

## **Regulatory Impact Statement**

### **Welfare Reform: Phase One – Social Security Amendment Bill (No. 1)**

#### **Agency Disclosure Statement**

This Regulatory Impact Statement has been prepared by the Ministry of Social Development.

In October 2011, Cabinet agreed to a comprehensive package of welfare reform staged over two years, aimed at transforming the benefit system into one that is modern, active and work-focused [CAB Min (11) 39/8].

Two phases of legislation (Social Security Amendment Bills No. 1 and No. 2) will give effect to these decisions. The first phase will focus on young people and beneficiaries with children. Most issues related to youth have been covered in earlier Cabinet decisions and associated Regulatory Impact Statements.

The suite of Cabinet papers that this Regulatory Impact Statement accompanies focus on the detailed policy needed to:

- provide an increased focus on work availability and preparation for sole parents, widows, women alone, and partners within the benefit system;
- reconnect people with the labour market early when they have subsequent children while on benefit; and
- facilitate the information sharing that will be required to implement the Youth Pipeline.

Amending the Social Security Act 1964 is the appropriate vehicle to achieve changes in expectations about being available for work, or preparing for work in return for benefits, and to set out the sanctions for non-compliance.

Estimates of the impacts of the changes to the benefit system are based on the best available international and domestic evidence about the impacts of similar initiatives, but are subject to some uncertainty – in particular about the economic outlook and service delivery model. The new service model for delivering welfare will be a significant driver of the effectiveness of the reform package, and as final decisions have not yet been made about it, there is some uncertainty about the magnitude of predicted effects.

Reform to the welfare system will greatly expand the number and range of benefit recipients with work preparation and availability expectations, however there is no change to eligibility criteria or rates of benefit in the Bill. The changes will not impose any additional costs on businesses, impair property rights, market competition or the incentives on businesses to innovate and invest nor override fundamental common law principles.

The general policy to equalise work availability and preparation across the benefit system appears to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

The policy to apply work availability expectations to parents on benefit who have subsequent children, may invoke the right to be free from discrimination on the grounds of family status and sex as affirmed in section 19(1) of the Bill of Rights Act. A final view as to whether this policy will be consistent with the Bill of Rights Act will be possible once the legislation has been drafted.

The Office of the Privacy Commissioner does not support inclusion of the proposed information sharing provisions in the Social Security Act 1964. They consider it would be more appropriately implemented through the provisions of the Privacy (Information Sharing) Bill. They agree that to minimise confusion and to create a consistent standard for information sharing across government. All provisions should mirror provisions of the Privacy (Information Sharing) Bill as closely as possible. We will develop these provisions with the Privacy Commissioner.

The public will have the opportunity to comment on the Social Security Amendment Bill No. 1 at the Select Committee stage of the Bill. Government's decisions on changes to the welfare system have been in response to the Welfare Working Group's report - *Reducing Long-Term Benefit Dependency: Recommendations*. Extensive consultation was carried out by the Welfare Working Group during the preparation of this report.

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# Welfare Reform: Phase One – Social Security Amendment Bill (No. 1)

## Background

- 1 On 22 February 2011, the Welfare Working Group published its final report: *Reducing Long-Term Benefit Dependency: Recommendations*, which made wide reaching recommendations for the reform of the welfare system. As part of its response to that report, on 25 October 2011 Cabinet agreed to a range of measures to reform the benefit system to increase the work focus [CAB Min (11) 39/8 refers].<sup>1</sup> A Regulatory Impact Statement (RIS) was prepared to accompany that Cabinet Paper.
- 2 Two phases of legislation will give effect to these decisions, with the first phase including:
  - the Youth Package, coming into effect in July 2012 [CAB Min (11) 44/9 refers]; and
  - some parts of the wider welfare reform package affecting parents on benefit, coming into effect in October 2012.
- 3 The suite of Cabinet papers that this RIS accompanies make recommendations on how some of the wider reform package can be implemented through amendments to the Social Security Act contained in Bill 1. The Cabinet papers are split as follows:
  - Paper A: Welfare reform: Overview;
  - Paper B: Work availability and preparation for Sole Parents, Widows', Women Alone, and Partners;
  - Paper C: Parents on benefit who have subsequent children; and
  - Paper D: Youth pipeline information sharing.
- 4 The specific implementation issues that these Cabinet papers seek decisions on are:
  - whether the work availability expectations of Sole Parents should be extended to couples (*Paper B*);
  - when to transfer Sole Parents, Widows' and Women Alone to new benefit categories (*Paper B*);
  - how to give effect to decisions to introduce flexibility around the hours required for work tests (*Paper B*);
  - how to give effect to decisions to create a new activation power to enable beneficiaries to be required to undertake activities to prepare them for work (*Paper B*);
  - how to apply the decision to change work availability expectations for parents who have subsequent children while on benefit (*Paper C*); and
  - how to facilitate information sharing between the Ministry of Education (MoE) and the Ministry of Social Development (MSD) required to implement the Youth Pipeline decisions (*Paper D*).

