate (with grand-parenting protection for any recipient being paid at the New Zealand Superannuation or Veterans Pension rate prior to the change)	Neutral	This is current policy and practice
Ensuring the <i>special income exemption</i> in respect of sick benefits from friendly or like society is available to all clients receiving a main benefit by including Supported Living Payment (on the grounds of caring for a patient requiring care) in the list of benefits	Positive	While this is current policy and practice, bringing legislation in line protects entitlement for clients

Fix	Client impact	Comment
<p>Removing the provision that Accommodation Supplement areas are defined by the Government Statistician<sup>8</sup>:</p> <ul style="list-style-type: none"> <li>validating payments made for non-adjusted areas</li> <li>protecting anyone who has had their Accommodation Supplement area changed as a result of a successful legal challenge<sup>9</sup></li> </ul>	Neutral	<p>The removal provision will no longer be necessary as a result of amendments made in the Families Package legislation.</p> <p>Validates payments as made, with protection for clients who have successfully challenged</p>
Clarifying that <i>health practitioner</i> means only current health practitioners (ie not former practitioners)	Neutral	This is current policy and practice
Clarifying that the 50 percent protection for people with dependent children who are subject to the 13-week non-entitlement period applies when a benefit has not yet been granted (and not just when it has been cancelled)	Positive	While this is current policy and practice, bringing legislation in line protects entitlement for clients
Clarifying that sanctioned work-tested beneficiaries continue to receive a reduced rate of benefit unless they cease to be work-tested beneficiaries	Neutral	This is current policy and practice
<p>Clarifying the waivers to the initial stand-down for groups who would suffer hardship without the waiver, including:</p> <ul style="list-style-type: none"> <li>refugees<sup>10</sup> leaving the Mangere Refugee Resettlement Centre</li> <li>Youth Service applicants who are meeting their obligations<sup>11</sup></li> </ul>	Positive	While this is current policy and practice, bringing legislation in line protects entitlement for clients
Allowing decisions on medical grounds to cancel or decline Supported Living Payment (on the grounds of caring for a patient requiring care) to be appealed to the Medical Appeal Board (MAB)	Positive	Allows appeals to be heard by medical experts and aligns all medical-related reviews to a MAB
Replacing the outdated term 'shared custody' with 'shared care'	Neutral	Not client-related
Removing an outdated provision related to declarations	Neutral	Not client-related
Clarifying that the discretion to not pay Disability Allowance or pay it at a reduced rate because a client is receiving other similar assistance only applies to an overseas pension or periodical payment if it is made for the same purpose	Neutral	This is current policy and practice

<sup>8</sup> This issue is being fixed in the Families Package legislation.

<sup>9</sup> You will receive a separate briefing on the Accommodation Supplement boundary issue by the end of February 2018.

<sup>10</sup> This includes protected persons as defined in the Immigration Act 2009.

<sup>11</sup> The Youth Service obligations relate to secondary or tertiary education, and approved training or work-based learning leading to a NCEA level 2 qualification or an equivalent or higher qualification.

Fix	Client impact	Comment
<p>Allowing decisions on medical grounds to cancel or decline Supported Living Payment (on the grounds of caring for a patient requiring care) to be appealed to the MAB</p> <p>Currently the decision can only be reviewed by a Benefit Review Committee or appealed to the Social Security Appeals Authority.</p> <p>The MAB has the expertise to hear appeals on medical grounds, being comprised of medical practitioners or other people with appropriate expertise. It is also already used for all other appeals against decisions made on medical grounds under the Act.</p>	Positive	Allows the option for hearings to be undertaken where a client lives rather than being restricted to where the decision was originally made
<p>Changing Benefit Review Committee provisions to better support a client's ability to review decisions:</p> <ul style="list-style-type: none"> <li>allowing a Benefit Review Committee to be established in an office where the client currently lives when they have moved from where the decision was made</li> <li>removing the requirement that the community representative be resident or closely connected with the office where the Committee will be held. Each region has a pool of community representatives, rather than a person resident in, or closely connected to, a particular office.</li> </ul>	Positive	Allows the option for hearings to be undertaken where a client lives rather than being restricted to where the decision was originally made
<p>Repealing the War Serviceman's Dependents Allowance as entitlements for veterans and any dependent family sit rightly within the Veteran's Support Act 2014 rather than the Social Security Act</p>	Neutral	There are no clients receiving this assistance

The additional fixes and clarifications to be added to the Rewrite Bill (agreed to in REP/17/11/1097) are:

Additional fixes and clarifications	Client impact	Comment
<p>Clarifying that clients are able to notify MSD of their overseas absence due to humanitarian reasons as soon as is reasonably practicable, including after returning to New Zealand, and still have their benefit backdated. The wording of the provision is ambiguous and open to interpretation. The amended provisions have been drafted to remove doubt.</p>	Positive	While this is current policy and practice, ensuring legislation is in line will protect entitlement
<p>Clarifying that, as originally intended, the maximum limit for advance payment of benefit should not include supplementary benefits. The wording of the provision is ambiguous and open to interpretation. The amended provision will be drafted to remove doubt.</p>	Neutral	This is current policy and practice
<p>Clarifying that the cost of evidential drug tests cannot be reimbursed<sup>12</sup> to employers when it was unnecessary because the client waived the need for evidential testing. Due to provisions being drafted too broadly clients are being put in debt to reimburse the cost of unnecessary tests</p>	Positive	Clients will not be incurring unnecessary debt

<sup>12</sup> Work and Income can reimburse a potential employer for the cost of failed drug test, which in turn becomes a debt to the client.

