

Regulatory Impact Statement:

The Impact of Weekly Compensation Payments on Social Security Benefits, and Assistance with Accommodation Costs for full-time Students

Agency Disclosure Statement

1. This Regulatory Impact Statement has been prepared by the Ministry of Social Development (the Ministry).
2. It provides an analysis of options to address two issues:
 - a Social Security Appeal Authority (SSAA) decision [SSAA 10/2009] that section 71A of the Social Security Act 1964 (which provides for dollar-for-dollar deduction of weekly compensation payments from main¹ social security benefit payments) does not cover weekly compensation payments made by employers accredited under the Accident Compensation Corporation (ACC) accredited employer scheme.
 - an inconsistency between policy and legislation as set out in section 61EA of the Social Security Act 1964 which has the unintended effect of giving access to Accommodation Supplement to some full-time students, when the policy intent is that financial assistance for students is provided under the Student Allowances Regulations 1998 and the Student Loan Scheme.

Impact of Weekly Compensation on Social Security Benefits

3. Since 1994, ACC has operated an accredited employer scheme designed to encourage employers to take responsibility for their employees. An accredited employer enters into an agreement with ACC to pay entitlements, including weekly compensation, on claims² for injuries occurring at work. In exchange, the employer pays lower ACC levies. Most large employers are accredited, with the scheme covering about a quarter of all employees.
4. Currently all weekly compensation payments, by ACC or accredited employers, are deducted from main social security benefit payments. It would be inequitable for payments by accredited employers to be treated differently. An amendment to the Social Security Act 1964 is proposed to provide a legislative basis for the current practice.

Assistance with Accommodation Costs for Full-time Students”

5. Assistance for students is designed in the context that benefits from tertiary study accrue to both the student and the nation so it is reasonable to expect students to contribute to their own study costs. Students are excluded from the Accommodation

¹ Main social security Benefits are Unemployment, Sickness, Domestic Purposes, Widow's, Invalid's and Emergency Benefit and EMA.

² Employers may elect to manage claims for anywhere between one and four years in addition to the cover year

Supplement because there is separate assistance for students' accommodation costs available in the form of the Accommodation Benefit. It would be inequitable to allow some students to arrange their circumstances so as to qualify for the AS whereas students in similar circumstances receive different levels of accommodation assistance.

Rationale for Legislative Change

6. The key assumption underlying this analysis is if the legislation is not amended and the Ministry continues the current practice some beneficiaries, students and their advocates will use the legal process to challenge current practice and be successful in obtaining higher entitlements to benefits and Accommodation Supplement than the current policy and practice would allow.
7. The Ministry also estimates, in relation to weekly compensation, that additional benefit expenditure will be incurred if the legislation is not changed. This assumes that the Ministry would, as a matter of natural justice, review the benefit entitlements of all people who receive or have received weekly compensation payments from accredited employers, rather than only reviewing the benefits of people who pursued legal avenues to challenge the treatment of these payments.
8. The legislative changes recommended will not impose any additional costs on businesses, and will not impair private property rights or market competition that the government has said would require a particularly strong case before regulations are considered.
9. Retrospective legislation is proposed to address the SSAA decision on weekly compensation. The underlying principle is that legislation should operate prospectively, so that people are aware of the law at the time it affects them. The situation outlined in this paper is different because the Ministry of Social Development had understood accredited employer payments to be captured by section 71A of the Social Security Act 1964 and so had administered the benefit system accordingly. A retrospective change would confirm the previous understanding of the legislation and administrative practice.
10. Legislation retrospectively confirming practice has previously been passed in similar circumstances. For example, in response to a decision of the SSAA appealed to the High Court³, section 64(2A) of the Social Security Act 1964 was amended by section 13 of the Social Security (Personal Development and Employment) Act 2002 to clarify when income received by beneficiaries should be charged and affect their rate of benefit. This change was made retrospectively to avert fiscal risks but did not affect the rights of those who had already applied for a review, appeal or other proceedings.
11. If the legislation is not changed retrospectively, there would be windfall gains of additional benefit payments to people whose employers have agreed with ACC to manage their own accident compensation risks in return for reduced employer levies. The legislation would be drafted so as not to deprive the successful appellant of the benefit of the Social Security Appeal Authority finding. Others seeking to dispute their entitlement in the interim would be informed that a benefit debt could result from such action, after the retrospective change to legislation.