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<sup>1</sup> The Cabinet paper that led to these decisions can be found at <http://www.msd.govt.nz/about-msd-and-our-work/newsroom/media-releases/2011/welfare-reform.html>

- 5 These elements of the package build very closely on the Future Focus reforms the Government introduced in 2010. Phase 1 also includes the changes agreed as part of the Youth Package, which will be implemented from July 2012. Cabinet made decisions on the Youth Package in August 2011 and February 2012 [CAB MIN (11) 44/9 and CAB Min (12) 3/5 refers] that created a package of changes to redesign welfare assistance for 16 – 19 year olds. A RIS was prepared to accompany each of these Cabinet papers.
- 6 Recommendations on how to implement the remaining decisions Cabinet made on the package of reforms (Phase two), will be sought in a subsequent Cabinet paper that will cover:
- the changes needed to support an investment approach to the benefit system;
  - significant changes to benefit categories, including merging Sickness Benefit (SB) and Unemployment Benefit (UB) into a new Jobseeker Support benefit, and merging the Invalid's Benefit (IB) and DPB for the Care of Sick and Infirm (DPB-CSI) into a new Supported Living Payment;
  - changes to assessments for sick and disabled people on benefit;
  - social obligations (such as participation in parenting and budgeting courses, and participation in early childhood education);
  - sanctions for people who fail pre-employment drug tests, or who refuse to apply for jobs with pre-employment drug tests; and
  - measures to reduce fraud.

## Status quo and problem definition

The accompanying Cabinet papers seek detailed decisions on how to implement some of the earlier Cabinet decisions to reform the welfare system. These decisions give rise to a number of specific issues that need to be addressed.

### *Work availability requirements for Sole Parents, Widows', and Women Alone*

- 7 At present sole parents receiving the Domestic Purposes Benefit (DPB-SP) do not have part-time work availability expectations until their youngest child is aged six years of age<sup>2</sup>, and do not have full-time work availability expectations until their youngest child reaches 18 years of age (the age for full-time work availability expectations is higher than for many other countries). This group also receives minimal support and services to move into work.
- 8 People receiving the Widows' (WB) and Women Alone (DPB-WA) benefits do not have work availability expectations, even though men in similar circumstances receiving benefits can.
- 9 As part of reforms, Cabinet has agreed to extend the work availability expectations as follows [CAB Min (11) 39/8 refers]:

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<sup>2</sup> Until the 2010 "Future Focus" reforms, sole parents faced no work expectations, but now those with a youngest child aged 6 years and older have a part-time work availability expectations of 15 hours a week.

- current DPB Sole Parents will have part-time work availability expectations when their youngest child reaches five years of age (currently six) and full time work availability expectations when they reach 14 years of age;
  - current Widows' and Women Alone benefit recipients will have part-time work availability expectations when their youngest child reaches five years of age (currently none) and full time work availability expectations when they reach 14 years of age or if they do not have children (currently none).
- 10 The current timeframe for the creation of the new main benefit categories is mid-2013.
- 11 This gives rise to the following implementation issues that need to be resolved:
- i) the timing of when to transfer DBP-SP, DPB-WA and WB to a new benefit category focused on work; and
  - ii) application of the policy to couples on benefit with children.

#### *Work test – hours of requirement*

- 12 The Social Security Act 1964 (SSA) currently requires that work tested beneficiaries must be available for, and take reasonable steps to obtain 'suitable employment'. The concept of suitable employment includes both the nature of work that beneficiaries can be required to take, and the hours of work involved.
- 13 The definition of 'suitable employment' in the SSA currently limits it to employment with hours at least equal to what would satisfy the beneficiary's work test (15 hours on average for part-time and 30 hours on average for full time work).
- 14 These rules mean that people cannot be required to take jobs of less than 30 hours a week (for someone who is full-time work-tested) or 15 hours a week (for someone who is part-time work-tested), even where doing so would be appropriate.
- 15 Cabinet has decided to address this by agreeing that the hours required for part- and full-time work tests should be more flexible, so that beneficiaries can be required to take suitable jobs around the current 15 and 30-hour targets [CAB Min (11) 39/8 refers].
- 16 More flexibility will increase the range of jobs sole parents can be required to take, which in turn increases the likelihood they will be able to find work, which is consistent with the objectives of the reforms.
- 17 This flexibility will also be important when an increased number of people who are sick or disabled face work availability expectations (under the new Jobseeker Support category), as it will mean a greater ability to take account of individual work capacity.
- 18 This gives rise to the following implementation issue that needs to be resolved:
- i) whether the flexibility in hours should be prescribed in legislation or through operational guidance.

#### *Activation power*

- 19 Existing legislative provisions enable MSD to require people who are not work tested to create an employment plan. The principles of the SSA in section 1B include a principle that "people for whom work may not currently be an appropriate outcome should be assisted to plan for work in the future and develop employment-focused skills".

- 20 These provisions focus on planning and a beneficiary's agreement is sought to include work-related activities in the plan. Failures to develop a plan or complete activities in it are sanctioned in the following way:
- a five-step process, involving several reviews of the person's plan;
  - a 30 day notice period;
  - a stepped reduction, of first 20% and then 50% (but no greater, even if the person continues to refuse to engage in planning); and
  - if a recipient re-compiles (by engaging in planning), any reductions to their benefit will be backdated and repaid in a lump sum.
- 21 In October 2011, Cabinet agreed that "stronger and broader pre-employment preparation and activation expectations be created ... to enable beneficiaries to be required to undertake activities, including work preparation, training, parenting, budgeting, or other activities". It was agreed that these requirements would apply to all new benefit types (Sole Parent Support, Jobseeker Support, and the Supported Living Payment) [CAB Min (11) 39/8 refers].
- 22 Pre-employment preparation and activation expectations will apply to parents of children of any age. This can require beneficiaries to undertake activities including work preparation, training, parenting, budgeting or relationship programmes for example.
- 23 Implementing this decision gives rise to the following issues that need to be resolved:
- i) the nature of the activation expectation;
  - ii) when the activation expectations will apply; and
  - iii) the sanction that should apply for non-compliance with the activation requirements.
- 24 Bill 1 focuses exclusively on activation for work preparation for sole parents, widows' and women alone who are not required to be available for part-time or full-time work. Further work on a range of wider social obligations and activation expectations for people who are sick or disabled is still being considered, and will be addressed in Bill 2.