## Appendix 4 – An high-level overview of the steps to be completed for the Rewrite Bill to pass

Step / process	Comment
Second reading	Discussed in <i>There are two options for the next step for the Rewrite Bill</i> section in the body of this report.
Cabinet policy committee agreement to changes	<p>Due to the significance of social security legislation and the complexity of the Rewrite Bill, agreement to changes is required from the appropriate Cabinet policy committee.</p> <p>Your paper will also ask the Committee to invite the Minister for Social Development to issue drafting instructions to PCO.</p>
PCO draft changes in SOP	<p>An SOP has already been drafted to fix minor drafting errors and changes the commencement date (which is currently 3 July 2017). A further SOP has been drafted to separate the Rewrite Bill into three separate Bills, known as a break-up SOP. As the member in charge of the Rewrite Bill, these and any further government SOPs will be in your name.</p> <p>MSD will instruct PCO to amend the draft SOP to remove the new policy proposals from the Rewrite Bill and add the three additional fixes, plus any other changes you make in this paper.</p>
LEG approve SOP	All SOPs that make substantive changes to a bill must be approved by LEG <sup>13</sup> .
Releasing the SOP	It is good practice to release a SOP publically prior to the Committee of the whole House stage.
Committee of the whole House stage	<p>The SOPs will be considered and if agreed by the Committee the Bill will be divided into three separate Bills. The Clerk of the House will then draft the amendments into final revision-tracked versions of the Bills.</p> <p>At this stage you will inform the chairperson of the Committee you no longer intend to move the amendments concerned in SOP 228 which you released on 26 September 2016 [REP/17/11/1097 refers].</p>
Third reading	Following the debate the Bills will be read a third time and passed by the House.
Royal assent	The Clerk of the House prepares fair copies of the Bills for Royal assent by the Governor-General. The Attorney-General certifies the Bill and the Prime Minister signs the formal advice. The Governor-General signs the Bill in token of the Royal assent and it becomes law.

Social security regulations will be progressed with the Rewrite Bill as a single legislative package. You will receive further advice on regulations as the Rewrite Bill progresses through the House.

<sup>13</sup> The process for making policy changes to a bill after introduction is outlined in paragraphs 7.72-7.77 of the Cabinet Manual and, at the Committee of the whole House stage in Standing Orders 306-308.



**MINISTRY OF SOCIAL  
DEVELOPMENT**  
TE MANATŪ WHAKAHIATO ORA

**Draft Cabinet Papers: Progressing the Social Security  
Legislation Rewrite Bill**

**Date:** 13 April 2018

**Report no.:** REP/18/4/525

**Security level:** In Confidence

**Priority:** Routine

**Action Sought**

Hon Carmel Sepuloni

*Social Development, Disability  
Issues*

Agree to forward the attached draft Cabinet  
papers to your Ministerial colleagues for  
consultation

16/04/2018

**Contact for telephone discussion**

Name	Position	Telephone	1st Contact
Fiona Carter-Giddings	General Manager, Employment and Income Support Policy	s9(2)(a)	<input checked="" type="checkbox"/>
Bede Hogan	Policy Manager, Employment and Income Support Policy		

**Report prepared by:** s9(2)(a) Senior Policy Analyst

**Other departments  
consulted:** Treasury, SSC, DPMC, ACC, MOE, MOH, MBIE, Ministry of Pacific Peoples, Ministry  
for Women, Oranga Tamariki-Ministry for Children, Inland Revenue, and TPK.

**Minister's office comments**

- ☐ Noted
- ☐ Seen
- ☒ Approved
- ☐ Needs change
- ☐ Withdrawn
- ☐ Not seen by Minister
- ☐ Overtaken by events
- ☐ Referred to (specify)

**Comments**

**Date received from MSD**

13 APR 2018

**Date returned to MSD**

27 APR 2018



# Report

**Date:** 13 April 2018

**Security Level:** IN CONFIDENCE

**To:** Hon Carmel Sepuloni, Minister for Social Development

## Draft Cabinet Papers: Progressing the Social Security Legislation Rewrite Bill

### Purpose of the report

- 1 This report seeks your agreement to provide the attached draft Cabinet papers to your Ministerial colleagues for consultation. This approach is required so that decisions for the Social Security Rewrite Bill (the Rewrite Bill) can be completed by 14 May 2018.

### Recommended actions

It is recommended that you:

- 1 **note** that you have previously agreed to progress a policy-neutral Social Security Legislation Rewrite Bill that also includes a number of fixes and clarifications and minor policy changes [REP/17/11/1165 refers]
- 2 **note** that the Ministry of Social Development has received directions from your office on changes to the rebalancing of primary and delegated legislation in the Social Security Legislation Rewrite Bill including:
  - 2.1 retaining the definition of 'accommodation costs' and 'cash assets' for Accommodation Supplement in primary legislation
  - 2.2 retaining the eligibility criteria for Funeral Grants in primary legislation
- 3 **note** your office also directed that decisions made on medical grounds to cancel or decline Supported Living Payment should be reviewed by a Benefit Review Committee, the Social Security Authority or the Courts
- 4 **note** that draft Cabinet papers have been prepared to reflect your instructions and include:
  - 4.1 a Cabinet Social Wellbeing Committee paper entitled "Progressing the Social Security Legislation Rewrite Bill" with the intention it be considered at their 2 May 2018 meeting
  - 4.2 a Cabinet Legislation Committee paper entitled "Social Security Legislation Rewrite Bill – Supplementary Order Paper" with the intention it be considered at their 10 May 2018 meeting
- 5 **note** that the Parliamentary Counsel Office has amended the Supplementary Order Paper to reflect your decisions

- 6 **note** that agency consultation has been completed on the draft Cabinet papers and no substantive feedback was received
- 7 **agree** that the attached Cabinet papers be provided to your Ministerial colleagues for consultation over the period of 16 April 2018 to 20 April 2018.