³ Tapp v Chief Executive of the Department of Work and Income

12. Leaving the current legislation in place for the treatment of weekly compensation payments in the benefit system would override the common law principle that all are treated equally under the law. All employees pay ACC levies at the same rate. The policy intent is that people whose weekly compensation is lower than the rate of income-tested benefit that they could receive to support themselves and their family have their income “topped up” to the appropriate benefit level. This is achieved by dollar for dollar deduction of weekly compensation payments from benefit rates. The SSAA decision, if applied, would result in different rates of benefit for people depending on whether or not their employer contracted with ACC to join the accredited employer scheme and whether or not the employers made the payments (if the employer goes into liquidation or for any other reason does not make weekly compensation payments, ACC is the default payer).

Catherine Nalty

General Manager

Working Age People’s Policy

Ministry of Social Development

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Introduction

13. This statement discuss two issues:

- Part A focuses on weekly compensation payments
- Part B focuses on accommodation support for students

PART A: WEEKLY COMPENSATION PAYMENTS AND SOCIAL SECURITY BENEFITS

Status quo and problem definition

14. Section 71A of the Social Security Act 1964 provides for dollar-for-dollar deduction of weekly compensation payments that are required under the Accident Compensation Act, but does not include weekly compensation payments when made by accredited employers.
15. Having only some weekly compensation payments made by ACC directly deducted from income-tested benefits will have fiscal costs and will mean unequal treatment between beneficiaries who have paid exactly the same ACC levies and receive exactly the same weekly compensation.
16. Some people will also qualify for a benefit when they have weekly compensation paid by an accredited employer at a rate higher than the benefit rate, but below the level where the benefit is fully abated when these payments are treated as other income. People receiving a similar level of weekly compensation from ACC will not receive any benefit payment.
17. Having the weekly compensation treated as income for those who receive it from accredited employers will reduce the financial incentive for the recipients to return to full or part-time work, since their income while on benefit plus weekly compensation will be higher than would otherwise be the case
18. Part or all the incentives to work while on benefit - the “free-zone” of allowable income before the amount payable of any income-tested benefit is affected (currently \$80⁴), and the 30 per cent abatement rate for the next \$100 of income (before tax) received by people on the part-time abatement regime (those on Invalid’s, Widow’s or Domestic Purposes Benefit) will be taken up by the weekly compensation payment. This would push more of the part-time earnings of beneficiaries into the 70 per cent reduction applied to income over \$80 (or \$180 for those on the part-time abatement regime).
19. The Ministry estimates that an additional \$700,000 in benefit expenditure per annum would result if the legislation is not amended to ensure that all weekly compensation payments are treated the same in the benefit system. Additional one-off payments estimated as amounting to up to \$3.261 million will also result if the legislation does not have retrospective effect in confirming the past practice of direct deduction.
20. A person paid \$100 weekly compensation with no other income would have their income-tested benefit reduced each week by
 - \$100 if that compensation is paid by ACC
 - \$6 (if on Invalid’s benefit, Widow’s benefit or DPB) or \$14 (if on UB or SB) if that compensation is paid by an accredited employer under the current benefit abatement regime

⁴ Subject to the enactment of the Social Security (New Work Tests, Incentives, and Obligations) Amendment Bill the free-zone is scheduled to rise to \$100 (before tax) from 27 September 2010.

Objectives

21. The intent of the direct deduction provision is to offset all weekly compensation payments from income-tested benefit payments, preventing duplication in the government's minimum income or "safety net" provisions.
22. New Zealand's social security system is based on the premise that where it is possible people are expected to provide for themselves before claiming a social security benefit. This requirement is set out in Section 1A(c) of the Social Security Act 1964 which notes that the purpose of the Act is to provide financial and other support to people "taking into account -
 - i. that where appropriate they should use the resources available to them before seeking financial support under this Act; and
 - ii. any financial support that they are eligible for or already receive, otherwise than under this Act, from publicly funded sources"
23. The ACC system is compulsory for workers in NZ. Arrangements between ACC and employers to encourage healthy and safe workplaces should not affect the amount people who have previously worked and now claim weekly compensation specified in the Accident Compensation Act 2001 can claim in social security benefits.