*Changes to work availability expectations for parents on benefit who have subsequent children*

- 25 In October 2011, Cabinet agreed that parents who have additional children while on benefit should be exempt from work availability expectations for the first 12 months following the birth. After this time, work availability expectations are to be based on the age of their next youngest child [CAB Min (11) 39/8 refers]. For example, if a parent who has a five year old (or older child up to 14 years of age) has another child while on benefit, their part-time work availability expectations will be suspended until their latest child is one year old. From this time, they will be expected and supported to be available for part-time work.
- 26 Families in this situation are at heightened risk of long-term welfare dependence; as such the intention of this policy is to ensure that parents on benefit who have subsequent children have access to timely employment support.
- 27 The trigger for work availability expectations when the additional child is one year of age was agreed by Cabinet as it:
- aligns expectations with the 12 month extended parental leave provisions for working parents;

- supports parents and children through critical bonding and breastfeeding milestones; and
- ensures that families at greater risk of long-term benefit receipt are afforded earlier support and assistance to secure paid work and the social, financial and developmental advantages this provides to the family.

28 The table below shows the annual average number of subsequent children born to parents on benefit, by benefit type.

<b>Number of subsequent children born to parents on benefit</b>	
Annual average 2006-2010	
DPB-SP and Emergency Maintenance Allowance (EMA)	4,190
DPB caring for the sick and infirm	40 No work expectations
WB	10
Singles on UB (includes UB training)	20
Singles on SB	60 Some part-time work expectations
Singles on IB	80 No work expectations
Couples on UB (includes UB training)	120
Couples on SB	160
Couples on IB	120 Generally no work expectations
<b>Total</b>	<b>4,800</b>

29 As can be seen above, the great majority of subsequent children born on a benefit are the children of sole parent mothers on DPB-SP.

30 Implementing this decision gives rise to the following issues that need to be resolved:

- application of the policy to all parents on benefits;
- application of the policy to beneficiaries assuming care of children who are not their own; and
- Use of judgement not to apply the subsequent children policy in particular circumstances.

### *Information Sharing*

31 In August 2011, Cabinet agreed to 'implement a service to actively identify, engage, and support NEET (not in employment, education or training) 16 and 17 year olds or those at risk of becoming NEET to return to education, training, or employment' [CAB Min (11) 29/19 refers].

32 A fundamental part of actively engaging and supporting NEET young people is the use of data about school leavers in order to identify those school leavers most at risk and therefore most in need of support to prevent them from coming onto benefit when they

turn 18. Information from the MoE is also essential in identifying the particular barriers a young person has to engaging in education so that the services they receive meet their individual needs.

- 33 Implementing this decision gives rise to the following issue that needs to be resolve:
- i) The process for authorising the sharing of information about school leavers between MoE and MSD.

## Objectives

- 34 The overall objectives of welfare reforms that the government has agreed to [CAB Min (11) 39/8 refers] are to create a benefit system that:
- is more work-focused and which expects and rewards independence;
  - is more flexible, and supports an investment approach, focusing resources where the returns are greater;
  - reduces the costs associated with long-term benefit dependency through early intervention; and
  - is able to work with as many people as possible to support them into work.
- 35 Splitting the implementation of the reforms into two Bills enables some elements to be implemented from 15 October 2012. This will allow early progress to be made in expanding the work focus of the benefit system and for some benefits of welfare reforms to be realised sooner.
- 36 The overall objective for the implementation of Cabinet decisions relevant to this RIS is to do so in a way that supports these objectives. Specific objectives for implementing particular decisions are discussed below.

### *Work availability requirements for Sole Parents, Widows', and Women Alone*

- 37 The objective is to implement Cabinet's decisions to extend and introduce new work availability expectations for Sole Parents (DPB-SP), Widows' (WB) and Women Alone (DPB-WA):
- in a timely manner that will allow progress to be made in facilitating more people into work;
  - without making welfare reforms unnecessarily administratively complex; and
  - to remove a long-standing source of discrimination from the benefit system.

### *Hours of work – increasing the flexibility*

- 38 The objective is to implement Cabinet's decisions to increase flexibility to enable work tested beneficiaries to be required to take jobs with a wider range of hours, in a way that:
- provides clear direction on how flexibility should be applied; while
  - allowing for sufficient discretion in how it is applied to appropriately take account of individuals circumstances; and
  - ensures people take up appropriate work opportunities.



### *Activation power*

- 39 The objective is to implement Cabinet's decisions for stronger and broader pre-employment preparation and activation expectations so that they will be effectively applied to support parents to prepare for part-time when their children near the ages of five.

### *Changes to work availability expectations for parents on benefit who have subsequent children*

- 40 The objective is to implement Cabinet's decision relating to parents on benefit who have subsequent children, in a way that supports the policy intent, while ensuring individual circumstances and needs are recognised in the application of the policy.