**Agree / Disagree**



Fiona Carter-Giddings  
General Manager  
Employment and Income Support Policy

13/04/2018

Date



Hon Carmel Sepuloni  
Minister for Social Development

15/04/2018

Date

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

## **You have previously agreed to progress a policy-neutral Social Security Legislation Rewrite Bill**

- 2 The Rewrite Bill awaiting its second reading and currently includes a number of policy changes.
- 3 In a previous report you indicated you wished to progress a policy-neutral rewrite of the Social Security Act 1964 and the inclusion of a number of fixes, clarifications and additional changes, including minor policy changes [REP/17/11/1165 refers].
- 4 You have made a number of decisions that change the Rewrite Bill, including removing the policy changes from the Rewrite Bill.
- 5 You also agreed to remove a provision currently contained in the Rewrite Bill that validates past decisions on Accommodation Supplement (AS) [REP/18/2/154 refers].
- 6 Subsequently, you withdrew a previous Cabinet paper on the Rewrite Bill [REP/18/1/114 refers], so that further consultation on the Rewrite Bill with government partners could be undertaken. In the cover report for that Cabinet paper you agreed to amend the commencement dates in the Rewrite Bill, so that
  - 6.1 the commencement date for regulation-making provisions was amended to be the day after royal assent
  - 6.2 the commencement date for the remaining provisions in the Rewrite Bill was amended to be 26 November 2018.

## **Your office has provided direction on additional changes**

- 7 The Ministry of Social Development (MSD) has received directions from your office on additional changes to the Rewrite Bill:
  - retaining the definition of 'accommodation costs' and 'cash assets' for AS in primary legislation
  - retaining the eligibility criteria for Funeral Grants in primary legislation.
- 8 Your office also indicated that you wish to maintain the status quo for reviewing decisions made on medical grounds to cancel or decline Supported Living Payment, which means that such decisions can only be reviewed by a Benefit Review Committee, appealed to the Social Security Authority, or the Courts.

## **Two Cabinet papers have been drafted to reflect this agreement and the directions that we have been given**

- 9 MSD has prepared two draft Cabinet papers reflecting these decisions and your directions (as above). We seek your agreement that the attached Cabinet papers be provided to your Ministerial colleagues for consultation over the period of 16 April 2018 to 20 April 2018. These are:
  - a Cabinet Social Wellbeing Committee paper entitled "Progressing the Social Security Legislation Rewrite Bill". The paper seeks policy approval to progress a policy-neutral Rewrite Bill and to agree to a limited number of minor and technical changes. The resulting decisions will be advanced through a SOP that will amend the Rewrite Bill
  - a Cabinet Legislation Committee paper entitled "Social Security Legislation Rewrite Bill – Supplementary Order Paper". This paper seeks Cabinet Legislation Committee approval to release a SOP to amend the Rewrite Bill.

- 10 The SOP is being drafted in anticipation of Cabinet Social Wellbeing Committee agreement so that it will be ready for the Cabinet Legislation Committee meeting.
- 11 These Cabinet papers have been consulted on with agencies and no substantive feedback was received.
- 12 Based on your office's instructions to have all Cabinet decisions completed by 14 May 2018, we have prepared the following timetable.

Action	Date
Ministerial Consultation with colleagues on draft Cabinet papers	16 April 2018 to 20 April 2018
Ministerial approval of updated Cabinet papers following consultation	By 24 April 2018
Submission to Cabinet Office of both finalised Cabinet papers	By 26 April 2018 10:00am via CabNet
Cabinet Social Wellbeing Committee	2 May 2018
Cabinet	7 May 2018
Cabinet Legislation Committee	10 May 2018
Cabinet	14 May 2018

### Immediate next steps

- 13 Following Ministerial consultation, MSD will update the draft Cabinet papers as required. Your approval of the finalised papers will be needed by Tuesday 24 April 2018 so that they can be submitted to Cabinet Office by 10:00am on Thursday 26 April 2018 for the:
  - Cabinet Social Wellbeing Committee meeting of Wednesday 2 May 2018
  - Cabinet Legislation Committee meeting of Thursday 10 May 2018.
- 14 You will be provided with Aide Memoires to support both the Cabinet papers ahead of the meetings.

File ref: REP/18/4/525

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Responsible manager: Bede Hogan, Policy Manager, Employment and Income Support

Chair  
Cabinet Social Wellbeing Committee

## **PROGRESSING THE SOCIAL SECURITY LEGISLATION REWRITE BILL**

### **Proposal**

- 1 I seek the approval of Cabinet Social Wellbeing Committee to progress a policy-neutral Social Security Legislation Rewrite Bill (the Rewrite Bill) and to agree to a limited number of minor and technical changes. The resulting decisions will be advanced through a Supplementary Order Paper (SOP) that will amend the Rewrite Bill.

### **Executive summary**

- 2 The Social Security Act 1964 (the SSA) sets entitlements to social assistance, which are delivered through the benefit system. However, due to frequent amendments and changes over time, the SSA has become fragmented and difficult to navigate. The last National-led Government initiated work to rewrite the SSA to make it more fit for purpose.
- 3 Cabinet agreed that the SSA should be rewritten so that it would be more coherent, accessible and easier to understand [CAB Min (13) 21/6 recommendation 3 refers]. Cabinet also agreed to seven policy changes that were incorporated into the Rewrite Bill [CAB Min (15) 19/1, SOC Min (15) 12/1 and SOC-16-MIN-0004 refer]. These policy changes covered a range of matters, from embedding the objectives of the Investment Approach in the overarching principles of the SSA through to a new regulation-making power to identify specific client circumstances where compulsory redirection of benefit payments is appropriate.
- 4 I am proposing to progress a policy-neutral Rewrite Bill and that the policy changes currently within the Rewrite Bill are removed through a SOP. This approach will ensure the issues identified with the SSA are addressed promptly and the focus remains on improving the legislative framework through a new Act. Any future policy changes could be considered through the overhaul of the welfare system. The overhaul aims to ensure the welfare system is fair and accessible, aligns with the labour market and supports people to reach their potential. I consider that progressing a policy-neutral Rewrite Bill will provide a solid legislative platform for future work on the overhaul of welfare settings.