Regulatory impact analysis

24. Three options were considered to address the SSAA's decision.
25. Option One: changing the legislation so that all weekly compensation payments required under the Accident Compensation Act are deducted from income-tested benefit payments would maintain the policy intent and avoid additional fiscal costs. This would ensure that people paid weekly compensation payments, whether by accredited employers or by ACC, are treated the same.
26. Two alternative options were explored to address the Authority's decision but were found to not achieve the policy objective and have significant fiscal costs.
27. Option Two: Implementing the Social Security Appeal Authority decision would cost \$700,000 per annum plus one off payments amounting to some \$3.261 million It would be inequitable since beneficiaries receiving weekly compensation payments would be treated differently depending on whether the payments were made by accredited employers or ACC. This option would not achieve the policy intent of avoiding duplication of income replacement. It would also reduce work incentives for people paid weekly compensation by an accredited employer while receiving an income-tested benefit.
28. Option Three: Changing the legislation to treat all weekly compensation payments as income for benefit purposes. This option would address criticisms from people affected by the direct deduction policy who say that payments made in compensation for earnings should be treated the same way as earnings – that is, weekly compensation should be treated as income rather than reducing the benefit dollar-for-dollar.
29. The direct deduction policy is sometimes criticised by people who receive weekly compensation as the result of an accident while working part-time and receiving a social security benefit. They claim that while ACC contributes to medical and other

costs arising from personal injury they get no compensation for the loss of part-time earnings as their weekly compensation payment is directly deducted from their benefit. They end up on the benefit income they had before taking on part-time work. However, people who have worked while on benefit and who have had an accident at work would have received additional income from their time at work. After injury they have support for rehabilitation from ACC as well as access to support from the Ministry to return to work.

30. Option Three would increase ongoing fiscal costs by approximately \$7 million per annum. This cost would be borne by general taxpayers. It would not achieve the policy objective of avoiding duplication of income replacement and would reduce work incentives for all people receiving weekly compensation while receiving an income-tested benefit.

Consultation

31. The Crown Law Office was consulted on the prospects of appealing the SSAA decision and recommended that, if the SSAA decision was of concern, the legislation should be amended rather than an appeal being pursued in the Courts.
32. ACC and the Treasury were consulted and agree with the approach for weekly compensation.
33. No consultation was undertaken with beneficiaries or their advocates because that would increase the fiscal risk arising from the current wording in the legislation.

Conclusions and recommendations

34. The preferred option, to change the legislation, is the only option that is equitable, maintains the policy intent and avoids increased fiscal cost.

Implementation

35. No implementation strategy is required as the proposed legislative amendments will provide for current practice.

Monitoring, evaluation and review

36. There are no plans for formal monitoring or evaluation of these changes since:

- existing practice will be maintained by the change in legislation to address the SSAA's finding on weekly compensation, so we do not expect any change as a result of the legislation.

37. The Ministry, as part of usual business practice, reviews decisions of Benefit Review Committees and SSAA and rulings in the Courts when beneficiaries dispute decisions. This process allows the Ministry to identify any new interpretations of the provisions of the Social Security Act 1964 and consider whether there is any departure from policy intent.