### *Information sharing to deliver Youth Pipeline*

- 41 The objective is to implement Cabinet's decision in respect of school leavers identified as being most at risk of coming onto benefit at 18, by re-engaging them in education, training or work-based learning, by ensuring that information about school leavers can be shared between MoE and MSD for risk profiling and with service providers.

## **Regulatory impact analysis**

- 42 In view of the fact that Cabinet has already agreed to a comprehensive package of welfare reform [CAB Min (11) 39/8 refers], this analysis does not include the status quo as a feasible option.
- 43 The SSA contains a mixture of prescription where entitlements and requirements are clearly set out in the legislation for transparency and clarity, as well as elements of discretion that enable case managers and staff to recognise an individual's circumstances and provide for this on a case-by-case basis. Prescription is important so that people know what is expected of them in return for benefits. It also ensures that there is less opportunity for legal challenge and review and for the most part people are treated equally where the same circumstances apply.
- 44 Many of the changes being implemented in these reforms involve placing requirements on citizens and imposing sanctions if they do not meet these requirements. As such, changes to existing entitlements and requirements can only be done effectively through amending the legislation. However, given individual circumstances vary there is a competing need for flexibility. As such, the options consider the appropriate balance between clarity/certainty and flexibility.
- 45 It is estimated the overall programme of welfare reform could result in fiscal savings to the Government in the order of \$1 billion over four years, and between 28,000 and 46,000 fewer people receiving benefits by 2015/16, depending upon economic conditions.
- 46 Treasury and MSD have isolated the impact of the policy changes to be delivered in Bill 1 through introducing full-time work expectations on DPB-SP, WB and DPB-WA with no children or children aged 14 or older (and providing a service model equivalent to UB) and extending a part-time expectation to parents whose youngest dependent child is aged five years (from six years). The expected impact from these policy changes is benefit savings of between \$122 million and \$272 million over four years.
- 47 The specific options assessed below which are required to implement some aspects of the welfare reform package, do not significantly alter the costs and benefits already

identified and agreed as part of the overall package of reforms, such as the costs to build the IT systems and of preparing Work and Income staff for the changes.

## **IMPLEMENTING THE WORK AVAILABILITY REQUIREMENTS FOR SOLE PARENTS, WIDOWS', AND WOMEN ALONE**

### **i) Timing of transfer of Sole Parents, Widows', and Woman Alone to a benefit category focused on work**

#### *Option 1: Implement work availability expectations for Sole Parents, Widows', and Women Alone in July 2013*

- 48 The changes in work availability expectations for DPB-SP, WB and DPB-WA agreed to by Cabinet, would extend part-time work availability requirements to 6,300 sole parents with a youngest child that is five years of age, and apply full-time work availability expectations to 11,300 sole parents with a youngest child aged 14 years or older.
- 49 The new benefit categories (Jobseeker Support, Sole Parent Support and Supported Living Payment) are not going to be created until July 2013 (as part of Bill 2), and so there is an option not to make changes to the work availability expectations for beneficiaries on DBP-SP, DPB-WA and WB until July 2013. This would mean a nine-month period before these beneficiaries would have the new work availability expectations applied and a lost opportunity to work with a wider group of clients and to build on the work already being done with sole parents as part of the Future Focus reforms in 2010.

#### *Option 2: Implement work availability expectations for Sole Parents, Widows' and Women Alone in October 2012 and move those with children 14 years and over onto Unemployment Benefit at this time*

- 50 Moving beneficiaries with the new full-time work availability expectations to the UB in October 2012 would be an interim step before the new Jobseeker Support category is implemented in July 2013. This would send a strong signal to people on the increased focus on work availability for parents with children 14 years and over. The implications are that people in these circumstances would be considered "unemployed" with an expectation to be seeking employment (as appropriate to their circumstances).
- 51 Making this change would allow Work and Income to provide the same level of service as for recipients on the UB, including actively working with these recipients and their employers to increase their hours of work. This would raise issues with both the benefit rate and the abatement rates, as there are currently differences between WB and DPB-WA and UB. The UB abatement rate is less generous in order to make moving into full-time work and off benefit more attractive.
- 52 This option would result in two changes to a person's benefit category in the space of less than a year. This might cause unnecessary disruption and uncertainty to beneficiaries about the nature of their benefit. Further shifting beneficiaries between benefit categories in the middle of a financial year will complicate reporting and require that performance measures be adjusted.

*Option 3: Implement work availability expectations for Sole Parents, Widows', and Women Alone in October 2012 within their existing benefit category*

- 53 Applying the work availability expectations from October 2012 would allow some of the benefits of welfare reforms to be realised as early as possible, and to phase the implementation of reforms more gradually. However, unlike Option 2, there would be no change of benefit category at this time. Waiting until the new category is created would result in the least disruption for beneficiaries.
- 54 As part of the Future Focus reforms introduced in 2010, some part-time work availability expectations for sole parents were introduced. There is an opportunity to realise further gains with this group and to continue the momentum.

**ii) Application of the policy to couples on benefit with children**

*Option 1: No change – retain existing work availability expectations for couples with children*

- 55 Not extending the changes to couples on benefit with children would result in different treatment based on marital and family status, which is likely to give rise to issues of discrimination under the New Zealand Bill of Rights Act 1990. This would create an inconsistency in the legislation that is not justified in the case of this group. This option would be contrary to the objectives of the reforms, which involves increasing the work focus of the benefit system.