### **Background**

#### **The Social Security Act 1964 sets New Zealanders' entitlements to social assistance**

- 5 The SSA establishes New Zealanders' fundamental legal entitlements to social assistance, delivered through the benefit system. The purpose and principles of the SSA emphasise sustainable employment and providing social and financial support to people for whom work is not appropriate or who, for some reason, are not able to work for a period of time.

## **The Social Security Act 1964 has become fragmented and hard to understand over time**

- 6 After more than 50 years of amendments and repeals, including more than 150 amending Acts, the SSA has become fragmented, hard to understand and difficult to navigate. Only four sections of the SSA are unchanged from the original enactment. Frequent reform of the SSA has led to ambiguity and inconsistencies within the legislative framework making it hard to follow and risky to continually amend. Under the last National-led Government work was initiated to rewrite the SSA to make it more fit for purpose.

## **Development of the Social Security Rewrite Bill and key decisions**

- 7 On 15 June 2013, Cabinet agreed that the SSA should be rewritten so that it would be more coherent, accessible and easier to understand [CAB Min (13) 21/6 refers]. Subsequently, on 8 June 2015 and 17 February 2016, Cabinet agreed to seven policy changes (discussed further below) and these were incorporated into the Rewrite Bill [CAB Min (15) 19/1, SOC Min (15) 12/1 and SOC-16-MIN-0004 refer]. Cabinet also agreed that minor and technical changes could be made in order to achieve a coherent and durable Act. The Minister for Social Development was delegated authority to make minor and technical changes or transitional arrangements required, to finalise draft legislation in a manner consistent with the overall aims of the Rewrite Bill [SOC Min (15) 12/1 recommendation 29 refers].
- 8 The Rewrite Bill was considered at Cabinet Legislation Committee on 8 March 2016 [CAB LEG (16) MIN 0026 refers], was then introduced to the House on 17 March 2016, and read for the first time and referred to the Social Services Committee on 10 May 2016. The Committee reported back on 14 September 2016. The Rewrite Bill is due to have its second reading.

## **The Social Security Legislation Rewrite Bill rewrites and restructures the Social Security Act 1964**

- 9 The Rewrite Bill rewrites and restructures the SSA, changes the balance between primary and delegated legislation, fixes and clarifies issues with existing legislation and contains a number of policy changes agreed to by the previous National-led government.
- 10 The Rewrite Bill provides a more logical structure for the future Act, modernises the language used, improves consistency, re-numbers provisions and re-enacts the legislation in a more accessible and understandable form. This approach provides an opportunity for greater clarity, transparency and coherence and updates the SSA in line with modern practice.

## **The Social Security Legislation Rewrite Bill rebalances primary and delegated legislation**

- 11 The Rewrite Bill rebalances primary and delegated legislation with detail moving from the SSA into regulations without making any policy changes. This approach removes unnecessary detail from the primary legislation and allows appropriate provisions to be flexible and responsive to change. This was a principles-based approach to where provisions should sit, based on:
  - main benefit eligibility, obligations, and sanctions set out in detailed provisions in primary legislation
  - supplementary assistance set out with broad parameters in primary legislation, with further detail in regulations
  - hardship and emergency assistance enabled through flexibility and discretion in primary legislation, with further detail in regulations and/or welfare programmes

- simplified provisions in primary legislation for general, technical, and administrative provisions
  - retaining rates of payments, income and means tests in the Schedules to the SSA.
- 12 While I consider that the approach to the rebalancing of primary and delegated legislation is generally sound, particularly the seeking of consistency, there needs to be reconsideration of the changes in some specific areas. There are provisions where I consider it would be more appropriate for them to sit in primary legislation. Those provisions that should remain in legislation include:
- the definitions of accommodation costs and cash assets for the purpose of accommodation supplement
  - the eligibility criteria for funeral grants.
- 13 Appendix 1 sets out the provisions that will be moved from primary legislation to regulations.

**The Social Security Legislation Rewrite Bill includes fixes, clarifications, and minor and technical changes**

- 14 The Rewrite Bill includes fixes and clarifications to manage legal risk. Because the SSA is more than 50 years old and has undergone substantial changes, there are ambiguities and inconsistencies. These issues present legal risks, including the risk of inconsistent treatment of clients and increased risk of legal challenge (to the Benefit Review Committee, Social Security Appeal Authority, and appeals to the High Court). The Rewrite Bill fixes a number of issues to retain the original policy intent, while ensuring the legislative framework supports current policy and practice.
- 15 I seek Cabinet's agreement to make minor and technical changes. Three of these changes are fixes and clarifications to be included in the Rewrite Bill and include clarifying that:
- clients are able to notify the Ministry of Social Development (MSD) of their overseas absence due to humanitarian reasons as soon as is reasonably practicable, including after returning to New Zealand, and still have their benefit backdated. The wording of the provision is ambiguous and open to interpretation and the amended provisions will be drafted to remove doubt
  - as originally intended, the maximum limit for advance payment of benefit should not include supplementary benefits. The wording of the provision is ambiguous and open to interpretation. The amended provision will be drafted to remove doubt
  - the cost of evidential drug tests cannot be reimbursed to employers when it was unnecessary because the client waived the need for evidential testing. Due to provisions being drafted too broadly, clients are being put in debt to reimburse the cost of unnecessary tests.
- 16 I propose to remove a validation provision for addressing a misalignment issue between Government Statistician boundaries and the Accommodation Supplement Areas, which was historic and is included in the Rewrite Bill. The Minister of Housing and Urban Development and I will receive further advice on options for addressing this issue.
- 17 The Rewrite Bill currently includes a change allowing decisions on medical grounds to cancel or decline Supported Living Payment (caring for a patient requiring care) to be appealed to

the Medical Appeal Board (SOC Min (15) 12/1 recommendation 29 refers)<sup>1</sup>. I propose that this change be reversed to revert to the status quo so that such decisions can only be reviewed by a Benefit Review Committee, appealed to the Social Security Appeal Authority, or to the judiciary.