PART B: ACCOMMODATION ASSISTANCE FOR STUDENTS

Status Quo and problem definition

38. The government provides assistance for full-time students through allowances and loans. Underpinning the design of this assistance is the fact that returns from tertiary education accrue to both the individual and the nation, so it is reasonable for a shared approach to assistance with both the government and the student contributing resources. The Accommodation Supplement assists low to middle-income people with accommodation costs when they do not receive assistance through Housing New Zealand income-related rental or student allowances or loans.
39. Section 61EA(4) of the Social Security Act 1964 does not exclude students from accessing Accommodation Supplement if they choose not to receive the support they are entitled to receive under the Student Allowance Regulations 1998.
40. Section 61EA (4) of the Social Security Act 1964 says:
- No person shall be granted an accommodation supplement if that person –*
- (a) is receiving a basic grant or an independent circumstances grant under the Student Allowances Regulations 1998; or*
- (b) would be eligible to receive a basic grant or an independent circumstances grant under the Student Allowances Regulations 1998, but for the level of the income of that person's income or the level of the income of that person's parent or parents.*
41. The policy intent is that students who receive or are eligible for student allowances (including those who would be eligible but for the level of their own, their spouse's, partner's, or parents', income) receive accommodation assistance through the student allowance system and not through the Accommodation Supplement.
42. This leaves a loophole for students who would be eligible for Student Allowance on income (including parental income) grounds to instead:
- not to apply for a Student Allowance and Accommodation Benefit (and so not receive it)
 - to cancel Student Allowance and Accommodation Benefit, if already granted this assistance (and so stop receiving it).
43. Student Allowances comprise Basic Grants and Independent Circumstances Grants. A student granted either may also be eligible for an Accommodation Benefit under the Student Allowances Regulations, depending on his or her accommodation circumstances. The amount of assistance available to beneficiaries and working families from the Accommodation Supplement is generally higher than that available to full-time students via the Accommodation Benefit. For example for a single person in Auckland with no children the maximum rate of Accommodation Supplement is \$145 a week, compared to \$40 a week for Accommodation Benefit. For a sole parent in Auckland with two children the maximum rate of Accommodation Supplement is \$225 a week while the maximum Accommodation Benefit is \$60. For some students the Accommodation Supplement rate exceeds their combined rate of Accommodation Benefit and Student Allowance.

44. As a result of this minor loophole in the Act:

- the policy intent is not being delivered; and
- students in similar circumstances can be paid very different levels of government accommodation assistance, depending on whether they are aware of the loophole.

45. The fiscal risk associated with the loophole cannot be estimated accurately because the rate of Accommodation Supplement, Accommodation Benefit and Student Allowance vary according to family circumstances, the location of the home, and the income, assets and accommodation costs of the family. Only a few students claim Accommodation Supplement rather than Student Allowance and Accommodation Benefit. However there is anecdotal evidence that student associations have brought this issue to the attention of students, increasing the potential for fiscal risk and inequitable treatment of students in like circumstances.

46. Regardless of the fact that only small numbers of students are likely to be better off by taking advantage of the loophole, it is inequitable for the loophole to be left and different levels of accommodation assistance to be provided to students in similar circumstances.

Regulatory impact analysis

47. The Ministry's preferred option is to change the legislation to reflect the original policy intent and current practice to exclude students from Accommodation Supplement when they have access (or would have but for their own income or the income of their parents or partner) to assistance under the Student Allowance Regulations.

48. We considered the status quo, leaving the inconsistency between policy and legislation concerning accommodation assistance for students. That option leaves an inequitable situation where students in similar situations could have different accommodation assistance and an unquantifiable, but likely very small, fiscal risk.

Consultation

49. The Ministry of Education was consulted and agrees with the approach for accommodation assistance for students.

50. The Treasury was consulted and, since the proposal concerning accommodation assistance for students was added to the Cabinet paper at a late stage has yet to fully consider and formulate a view on this issue.

51. No consultation was undertaken with students or their advocates because of the fiscal risk attached while the legislation remains unchanged.

Conclusions and recommendations

52. The preferred option, to change the legislation to close the loophole, is the only option that maintains the policy intent and avoids increased fiscal cost.

Implementation

53. No implementation strategy is required as the proposed legislative changes will provide for current practice.

Monitoring, evaluation and review

54. There are no plans for formal monitoring or evaluation of this change since

- the amendment of eligibility criteria for Accommodation Supplement will close a loophole but is expected to affect only a small number of full-time students
- identifying the students who might have chosen to claim Accommodation Supplement rather than the Student Allowance and Accommodation Benefit would require a full analysis of each individual's circumstances.

55. The Ministry is aware that a small number (we know of two) students have accessed Accommodation Supplement as a result of the legal loophole. Students apply for assistance at the beginning of each academic year and the situation of these students, if they are continuing their studies, will be reassessed next year.