*Option 2: Extend the changes in work availability expectations to couples with children*

- 56 Extending the work availability expectations agreed for sole parents to couples with children is consistent with current settings where work expectations are aligned.
- 57 This option would expand the range of people Work and Income could actively work with and could result in more people on benefit finding jobs and moving off benefit. This amendment would affect about 700 couples on benefit with children between five and six (who would have part-time work availability expectations) and about 2000 couples with children between 14 and 18 (who would have full-time work availability expectations). This is consistent with the objectives for the reforms.
- 58 Couples may be able to share childcare responsibilities, so could be in a better position to cope with the new work availability expectations. However, this option may increase the demand for before and after school programmes and holiday care and recreation by the additional beneficiaries who move into paid employment due to the change. There is capacity in the current OSCAR network to place the expected number of additional children. However there are specific locations and times of day where access to OSCAR services can be improved. The OSCAR funding system will be refocused to target specific locations and settings to fill these service gaps.

**CONCLUSIONS AND RECOMMENDATIONS**

- 59 Applying work availability expectations to DPB-SP, WB and DPB-WA so that they align with other beneficiaries in similar circumstances will remove a significant source of discrimination from the benefit system. Based on the analysis above, it is recommended these changes are implemented from October 2012, as opposed to waiting until the new benefit categories are created in July 2013. This will allow some of the benefits of welfare reforms to be realised as early as possible, and will phase the implementation of reforms more gradually.

- 60 It is also recommended that the changes to work availability expectations agreed for sole parents should also apply to partners of main beneficiaries with children. This will ensure that couples with children continue to be treated equally to sole parents, and avoids the human rights issues that treating them differently may create.

## **IMPLEMENTING FLEXIBILITY IN THE HOURS FOR THE PART-TIME AND FULL-TIME WORK TEST**

### *Option 1 – Prescribed limits through legislation*

- 61 A wider set of hours than is currently the case could be provided for in legislation – this would give certainty to case managers and benefit recipients about the expectations for work tests. However, any prescription would still require maximums and minimums to be set out explicitly, which would ultimately reduce the flexibility and discretion of the case manager to place people into suitable work and would therefore not meet the objectives.

### *Option 2 – Prescribed limits through operational guidance*

- 62 Providing guidance to case managers on hours of work requirements through operational guidance is more consistent with a flexible approach. This option would allow greater discretion to take into account individual circumstances making it more likely that a recipient can be placed in a job.
- 63 In this option the target for the part-time and full-time work test would remain at 15 hours and 30 hours of work per week respectively – but the guidance would set out a range of acceptable hours i.e. for the part-time work test five hours either side and for the full-time work-test 10 hours either side.
- 64 At the upper end for the part-time work-test, a sole parent could be expected to undertake 20 hours of work if suitable in other respects; this will generally mean that they can choose to leave benefit<sup>3</sup>. This is consistent with the objectives of the reforms.
- 65 The focus of the increased flexibility is to allow the case manager to work with a benefit recipient and determine what is right for them based on their individual's circumstances (i.e. lesser hours may be more appropriate for a sole parent).
- 66 This option is more consistent with the Cabinet decision by achieving clear direction that there is flexibility in the hours of the work test, but leaving the application of the policy to operational guidance, where discretion can be applied based on individual circumstances.

## **CONCLUSIONS AND RECOMMENDATIONS**

- 67 Based on the analysis above, it is recommended that Work and Income have discretion about the hours of work people can be required to accept, having regard to the hours of their work-test. Advice on the range of hours that should generally be considered for part-time work and full-time work would be provided in operational guidance to give the greatest degree of flexibility.

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<sup>3</sup> At 20 hours work a week sole parents become eligible for Working for Families tax credits if they meet other criteria.

## **IMPLEMENTING STRONGER AND BROADER PRE-EMPLOYMENT PREPARATION AND ACTIVATION EXPECTATIONS**

### **i) The nature of the activation expectation**

#### *Option 1 – New activation powers*

- 68 New activation powers would shift the focus from a requirement to engage in 'employment planning' and an agreement to plan, to a stronger, clearer power. This power would require beneficiaries who are not expected to be available for work, to take steps to improve their work readiness. Stronger powers would strengthen the ability to require people to undertake activities to prepare for work and would support the extension of work availability requirements for sole parents. Under this option, Work and Income will determine who is worked with and what level of activity would be required based on where they believe there will be most gain.
- 69 This option would enable Work and Income to work more closely with sole parents before they have work availability expectations, to improve the likelihood that they will find suitable employment when their youngest child turns five. This option contributes to the overall goal of increasing the work focus of the benefit system, by signalling that most people should not expect benefit receipt to be permanent and is designed to break the cycle of long-term benefit dependency.

#### *Option 2 – New activation powers including a base expectation to take reasonable steps to improve work readiness*

- 70 In addition to Option 1, the power could also place broad expectations on all beneficiaries who are not work-tested to be "*taking reasonable steps to actively prepare for work*". This is similar to work-testing provisions, which require all work-tested beneficiaries to be "*taking reasonable steps to obtain suitable employment*". This expectation would apply regardless of whether the benefit recipient is working with a case manager or not.
- 71 This would reinforce the message that for most people, benefit receipt should not be permanent and may better prepare people to work with case managers if they are chosen for more intensive activation. This option is therefore considered to better implement the earlier Cabinet decision to provide stronger and broader pre-employment preparation and activation expectations to support parents to prepare for part-time when their youngest child nears the age of five.