- 18 Finally, since the Rewrite Bill has been reported back from Select Committee, legislative changes made after 14 September 2016 have been incorporated.
- 19 The Rewrite Bill currently contains the following seven policy changes that were agreed to by the previous National-led Government [CAB Min (15) 19/1, SOC Min (15) 12/1 and SOC-16-MIN-0004 refer] including:
- introducing a new regulation-making power to identify specific client circumstances where compulsory redirection of benefit payments is appropriate [SOC Min (15) 12/1 recommendations 2 - 4 refers]
  - merging the Orphan's and Unsupported Child's benefits into a single benefit named Supported Child's Payment. The policy settings were aligned so that step-parents would not be eligible (with grand-parenting provisions will protect the entitlement of step-parents granted Orphan's Benefit prior to the change in legislation) [SOC Min (15) 12/1 recommendations 8 - 11 refers]
  - renaming the Emergency Benefit as the Exceptional Circumstances Benefit [SOC Min (15) 12/1 recommendation 13 refers]
  - giving case managers discretion to apply work or work preparation obligations to a person granted the Exceptional Circumstances Benefit (Emergency Benefit), if the person has the capacity to meet the obligation [SOC Min (15) 12/1 recommendation 17 refers]
  - both parents in split care situations (where each parent cares for at least one dependent child from the former relationship) to be eligible for Sole Parent Support [SOC Min (15) 12/1 recommendation 18 refers]
  - including the objectives of the Investment Approach in the overarching principles of the Act [SOC Min (15) 12/1 recommendation 22 refers]
  - a single rate of Sole Parent Support for single carers who are paid the Supported Child's Payment (Orphan's and Unsupported Child's benefits) [SOC-16-MIN-0004 recommendation 9 refers].

#### **Removing policy changes from the Social Security Legislation Rewrite Bill to make it policy-neutral**

- 20 I consider that the Rewrite Bill needs to focus on achieving a stable and understandable social security legislative framework. I therefore propose that the seven policy changes currently within the Rewrite Bill be removed to make it policy-neutral. Pursuing a policy-neutral Rewrite Bill will:
- make the legislative regime more understandable

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<sup>1</sup> This decision was made under a power to make technical and minor changes, including any consequential changes or transitional arrangements required, to finalise draft legislation in keeping with the overall aims of the rewrite".

- enact much needed fixes and clarifications
- make the social security framework more efficient through changing the balance between primary and delegated legislation.

- 21 In short, the Rewrite Bill will create a fit for purpose legislative framework. Removing policy changes from the Rewrite Bill will ensure that the focus is on improving the legislative and social security framework.
- 22 I also note that a policy-neutral Rewrite Bill was supported in the minority Select Committee views from the New Zealand Labour Party and the Green Party of Aotearoa New Zealand.

*Future policy changes can be addressed through an overhaul of welfare system settings*

- 23 Any future policy changes could be considered through the overhaul of the welfare system. The overhaul aims to ensure the welfare system is fair and accessible, aligns with the labour market and supports people to reach their potential. Cabinet has agreed to establish an Expert Advisory Group for the overhaul. Any legislative amendments resulting from the overhaul of the welfare system will not occur before 2019 at the earliest.
- 24 I consider that progressing a policy-neutral Rewrite Bill will provide a solid legislative platform for future work on the overhaul of welfare settings.

## **Consultation**

- 25 The Department of the Prime Minister and Cabinet, the Accident Compensation Corporation, the Ministries of Education, Health, Pacific Peoples, Business, Innovation and Employment, Women, Oranga Tamariki—Ministry for Children, Inland Revenue, Te Puni Kōkiri, the State Services Commission and the Treasury have been consulted.

## **Financial implications**

- 26 There are no financial implications from the proposals in this paper.

## **Human rights implications**

- 27 On 8 March 2016, the Attorney-General presented a report to Parliament under section 7 of BORA that concluded that the advantageous treatment of the totally blind appears to be inconsistent with section 19 of BORA. These advantageous provisions are historic and date back to 1924. Cabinet has previously agreed that the provisions be re-enacted, consistent with a policy-neutral rewrite of the SSA. Given my intent to progress a policy-neutral Rewrite Bill, and that the Select Committee also recommended no change after hearing submissions, I therefore propose to retain the current provisions relating to the treatment of people who are blind.

## **Legislative implications**

- 28 The decisions resulting from this Cabinet paper will require that the Rewrite Bill be amended through a SOP.

## Regulatory impact and compliance cost statement

- 29 Two Regulatory Impact Statements (RIS) for the policy changes currently contained with the Rewrite Bill accompanied a previous Cabinet paper. These RISs have been published on MSD's and Treasury's website.<sup>2</sup>

## Gender implications

- 30 There are no gender implications from the proposals in this paper.

## Disability perspective

- 31 An issue relating to the preferential treatment of people who are blind compared to other people with other forms of disability or health condition is discussed under the Human Rights implications section of this paper.
- 32 There are otherwise no disability implications from the proposals in this paper.

## Publicity

- 33 I will work with officials to consider options for publishing this paper on the MSD website.