### **ii) When the activation expectations will apply**

- 72 Not all beneficiaries will be required to actively prepare for work. Resources will be targeted where MSD thinks there will be most gain from working with people to prepare them for work. Requirements to actively prepare for work will still need to be "reasonable" in the circumstances, providing a level of discretion.

#### *Option 1 – No explicit exemptions from the activation expectations*

- 73 If no specific exemptions are set out in legislation (or regulations), a decision to exempt a person from the activation requirements would be at the discretion of the case manager. This would generate a significant degree of uncertainty for benefit recipients as to their work preparedness requirements.

- 74 Currently the SSA enables regulations to be made that specify exemptions from work test obligations (section 105). The Social Security (Exemptions under Section 105) Regulations 1998 set out the circumstances where an application can be made for a benefit recipient to be exempt from the work test obligations. Similar to the work test obligations, there are a number of genuine circumstances where it is appropriate to exempt a person from the activation requirements, such as the recent death of a spouse or partner.

*Option 2 – Prescription about the circumstances where an exemption from activation expectations would apply*

- 75 To reflect strengthening the requirements for pre-employment activities and attaching much tougher sanctions, it is reasonable to provide some clear exemptions from the activation power. This gives people assurance that case managers will recognise situations when it is clearly inappropriate to ask people to focus on work preparation. Exemptions also give people a reasonable period of time to adjust to significant life shocks or changes in circumstances before focusing on work preparation.
- 76 For simplicity and consistency, it is preferable to align exemptions from the activation power with the applicable exemptions from work obligations (section 105 exemptions). For example, this will allow exemptions from the activation power to be granted to people who have experienced a recent bereavement or separation, people leaving situations of domestic or family violence, or people caring for a sick or disabled person. Most of these exemptions are temporary, starting at one month and generally lasting no longer than three months.
- 77 Further exemptions may be required when the changes to the main benefit categories are created and the group who can be required to prepare for work is expanded. These will be considered in the Cabinet paper seeking agreement to policy detail for Bill 2.

**iii) The sanctions that should apply for non-compliance with the activation expectations**

*Option 1: No change – current sanctions regime for employment planning*

- 78 The current sanctions regime associated with the existing employment planning provisions (as described in the problem definition section), has proved to be largely ineffective. The number of steps involved and lack of strong accountability for non-compliance means it is cumbersome to administer and weakens the effectiveness of the employment planning provisions. To date employment planning has only been implemented on a voluntary basis with a very limited number of benefit recipients, and almost no benefit recipients have been sanctioned for failing to comply. This approach would not support the objective to have stronger pre-employment preparation and activation expectations.

*Option 2: Align sanctions for failing to complete an activation requirement with the sanctions that apply for someone who fails a work test*

- 79 In this option, sanctions for failing to complete an activation requirement would be aligned with the sanctions that apply for someone who fails a work test. This means that someone:
- loses 50% of their benefit the first time they fail to meet an activation requirement, increasing to a 100% benefit suspension if the person doesn't comply within four weeks;

- has 100% of their benefit suspended the second time they fail to meet an activation requirement, until they re-comply; and
- has their benefit cancelled the third time they fail to comply.

80 Aligning sanctions for activation requirements with work test sanctions sends a clear signal to beneficiaries about the importance of participating in work preparation activities. It also simplifies communication with beneficiaries. Evidence suggests that sanctions regimes are more effective when they are simple and easy to understand<sup>4</sup>.

### *Option 3: Alternative sanctions regime*

81 As part of the Future Focus reforms in 2010, the current sanctions regime for failing to meet work expectations was thoroughly reviewed. This work concluded that the benefits of simplicity and alignment outweighed consideration of an alternative sanctions regime. At this time however, a change was made to add a graduated step into the legislation to include a 50% loss of benefit after the first failure. There seems little value in re-visiting alternatives to the current sanctions regime.

## CONCLUSIONS AND RECOMMENDATIONS

82 Based on the analysis above, it is recommended that the current provisions that focus on planning alone be replaced with an activation power that would strengthen the ability to require people to undertake activities to prepare for work and establish a broad range of activities that people can be directed to do in order to improve their work readiness. Sanctions for non-compliance should be aligned with the current sanctions that apply to people who do not meet their work availability expectations, to ensure simplicity and usability.

83 It is also recommended that a limited range of exemptions that align with exemptions from work obligations (as applicable) should be provided for in regulation, to recognise situations when it is not appropriate to require someone to prepare for work.

## **IMPLEMENTING WORK AVAILABILITY EXPECTATIONS FOR PARENTS ON BENEFIT WHO HAVE SUBSEQUENT CHILDREN**

84 The subsequent child while on a benefit policy may disadvantage parents based on when they have children, with whom and in what type of relationship, irrespective of the policy objective to ensure access to employment services and expectations for work availability is not delayed. It is possible that this would be considered a breach of the Bill of Rights Act 1990. The specific options to implement the policy are unlikely to materially change this view, but it should be noted the intent of the policy was agreed by Cabinet in October 2011 [CAB Min (11) 39/8 refers].