## Recommendations

- 34 It is recommended that Cabinet Social Wellbeing Committee:

- 1 **note** that the Social Security Act 1964 sets entitlements to social assistance and its purpose and principles emphasise sustainable employment and providing social and financial support to people for whom work is not appropriate or who, for some reason, are not able to work for a time;
- 2 **note** that, due to frequent changes and amendments, the Social Security Act 1964 has become fragmented and hard to understand;
- 3 **note** that the Social Security Legislation Rewrite Bill as reported back by the Social Services Committee rewrites and restructures the Social Security Act 1964, changes the balance between primary and delegated legislation, fixes and clarifies issues with existing legislation and contains a number of policy changes agreed by the previous National-led government;

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<sup>2</sup> The RISs comprise:

- Policy changes proposed as part of the Rewrite of Social Security Act 1964, published online at: <http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/regulatory-impact-statements/policy-changes-proposed-as-part-of-the-rewrite-of-social-security-act-1964.pdf>.
- Additional policy options proposed as part of the Social Security Act 1964 Rewrite, published online at: <http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/regulatory-impact-statements/additional-policy-options-proposed-as-part-of-the-social-security-act-1964-rewrite.pdf>.

## **Progressing a policy-neutral rewrite of the Social Security Act 1964**

- 4 **note** that to progress a policy-neutral rewrite of the Social Security Act 1964, the policy changes currently contained within the Social Security Legislation Rewrite Bill will need to be removed;
- 5 **note** that on 15 June 2013 Cabinet agreed that the rewrite include consideration of policy changes aimed at removing legislative barriers to frontline efficiency and modern service delivery, including legislative support for the investment approach [CAB Min (13) 21/6 recommendation 6.1 refers];
- 6 **note** that on 3 June 2015 Cabinet Social Policy Committee agreed that [SOC Min (15) 12/1 refers]:
  - 6.1 "the Rewrite Act introduce a regulation making power to identify specific client circumstances where compulsory redirection of benefit payments is appropriate in order to ensure positive outcomes for clients [recommendations 2 – 4 refer];
  - 6.2 the Orphan's and Unsupported Child benefits be merged into a single benefit in the Rewrite Act [recommendations 8 – 11 refers];
  - 6.3 the Emergency Benefit be renamed the Exceptional Circumstances Benefit [recommendation 13 refers]
  - 6.4 the Rewrite Act introduce a discretion to apply part-time or full-time work test obligations or work preparation obligations, and the associated sanctions policy, to an Emergency Benefit client where the Chief Executive determines they have capacity to seek, undertake, and be available for part-time or full-time work, or if not, to prepare for work [recommendation 17 refers];
  - 6.5 the Rewrite Act allow both parents in split care situations to be eligible for Sole Parent Support [recommendation 18 refers];
- 7 **note** that on 17 February 2016 the Cabinet Social Policy Committee agreed to matters relating to access to Sole Parent Support for single carers receiving Orphan's Benefit or Unsupported Child's Benefit, including introducing a single rate of Sole Parent Support (which was to be the same as the single rate of Jobseeker Support) to allow these carers to receive an appropriate rate of benefit while continuing to receive payment of Orphan's Benefit or Unsupported Child's Benefit [SOC-16-MIN-0004 recommendation 9 refers];
- 8 **rescind** the decisions referred to in recommendations 5, 6, and 7 of this paper and amend the Social Security Legislation Rewrite Bill accordingly;

## **Changes to the rebalancing of primary and delegated legislation**

- 9 **agree** that the following provisions remain in primary legislation and not be moved to regulations:
  - 9.1 the definitions of accommodation costs and cash assets for the purpose of accommodation supplement;
  - 9.2 the eligibility criteria for funeral grants;

## Minor and technical changes

- 10 **agree** that the following minor and technical changes be made to the Social Security Legislation Rewrite Bill:

10.1 clients are able to notify the Ministry of Social Development of their overseas absence due to humanitarian reasons as soon as is reasonably practicable, including after returning to New Zealand, and still have their benefit backdated;

10.2 as originally intended, the maximum limit for advance payment of benefit should not include supplementary benefits;

10.3 the cost of evidential drug tests cannot be reimbursed to employers when it was unnecessary because the client waived the need for evidential testing;

10.4 a validation provision for addressing a misalignment issue between Government Statistician boundaries and the Accommodation Supplement Areas is removed;

10.5 decisions on medical grounds to cancel or decline Supported Living Payment can only be reviewed by a Benefit Review Committee or appealed to the Social Security Appeal Authority;

- 11 **note** that I will work with officials to consider options for publishing this paper on the Ministry of Social Development's website.

Authorised for lodgement  
Hon Carmel Sepuloni  
Minister for Social Development

## Appendix 1 — Provisions moved from primary legislation to regulations

- **Residential requirements** – stipulating when a person meets the requirements or does not have to do so.
- **Accommodation supplement** – rates, costs covered, assets requirement, etc (this excludes some specific definitions which are in primary legislation).
- **Disability allowance – special categories of eligibility** – this relates to the exceptions from the eligibility requirement that the disability must be likely to last more than six months at the time an application is made.
- **Funeral grants** – includes amounts, the methods of making payments, circumstances when a funeral grant would not be paid.
- **Obligations in relation to dependent children** (currently called social obligations) – refining the obligations, e.g. hours of attendance required.
- **Insurance recovery** – including what insurance cover affects rates of benefit and how overpayments are recovered.
- **Work obligations** – including refining the requirements for drug tests, how the results of tests can be used and how work tests can be deferred.
- **Pre-benefit activities** – types of activities and who can be required to undertake them.
- **Absence from New Zealand** – who must notify MSD of absence, and exceptions to it.
- **Application for benefit** – process for applying and assessing applications.
- **Benefits granted not taking into account insurance payments** – suspending, cancelling or varying benefit.
- **Stand downs** – including calculation of stand down period and exemptions.
- **Payments** – including redirection, provisional payment and apportionment.
- **Payments during an epidemic** – including entitlement and rates.
- **Debts and deductions** – including what should be treated as a debt to the Crown, exceptions to the duty to recover debt, rates and method of recovery and District Court powers.
- **Notices**
- **Further provisions on deductions** – debt deduction notices.
- **Reciprocity and mutual assistance agreements** – including processes that apply before MSD can initiate adverse action on the basis of information provided by overseas countries.
- **Procedure and powers for reviews and appeals** – including the types of orders that can be made, and the evidence that can be heard.

Chair  
Cabinet Legislation Committee

## **SOCIAL SECURITY LEGISLATION REWRITE BILL – SUPPLEMENTARY ORDER PAPER**

### **Proposal**

- 1 I seek the approval of the Cabinet Legislation Committee for the release of a Supplementary Order Paper (SOP) that amends the Social Security Legislation Rewrite Bill (the Rewrite Bill). The SOP removes policy changes currently within the Rewrite Bill. This is required to progress a policy-neutral rewrite of the Social Security Act 1964 (the SSA).

### **Policy**

#### **The Social Security Act 1964 had become fragmented and hard to understand**

- 2 The SSA establishes New Zealanders' fundamental legal entitlements to social assistance, delivered through the benefit system. After regular amendments and repeals the SSA had become fragmented, hard to understand and difficult to navigate. Under the last National-led Government work was initiated to rewrite the SSA to make it more fit for purpose. This involved rewriting and restructuring the SSA, rebalancing primary and delegated legislation, and making a number of fixes and clarifications.

#### **Development of the Social Security Legislation Rewrite Bill and key decisions**

- 3 On 15 June 2013, Cabinet agreed that the SSA should be rewritten so that it would be more coherent, accessible and easier to understand [CAB Min (13) 21/6 refers]. Subsequently, on 8 June 2015 and 17 February 2016, Cabinet agreed to seven policy changes (discussed further below) and these were incorporated into the Rewrite Bill [CAB Min (15) 19/1, SOC Min (15) 12/1 and SOC-16-MIN-0004 refer]. Cabinet also agreed that minor and technical changes could be made in order to achieve a coherent and durable Act.

#### *Previous consideration of the Social Security Legislation Rewrite Bill*

- 4 The Rewrite Bill was considered at Cabinet Legislation Committee on 8 March 2016 [CAB LEG (16) MIN 0026 refers], was then introduced to the House on 17 March 2016, and read for the first time and referred to the Social Services Committee on 10 May 2016. The Committee reported back on 14 September 2016. The Rewrite Bill is awaiting its second reading.

#### **Recent decisions made by Cabinet on the Social Security Legislation Rewrite Bill**

- 5 On 7 May 2018, Cabinet agreed to rescind seven policy changes contained within the Rewrite Bill, these were:
  - introducing a new regulation-making power to identify specific client circumstances where compulsory redirection of benefit payments is appropriate [SOC Min (15) 12/1 recommendations 2 - 4 refers]

- merging the Orphan's and Unsupported Child's benefits into a single benefit named Supported Child's Payment. The policy settings would be aligned so that step-parents would not be eligible (grand-parenting provisions will protect the entitlement of step-parents granted Orphan's Benefit prior to the change in legislation) [SOC Min (15) 12/1 recommendations 8 - 11 refers]
  - renaming the Emergency Benefit as the Exceptional Circumstances Benefit [SOC Min (15) 12/1 recommendation 13 refers]
  - giving case managers discretion to apply work or work preparation obligations to a person granted the Exceptional Circumstances Benefit (Emergency Benefit), if the person has the capacity to meet the obligation [SOC Min (15) 12/1 recommendation 17 refers]
  - allowing both parents in split care situations (where each parent cares for at least one dependent child from the former relationship) to be eligible for Sole Parent Support [SOC Min (15) 12/1 recommendation 18 refers]
  - including the objectives of the Investment Approach in the overarching principles of the Act [SOC Min (15) 12/1 recommendation 22 refers]
  - applying a single rate of Sole Parent Support for single carers who are paid the Supported Child's Payment (Orphan's and Unsupported Child's benefits) [SOC-16-MIN-0004 recommendations 9 refers].
- 6 Removing the policy changes contained within the Rewrite Bill will mean it is policy-neutral. To progress these changes, a SOP has been prepared that amends the Rewrite Bill.

*Changes to the rebalancing of primary and delegated legislation*

- 7 On 7 May 2018, Cabinet confirmed that the approach under the Rewrite Bill to the rebalancing of primary and delegated legislation while generally sound needed to be reconsidered in some specific areas. There were provisions where it would be more appropriate for them to sit in primary legislation. Those provisions that should remain in primary legislation are:
- the definitions of accommodation costs and cash assets for the purpose of accommodation supplement (AS)
  - the eligibility criteria for funeral grants.

*Minor and technical changes, fixes and clarifications*

- 8 On 7 May 2018, Cabinet agreed to a number of minor and technical changes, fixes, and clarifications. These changes included that:
- clients are able to notify the Ministry of Social Development (MSD) of their overseas absence due to humanitarian reasons as soon as is reasonably practicable, including after returning to New Zealand, and still have their benefit backdated. The wording of the provision is ambiguous and open to interpretation and the amended provisions have been drafted to remove doubt
  - as originally intended, the maximum limit for advance payment of benefit should not include supplementary benefits. The wording of the provision is ambiguous and open to interpretation. The amended provision has been drafted to remove doubt

- the cost of evidential drug tests cannot be reimbursed to employers when it was unnecessary because the client waived the need for evidential testing. Due to provisions being drafted too broadly, there is potential for clients to incur debt to reimburse the cost of unnecessary tests
  - the validation provision for addressing a historical misalignment issue between Government Statistician boundaries and the AS Areas will be removed from the Rewrite Bill
  - decisions on medical grounds to cancel or decline Supported Living Payment will revert to the status quo so that such decisions can only be reviewed by a Benefit Review Committee or appealed to the Social Security Appeal Authority.
- 9 Finally, since the Rewrite Bill has been reported back from Select Committee, legislative changes made after 14 September 2016 have been incorporated.

### **Impact Analysis**

- 10 A Departmental Disclosure Statement has not been prepared for the Rewrite Bill.