85 Higher family income (and enhanced parental mental health/well-being) through employment will generally have a significant positive impact for both children and adult family members and is the driver for this policy.

86 All work expectations are set in the context of what is deemed to be “suitable employment”. The exercise of this test is subject to the satisfaction of the Chief Executive. Access to childcare is one such consideration.

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<sup>4</sup> Waddan, A. *Sanctions: mixed messages from the USA*, Benefits, Volume 12, Number 1, 1 February 2004, pp. 26-30; Mark Peters and Lucy Joyce: *A review of the JSA sanctions regime: summary research findings*, DWP, 2006.



## **i) Application of subsequent children policy to all parents on benefits**

### *Option 1 – Applies to sole parents only*

- 87 Most benefit recipients who have subsequent children are on the DPB. However, around a tenth of subsequent children are born to partners of primary recipients on other benefits. Work availability expectations for these clients generally mirror those of DPB-SP clients. Not extending these changes to couples on benefit with children would result in different treatment based on marital and family status, which is likely to give rise to issues of discrimination under the New Zealand Bill of Rights Act 1990.

### *Option 2 – Applies to all parents*

- 88 Based on the annual average for 2006-10, extending the subsequent child policy to families on UB, SB and IB could affect about 400 additional families. The aim of the policy is to introduce a stronger work focus for parents consistently across all benefit types, and to ensure that people who have additional children while receiving a benefit have access to timely employment support and assistance to ensure the best outcomes for them and their children. Where parents are on benefits such as IB do not have work availability expectations, the policy will have no impact.
- 89 Excluding parents with partners from this policy may be viewed as discriminatory on the basis of 'family status' and would be inconsistent with current settings where work expectations for sole parents and couples are aligned .

## **ii) Application of subsequent children policy to carers of children who are not their own**

- 90 The policy will not apply where parents on a benefit assume the care of children who have been placed into foster care with them under the Children, Young Persons and Their Families Act 1989 (CYPF). Children fostered under the CYPF Act are not considered to be dependent children under the provisions of the SSA. This is appropriate as fostering decisions are carefully made with consideration of the best interests of the children concerned.

### *Option 1 – Policy applies to carers of children who are not their own*

- 91 In some cases parents on benefit with children take on the care of a child who is not their own (e.g. a grandchild or godchild), where the actual parents of that child are unable to care for that child. Under the current legislation, a child for whom you assume full-time care is treated as a dependent child. This means the work availability expectations would apply as they would with respect to any other dependent child. The age of that child becomes a determining factor in any work availability expectations.
- 92 Applying the subsequent children policy to parents taking on dependent children who are not their own, could discourage people from taking on this role, which may disadvantage the interests of that child. It is possible that this will in turn increase the need for formal CYPF intervention to find non-family fostering options.

### *Option 2 – Policy does not apply to carers of children who are not their own*

- 93 People who assume care of children who are not their own will generally be doing so in a case of genuine need and in the best interests of the child. In all cases where Unsupported Child Benefit (UCB) is paid, Work and Income are required to determine that there is no natural parent, adoptive parent or step-parent able to care for the child



because of a breakdown in the child's family. This should seek to guard against possible gaming.

- 94 As discussed below the preferred option is that there is provision in the law for the policy to be departed from where the Chief Executive of MSD is satisfied that this best supports the policy intent. This would ensure the policy intent is realised, taking account of the wide variety of situations presented by the benefit system.

#### **iv) When the subsequent children policy applies**

- 95 Although application of the policy is likely to be straightforward in most cases. There are a number of scenarios where application of the policy may warrant more careful consideration. For example:

- Parents who become pregnant off benefit but give birth on benefit;
- Victims of crime, such as rape or incest.

#### *Option 1 – Explicit framework for exemptions to the application of the subsequent children policy*

- 96 In this option, a list of exemptions to the standard implementation of the policy would be provided for in legislation (or regulation). This would provide certainty to case workers and beneficiaries as to the set of situations where it is inappropriate to apply the policy.
- 97 However, a rules based system in this area is likely to create unintended consequences or perverse incentives, and to lead to unfairness and inequity at the margins where situations fall just inside or outside the criteria.
- 98 Unlike the exemptions from work obligations, it is not considered as easy to define the circumstances where the policy would and would not apply. The circumstances are likely to be more individual or one-off or potentially even unforeseen.

#### *Option 2 – Principled approach as to the application of the subsequent children policy*

- 99 In this option, the legislation would set out the principles where the policy would and would not apply, but would not specify an exhaustive list of circumstances. Having a provision in the legislation to enable the standard implementation of the policy to be departed from where the Chief Executive considers it appropriate, would best support the policy intent. This will enable the policy intent to be realised in the wide variety of real world situations presented by the benefit system.
- 100 Operational guidelines could be used to further set the application of the provision and limit the delegation of the Chief Executive's discretion. This will ensure more senior staff members such as Service Centre Managers make decisions in this important area.
- 101 The advantage of carefully applied discretion over a rules based system is that it ensures the policy intent can be maintained in the face of complex individual circumstances and needs. This enables the policy to be targeted appropriately and may reduce the potential issues of unfairness and inequity at the margins.

#### **CONCLUSIONS AND RECOMMENDATIONS**

- 102 Based on the analysis above, it is recommended that the changes agreed for parents who have additional children while on benefit, should also apply to partners of main beneficiaries with children. This will ensure that couples with children continue to be

treated equally to sole parents, and avoids the human rights issues that treating them differently may create.

- 103 It is recommended that application of the policy be principle based (rather than rule bound) through giving the Chief Executive discretion to apply or waive the policy in a wide variety of situations where additional children are added to a household on benefit, such as under Unsupported Child's Benefit.

## **IMPLEMENTING THE SHARING OF INFORMATION BETWEEN MoE and MSD FOR THE YOUTH PIPELINE PROPOSALS**

### *Option 1: No change - reliance on current Privacy Settings*

- 104 This option relies on the current privacy setting for the MoE to share the required information. While there is an argument that the MoE could share the information as the aim of the Youth Pipeline is directly related to the purpose for which the information was collected, the Office of the Privacy Commissioner (OPC) does not agree. As such, this option would leave a high degree of uncertainty as to whether the information needed to implement the Youth Pipeline would be available.

### *Option 2: Explicit provision in the legislation to allow the sharing of information between MoE and MSD*

- 105 Explicitly authorising information sharing in legislation to give effect to welfare reforms allows MoE to provide MSD with details about all school leavers.
- 106 There is a risk that including information sharing provisions in the SSA could introduce unnecessary legislative duplication, leading to uncertainty for departments. This would be addressed by ensuring that the information sharing provisions included in the Bill, and the resulting legislation, mirror as much as possible relevant changes in the Privacy (Information Sharing) Bill that is currently before the House.
- 107 The inclusion of information sharing provisions in the SSA would ensure there is explicit authority for the information to be shared and would remove any doubt. This would ensure that processes are in place so the Youth Pipeline can be implemented from July 2012 in line with the original policy intent.

### *Option 3: Information sharing agreement*

- 108 Under this option an information sharing agreement MoE and MSD would be entered into once the Privacy (Information Sharing) Bill currently before the House is passed.
- 109 The Social Security Amendment Bill (No. 1) and the Privacy (Information Sharing) Bill are following different timelines through to enactment and there is no certainty as to when the Privacy (Information Sharing) Bill will be passed. There is a high risk that it would not be passed in time for an information sharing agreement to be authorised by Order in Council for the Youth Pipeline implementation to commence at the end of July 2012.

## **CONCLUSIONS AND RECOMMENDATIONS**

- 110 Based on the analysis above, it is recommended that explicit authorisation for the information sharing between MoE and MSD is provided for in legislation. Given the timeframes, Bill 1 is the appropriate vehicle to ensure the necessary authority is provided in time for the Youth Pipeline to be implemented from 30 July 2012.

## Consultation

- 111 The following agencies have been consulted on the development of the Cabinet papers and this RIS: Treasury, the Ministry of Education, the Ministry of Justice, and the Department of Labour. The Department of Prime Minister and Cabinet, the Ministry of Health, the Ministry of Women's Affairs, Te Puni Kōkiri, and the Ministry of Pacific Island Affairs were informed.
- 112 The WWG undertook extensive public consultation as part of the development of its recommendations to the Government. No further consultation with stakeholders has taken place.
- 113 The public will have the opportunity to comment on the proposals at the Select Committee stage of the Bill.

## Implementation

- 114 Extending work expectations to a wider group of beneficiaries will require Work and Income to implement a new services model, but one which is adaptable and flexible. This will involve:
- tailoring the Job Search Service to respond to the needs of different client groups;
  - adjusting case management resources and ratios to ensure employment services can be delivered to a broader range of clients;
  - building on experience gained in the implementation of Future Focus and implementing a system of continuous improvement; and
  - working with employers on demand side strategies to match availability with opportunity.
- 115 An increased number of case managers will enable a much greater level of job search support to be provided to the wider group of work-tested clients. MSD anticipates that from October 2012, 84,200 clients (DPB sole parents, Widows and DPB-Woman Alone) will have work availability or activation expectations, including:
- 22,200 additional clients with full-time work availability (DPB-SP and WB with youngest child aged 14 years or over and DPB-WA); and
  - 40,000 with part-time work availability (DPB-SP and WB with a youngest child aged 5-13 years).
- 116 Work preparation activation applied to a targeted group of 22,000, including DPB-SP and WB with a youngest children aged three or four and 10% of the DPB-SP and WB group with younger children.
- 117 This would effectively double the volume of clients receiving the Job Search Service (currently 62,122 people on UB. With a total of nearly 100,000 people over the last 12 months having taken part in pre-benefit triage activities). Work and Income will work actively with Industry Associations and large employers to develop employment opportunities.

## Monitoring, evaluation and review

- 118 Demographic and individual level information, combined with evidence of which services and programmes are effective for different people will be used to match services to where they are most effective. High quality monitoring, evaluation, and review of benefit settings and programmes will be required. Funding sought for changes

to IT systems will ensure the administrative data needed to monitor the implementation of changes to track people on DPB-SP, WB and DPB-WA from October 2012 is collected.

- 119 Improved systems will also be needed to track the numbers of beneficiaries with part time or full-time work activity expectations declaring income from part-time earnings.
- 120 There is no opportunity to do a controlled trial for the subsequent child while a person is on benefit policy. Regular monitoring of the policy's effect on some key statistics is more appropriate. Work and Income and the MSD Centre for Social Research and Evaluation will track the:
- number of additional children born to parents who are on benefit;
  - age of next oldest children when subsequent children are born; and
  - rates of exits from benefit for parents affected by the subsequent child policy.