### **Human rights implications**

- 11 There are no human rights implications arising from the SOP.

### **Compliance**

- 12 The SOP complies with each of the following:
- the principles of the Treaty of Waitangi
  - the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
  - the principles and guidelines set out in the Privacy Act 1993
  - relevant international standards and obligations
  - Legislation Advisory Committee Guidelines; Guidelines on Process and Content of Legislation, published by the Legislation Design and Advisory Committee.

### **Consultation**

- 13 The Department of the Prime Minister and Cabinet, the Accident Compensation Corporation, the Ministries of Education, Health, Pacific Peoples, Business, Innovation and Employment, Women, Oranga Tamariki—Ministry for Children, Inland Revenue, Te Puni Kōkiri, the State Services Commission and the Treasury have been consulted.

### **Binding on the Crown**

- 14 The Rewrite Bill is binding on the Crown [LEG-16-MIN-0026 recommendation 5 refers].

## **Creating new agencies or amending law relating to existing agencies**

15 Not applicable.

## **Allocation of decision making powers**

16 The SOP does not allocate decision making powers between the executive, the courts, or tribunals.

## **Associated regulations**

17 The SOP does not include any provisions for regulations to be included in the Rewrite Bill. The Rewrite Bill does have provisions for regulation-making powers.

## **Other instruments**

18 The SOP does not make changes in terms of other instruments.

## **Definition of Minister and department**

19 The SOP makes no changes to the definitions of Minister or department. There are definitions of Minister and responsible department in the Rewrite Bill.

## **Commencement of legislation**

20 The Rewrite Bill in its current form has two commencement dates. Some provisions, such as for regulation-making, were expected to commence on 1 January 2017, with most provisions to come into force on 3 July 2017. Because the Rewrite Bill did not progress in the term of the last Parliament, these commencement dates need to be updated. The two step commencement was to allow for the same commencement date as the Bill. I therefore propose that:

- the commencement date for specified provisions such as those for regulation-making be amended to be the day after royal assent
- the commencement date for the remaining of the provisions in the Rewrite Bill be amended to 26 November 2018.

## **Parliamentary stages**

21 The Rewrite Bill is currently waiting for its second reading. Following Cabinet approval, the SOP to amend the Rewrite Bill will be tabled and in the House prior to the Committee of the whole House stage.

## **Recommendations**

22 It is recommended that the Committee:

- 1 **note** that that the Social Security Legislation Rewrite Bill rewrites and restructures the Social Security Act 1964, changes the balance between primary and delegated legislation, fixes and clarifies issues with existing legislation and contains a number of policy changes agreed by the previous National-led government;

- 2 **note** that on 7 May 2018 Cabinet agreed that the Social Security Legislation Rewrite Bill would be policy-neutral and the following policy decisions would be rescinded:
- 2.1 a new regulation-making power to identify specific client circumstances where compulsory redirection of benefit payments is appropriate [SOC Min (15) 12/1 recommendations 2 - 4 refers];
  - 2.2 merging the Orphan's and Unsupported Child's benefits into a single benefit named Supported Child's Payment. The policy settings would be aligned so that step-parents would not be eligible (grand-parenting provisions will protect the entitlement of step-parents granted Orphan's Benefit prior to the change in legislation) [SOC Min (15) 12/1 recommendations 8 - 11 refers];
  - 2.3 renaming the Emergency Benefit as the Exceptional Circumstances Benefit [SOC Min (15) 12/1 recommendation 13 refers];
  - 2.4 case managers being given discretion to apply work or work preparation obligations to a person granted the Exceptional Circumstances Benefit (Emergency Benefit), if the person has the capacity to meet the obligation [SOC Min (15) 12/1 recommendation 17 refers];
  - 2.5 both parents in split care situations (where each parent cares for at least one dependent child from the former relationship) to be eligible for Sole Parent Support [SOC Min (15) 12/1 recommendation 18 refers];
  - 2.6 including the objectives of the Investment Approach in the overarching principles of the Act [SOC Min (15) 12/1 recommendation 22 refers];
  - 2.7 a single rate of Sole Parent Support for single carers who are paid the Supported Child's Payment (Orphan's and Unsupported Child's benefits) [SOC-16-MIN-0004 recommendation 9 refers];
- 3 **note** that Cabinet agreed that the following provisions remain in primary legislation and not be moved to regulations:
- 3.1 the definitions of accommodation costs and cash assets for the purpose of accommodation supplement;
  - 3.2 the eligibility criteria for funeral grants;
- 4 **note** that Cabinet agreed that the following minor and technical changes were to be made to the Social Security Legislation Rewrite Bill:
- 4.1 clients are able to notify the Ministry of Social Development of their overseas absence due to humanitarian reasons as soon as is reasonably practicable, including after returning to New Zealand, and still have their benefit backdated;
  - 4.2 as originally intended, the maximum limit for advance payment of benefit should not include supplementary benefits;
  - 4.3 the cost of evidential drug tests cannot be reimbursed to employers when it was unnecessary because the client waived the need for evidential testing;
  - 4.4 a validation provision for addressing a historical misalignment issue between Government Statistician boundaries and the Accommodation Supplement Areas will be removed;

- 4.5 decisions on medical grounds to cancel or decline Supported Living Payment can only be reviewed by a Benefit Review Committee or appealed to the Social Security Appeal Authority;
- 5 **agree** that the Social Security Legislation Rewrite Bill's commencement dates be amended so that:
- 5.1 specified provisions, such as those for regulation-making, come into force on the day after Royal Assent
- 5.2 the remaining provisions in the Rewrite Bill come into force on 26 November 2018;
- 6 **note** that the attached Supplementary Order Paper gives effect to recommendations 2 to 5 in this paper;
- 7 **approve** the release of the accompanying Supplementary Order Paper.

Authorised for lodgement  
Hon Carmel Sepuloni  
Minister for Social Development

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT