



## ANALYSIS

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## SCHEDULE

## Schedule 30

Method of Calculating Ability to Make Payments Towards Costs of Home-based Disability Support Services Under Section 69FA

1997, No. 63

**An Act to amend the Social Security Act 1964**

[16 September 1997

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Social Security Amendment Act (No. 4) 1997, and is part of the Social Security Act 1964 (“the principal Act”).

(2) This Act comes into force on the day after the date on which it receives the Royal assent, except for sections 9, 11, 13, 14, 15, 18, 20 (1), 28, and 30.

**2. Interpretation**—(1) Section 3 (1) of the principal Act is amended by repealing paragraph (c) of the definition of the term “income” (as substituted by section 3 (2) of the Social Security Amendment Act 1994), and substituting the following paragraph:

“(c) Includes, whether capital or not and as calculated before the deduction (where applicable) of income tax,—

“(i) Any periodical income-related insurance payments; and

“(ii) Any lump sum income-related insurance payment to the extent of the income lost by the person as a result of, and within a period of 10 weeks from, the occurrence of the contingency in respect of which the payment was made; and”.

(2) Section 3 (1) of the principal Act is amended by adding to paragraph (f) of the definition of the term “income” (as so substituted) the following subparagraphs:

“(xiii) Any money received under the Children, Young Persons, and Their Families Act 1989 in respect of the care of a child or young person (as those terms are defined in that Act):

“(xiv) Any lump sum payment received by the person—

“(A) Under a contract of insurance on the life of the person’s deceased spouse or on the life of a deceased person who was, before his or her death, living together with the first-mentioned person in a relationship in the nature of marriage; or

“(B) Where the person is a dependent child, under a contract of insurance on the life of his or her deceased parent or step-parent; or

“(C) Under any superannuation scheme, not being a payment which the Director-

General considers, having regard to the matters specified in subsection (4), is for an income-related purpose; or

“(xv) Any part of a lump sum income-related insurance payment received on the occurrence of a contingency by an applicant for a benefit that has been used or committed by the applicant—

“(A) To repay or pay any amounts on account of existing debt of the applicant; or

“(B) To pay any essential costs arising as a consequence of the applicant’s health or disability (being costs arising from the contingency in respect of which the payment was made) to the extent that assistance towards those costs is not available under this Act or any other Act.”.

(3) Section 3 (1) of the principal Act is amended by inserting in the definition of the term “pay day” (as substituted by section 37 (1) (a) of the Social Welfare (Transitional Provisions) Act 1990), after the word “day”, the words “or date”.

(4) Section 3 (1) of the principal Act is amended by inserting, after the definition of the term “residential care disability services” (as inserted by section 2 (3) of the Social Security Amendment Act (No. 3) 1993), the following definition:

“‘Residential care services’ means disability services supplied to a person with a disability in an appropriately licensed or registered home; and includes—

“(a) Supervision and support services; and

“(b) Hotel-type services (including the provision of sleeping facilities, meals, laundry, cleaning services and supplies, household furniture and furnishings, lighting, heating, hot water, and other household utilities); and

“(c) Services that support daily living (including financial management and gardening); and

“(d) Personal care services (including toileting, bathing, hair washing, teeth cleaning, nail care, feeding, and mobility); and

“(e) Services within that home intended to provide satisfying activity to the person (including the

provision of educational, social, recreational, and other activities); and

“(f) Clinical support services, including health services (within the meaning of the Health and Disability Services Act 1993), consultations with a medical practitioner, pharmaceuticals, incontinence aids, and other treatment costs:”.

**3. Review of decisions**—Section 10A (1) of the principal Act (as substituted by section 3 of the Social Security Amendment Act (No. 5) 1991) is amended by inserting, after the words “notification of the decision”, the words “or (if the committee considers there is good reason for the delay) within such further period as the committee may allow on application made either before or after the expiration of that period of 3 months”.

**4. Power to obtain information**—(1) Section 11 (1) of the principal Act (as substituted by section 3 of the Social Security Amendment Act (No. 3) 1993) is amended by inserting, after the word “section” where it first occurs, the words “and to the code of conduct established under section 11B”.

(2) Section 11 (2) of the principal Act (as so substituted) is amended by inserting, after paragraph (d), the following paragraph:

“(da) Determining, pursuant to section 69FA, the amount that any person is required to pay towards the cost of the home-based disability support services supplied to that person, and whether a person who has been so assessed is entitled to that assessment; or”.

(3) Section 11 (3) of the principal Act (as so substituted) is amended by omitting the words “and, if the offence is a continuing one, to a further fine not exceeding \$200 for every day or part of a day during which the offence has continued”.

(4) Section 11 of the principal Act (as so substituted) is amended by repealing subsection (4), and substituting the following subsection:

“(4) Nothing in subsection (1) requires any person to provide any information or produce any document that would be privileged in a court of law, except as provided in subsection (5).”

(5) Section 11 (6) of the principal Act (as so substituted) is amended—

- (a) By inserting, after the word “under”, the words “subsection (4) or”:
  - (b) By inserting, after the words “that person”, the words “or any other person to whom the information or document relates”.
- (6) Section 11 (7) of the principal Act (as so substituted) is repealed.

**5. New sections inserted**—The principal Act is amended by inserting, after section 11A (as substituted by section 3 of the Social Security Amendment Act (No. 3) 1993), the following sections:

**“11B. Code of conduct applying to obtaining information under section 11—**(1) The Director-General, in consultation with the Privacy Commissioner appointed under the Privacy Act 1993, must, within 3 months after the commencement of this section, issue a code of conduct that applies in respect of requirements to supply information or documents under section 11 (1), and the Director-General, and every officer of the Department acting under the delegation of the Director-General pursuant to section 10 must comply with that code of conduct in relation to making any such requirement.

“(2) The code of conduct—

“(a) Must include the matters specified in section 11C; and

“(b) May include restrictions on obtaining—

“(i) Specified classes of information or documents;  
and

“(ii) Information or documents from specified classes of persons or from persons in specified relationships—

pursuant to a requirement under section 11 (1); and

“(c) Must specify procedures applying to the obtaining of information or documents under section 11.

“(3) The Director-General may from time to time, in consultation with the Privacy Commissioner, amend the code of conduct, or revoke the code of conduct and issue a new code of conduct.

“(4) Nothing in the code of conduct may derogate from any code of practice issued by the Privacy Commissioner under Part VI of the Privacy Act 1993 that applies to the information required under section 11, and the Director-General, in consultation with the Privacy Commissioner, must amend the

code of conduct to conform with any such code of practice. This subsection is affected by subsection (5).

“(5) Without limiting the general power to make regulations conferred by section 132, the Governor-General may, on the advice of the Minister given after consultation with the Privacy Commissioner, by Order in Council, make regulations under that section authorising the Director-General to obtain—

“(a) Any specified class of information or document; or

“(b) Information or documents from any specified class of persons; or

“(c) Information or documents in any specified manner—pursuant to a requirement under section 11 (1), despite the fact that the making of that requirement would otherwise be in breach of any code of practice issued by the Privacy Commissioner under Part VI of the Privacy Act 1993.

“(6) Any person who is—

“(a) Required to produce any information or document pursuant to a requirement under section 11 (1); or

“(b) The subject of any such information or document—may make a complaint to the Privacy Commissioner that the requirement breaches the code of conduct issued pursuant to this section.

“(7) Part VIII of the Privacy Act 1993 applies to any such complaint as if the code of conduct were a code of practice issued under Part VI of the Privacy Act 1993.

“(8) As soon as practicable after issuing any code of conduct and any amendment to it under this section, the Director-General must cause it to be published in a form accessible to the public.

“11c. **Matters to be included in code of conduct—**

(1) The code of conduct established under section 11B must contain the following matters:

“(a) Provisions—

“(i) Requiring any information or document to be first sought from a beneficiary; and

“(ii) Allowing the beneficiary a reasonable time to provide it—

before a requirement under section 11 (1) is issued to a person other than the beneficiary, except where compliance with such provision would prejudice the maintenance of the law:

“(b) A provision prohibiting a requirement under section 11 (1) being made in respect of a beneficiary to any person (not being the beneficiary, an

employer or former employer of the beneficiary, a financial institution, or a law practitioner) unless there is reasonable cause to make a requirement under that section:

- “(c) A provision prohibiting a requirement under section 11 (1) being made to an employer in respect of any information or document that relates solely to the marital status of an employee or former employee of that employer:
- “(d) Provisions otherwise restricting requirements under section 11 (1) made to employers to specified information relating to that employment and the address of the employee or former employee.
- “(2) In subsection (1) (b), ‘reasonable cause’ includes—
- “(a) Cause to suspect that the beneficiary has committed an offence under this Act or has obtained by fraud any payment or credit or advance under this Act:
- “(b) The fact that the beneficiary or a spouse of that beneficiary has failed within a reasonable time, or refused, to provide any information or produce any document in accordance with a request or requirement made to that person in accordance with subsection (1) (a).”

**6. Right of appeal**—(1) Section 12J of the principal Act (as inserted by section 4 of the Social Security Amendment Act 1973) is amended by repealing subsection (1), and substituting the following subsection:

“(1) Any applicant or beneficiary affected may appeal to the Appeal Authority against any decision or determination of the Director-General under—

- “(a) Any of the provisions of Part I; or
- “(b) Section 124 (1) (d); or
- “(c) Part I of the Social Welfare (Transitional Provisions) Act 1990; or
- “(d) The Family Benefits (Home Ownership) Act 1964; or
- “(e) Any regulations in force under section 132A or section 132B—

that has been confirmed or varied by a benefits review committee under section 10A, or that was made by the Director-General other than pursuant to a delegation under section 10.”

(2) Section 12J (2) of the principal Act (as substituted by section 4 (2) of the Social Security Amendment Act (No. 3) 1993) is amended by—

- (a) Inserting, after the word “grounds”, the words “or on grounds relating to incapacity”:
- (b) Adding to paragraph (c) the word “; or”:
- (c) Adding the following paragraphs:
  - “(d) A veteran’s pension under section 8 of the Social Welfare (Transitional Provisions) Act 1990; or
  - “(e) A sickness benefit under section 54.”
- (3) Section 12J of the principal Act is amended by repealing subsection (3).
  - (4) The following enactments are repealed:
    - (a) Section 3 of the Social Security Amendment Act 1976:
    - (b) Section 7 of the Social Security Amendment Act 1987:
    - (c) Sections 14 (4) and 38 (1) (a) of the Social Welfare (Transitional Provisions) Act 1990:
    - (d) Section 5 of the Social Security Amendment Act (No. 5) 1991:
    - (e) Section 4 (1) of the Social Security Amendment Act (No. 3) 1993:
    - (f) So much of the Schedule of the Social Security Amendment Act (No. 3) 1996 as relates to section 12J (1) (b) of the principal Act.

**7. Procedure on appeal**—(1) Section 12K of the principal Act is amended by repealing subsection (1) (as inserted by section 4 of the Social Security Amendment Act 1973), and substituting the following subsections:

“(1) An appeal under section 12J is begun by a written notice of appeal.

“(1A) If the appeal is against a decision or determination of the Director-General confirmed or varied by a benefits review committee, the notice of appeal must be lodged with the Secretary of the Appeal Authority within—

“(a) Three months after the applicant is notified of the confirmation or variation under section 10A (9); or

“(b) An additional time allowed by the Appeal Authority, on an application made to it before or after the end of that period of 3 months.

“(1B) If the appeal is against a decision or determination of the Director-General made other than pursuant to a delegation under section 10, the notice of appeal must be lodged with the Secretary of the Appeal Authority within—

“(a) Three months after the applicant is notified of the decision or determination; or

“(b) An additional time allowed by the Appeal Authority, on an application made to it before or after the end of that period of 3 months.

“(1c) The parties to an appeal are—

“(a) The applicant or beneficiary affected by the decision or determination; and

“(b) The Director-General.”

(2) Section 12k (11) of the principal Act (as so inserted) is amended by omitting the words “subsection (1) of this section”, and substituting the words “subsections (1A) and (1B)”.

(3) The provisions of sections 12k, 12m, 12o, and 12p of the principal Act apply, without modification (except for the new subsection (1c) substituted by subsection (1)), to every appeal under section 12j of the principal Act that was lodged, and has not been dealt with, before this section comes into force.

(4) Section 10 (3) of the Finance Act 1987 is consequentially repealed.

**8. Effect of deduction notices**—Section 27z(2A) of the principal Act (as saved by section 256 (1)(a) of the Child Support Act 1991) is amended—

(a) By omitting the words “not greater than”, and substituting the words “equal to”:

(b) By adding the words “, or the amount the Director-General assesses, having regard to all the liable parent’s financial circumstances and commitments, the liable parent can reasonably afford to pay on a periodical basis, whichever is the greater”.

**9. Rates of invalids’ benefits**—(1) Section 42 of the principal Act is amended by adding the following subsection:

“(2) Despite the Sixth Schedule, where a married person (other than a person whose financial means have been assessed under section 69F) is receiving residential care disability services because he or she has a psychiatric, intellectual, physical, or sensory disability,—

“(a) The rate of invalid’s benefit payable to the person receiving those services is one-half of the appropriate rate specified in that Schedule; and

“(b) The rate of invalid’s benefit payable to that person’s spouse (being a spouse who is not receiving residential care disability services) is the appropriate rate of an invalid’s benefit that would be payable under this Act if he or she was entitled to that

benefit in his or her own right and was unmarried,—  
and section 83 does not apply to either rate of benefit.”

(2) This section is deemed to have come into force on 1 July 1995.

**10. Right of appeal on medical grounds—**

(1) Section 53A (1) of the principal Act (as inserted by section 13 of the Social Security Amendment Act 1986) is amended—

(a) By inserting, after paragraph (b), the following paragraph:  
“(ba) Any claim for a sickness benefit is declined on medical grounds or on grounds relating to incapacity, or any such benefit is cancelled on medical grounds or on grounds relating to incapacity; or”:

(b) By omitting from paragraph (d) the word “Act—”, and substituting the words “Act; or”:

(c) By adding the following paragraph:

“(e) Any claim for a veteran’s pension under section 8 of the Social Welfare (Transitional Provisions) Act 1990, on the grounds of the applicant’s mental or physical infirmity, is declined, or any such pension is cancelled on those grounds—”:

(d) By inserting, after the words “to that person”, the words “or (if the Board considers there is good reason for the delay) within such further period as the Board may allow on application made either before or after the expiration of that period of 3 months”:

(e) By omitting the words “3 medical practitioners”, and substituting the words “2 medical practitioners and a rehabilitation professional”.

(2) Section 53A of the principal Act (as so inserted) is amended by adding the following subsection:

“(3) In this section, ‘rehabilitation professional’ means a person—

“(a) Professionally engaged in the rehabilitation of persons from sickness or accident or with disabilities; and

“(b) Registered as—

“(i) An occupational therapist under the Occupational Therapy Act 1949; or

“(ii) A physiotherapist under the Physiotherapy Act 1949; or

“(iii) A nurse under the Nurses Act 1977; or

“(iv) A psychologist under the Psychologists Act 1981.”

**11. New sections substituted**—(1) The principal Act is amended by repealing section 60A (as inserted by section 33 (1) of the Finance Act 1989 and amended by section 13 of the Social Security Amendment Act 1996), and substituting the following sections:

**“60A. Training benefits: purpose**—The purpose of the training benefit is to provide assistance to unemployed persons to enable them to undertake employment-related training that will enhance their prospects of obtaining employment.

**“60AA. Training benefits: qualifications**—(1) The basic qualifications for entitlement to a training benefit are in subsection (2). The qualifications for an unmarried person are in subsection (3) and the qualifications for a married person are in subsection (4).

**“(2)** The basic qualifications for entitlement to a training benefit are that a person—

**“(a)** Is unemployed (but his or her entitlement may be affected by subsection (6)); and

**“(b)** Is not a full-time student; and

**“(c)** Has resided continuously in New Zealand for not less than 12 months at any time; and

**“(d)** Is engaged full-time in an employment-related training programme approved by the Director-General for the purposes of this section.

**“(3)** An unmarried person is entitled to a training benefit if—

**“(a)** Subsection (2) applies to him or her; and

**“(b)** He or she is 18 years or over.

**“(4)** A married person is entitled to a training benefit if—

**“(a)** Subsection (2) applies to him or her; and

**“(b)** Either—

**“(i)** He or she is 16 years or 17 years and has a dependent child or dependent children; or

**“(ii)** He or she is 18 years or over.

**“(5)** The entitlement to a training benefit of a person referred to in section 60KA (1) is affected by section 60KA (2).

**“(6)** A person is not entitled to a training benefit if he or she—

**“(a)** Has—

**“(i)** Become unemployed; or

**“(ii)** Taken leave with or without pay from his or her usual employment; and

**“(b)** Has done so, in the Director-General’s opinion, in order to undertake employment-related training.”

(2) The entitlement to a training benefit of a person who, immediately before 1 January 1998,—

- (a) Was 16 years or 17 years; and
- (b) Was receiving a training benefit—

is determined by the law in force immediately before 1 January 1998.

(3) Section 60C (1) of the principal Act is amended by omitting the expression “section 60A of this Act”, and substituting the expression “section 60AA”.

(4) The following enactments are repealed:

- (a) Section 13 of the Social Security Amendment Act 1996;
- (b) Section 5 of the Social Security Amendment Act (No. 3) 1997.

(5) This section comes into force on 1 January 1998.

### **12. Period for which training benefit payable—**

Section 60C (1) of the principal Act (as inserted by section 33 (1) of the Finance Act 1989) is amended by omitting the word “Unless”, and substituting the words “A person is not entitled to receive a training benefit until his or her employment (if any) has ceased; and, unless”.

**13. New sections substituted—**(1) The principal Act is amended by repealing section 60F (as inserted by section 17 (1) of the Social Security Amendment Act (No. 2) 1990 and amended by section 15 of the Social Security Amendment Act 1996), and substituting the following sections:

**“60F. Independent youth benefits: basic qualifications—**(1) The basic qualifications for entitlement to an independent youth benefit are in subsection (2). The qualifications for an unmarried person are in section 60FA and the qualifications for a married person are in section 60FB.

“(2) The basic qualifications for entitlement to an independent youth benefit are that a person—

- “(a) Is 16 years or 17 years; and
- “(b) Is without a dependent child or dependent children; and
- “(c) Has resided continuously in New Zealand for not less than 12 months at any time; and
- “(d) Is in 1 of the situations described in subsections (3) to (6).

“(3) The first situation is that the person—

- “(a) Is unemployed (other than because of a strike either by the person or by fellow members of the same union at the same place of employment); and

“(b) Is capable of undertaking suitable work and is willing to do so; and

“(c) Complies with section 60HC (which relates to work testing); and

“(d) Is not enrolled in a full-time course (as defined in clause 2 (1) of the Student Allowances Regulations 1991 (S.R. 1991/295)).

“(4) The second situation is that the person—

“(a) Is unemployed (other than because of a strike either by the person or by fellow members of the same union at the same place of employment); and

“(b) Is enrolled in a full-time course of secondary instruction (but his or her entitlement may be affected by section 60FC (1)).

“(5) The third situation is that the person is engaged full-time in an employment-related training programme approved by the Director-General for the purposes of this section.

“(6) The fourth situation is that, through sickness or accident, the person—

“(a) Is incapacitated for work temporarily; or

“(b) Will be incapacitated for work for an indefinite period.

“60FA. **Independent youth benefits: unmarried persons**—(1) An unmarried person is entitled to an independent youth benefit if—

“(a) Section 60F (2) applies to him or her; and

“(b) He or she is in the following situation, established to the satisfaction of the Director-General:

“(i) He or she is not living with his or her parents; and

“(ii) He or she is not being financially supported by his or her parents or any other person; and

“(iii) He or she cannot reasonably be expected to be financially dependent on his or her parents or any other person for a reason described in subsection (2).

“(2) The reasons are—

“(a) Because there has been a breakdown in the person’s relationship with his or her parents; or

“(b) Because the person’s parents are absent and are unable to support the person financially; or

“(c) Any other good and sufficient reason.

“(3) In this section, ‘parents’—

“(a) Means the parents or guardian or other person who had the care of the person most recently before the person turned 16 years; but

“(b) Does not include the Director-General acting in his or her official capacity.

“60FB. **Independent youth benefits: married persons**— A married person is entitled to an independent youth benefit if section 60F (2) applies to him or her.

“60FC. **Independent youth benefits: persons enrolled in full-time course of secondary instruction**—(1) A person enrolled in a full-time course of secondary instruction is not entitled to an independent youth benefit if—

“(a) He or she has moved from his or her parents’ home in order to better his or her educational prospects; and

“(b) There is no breakdown in his or her relationship with his or her parents.

“(2) A person—

“(a) Entitled to receive an independent youth benefit; and

“(b) Enrolled in a full-time course of secondary instruction during the year in which he or she turns 18 years— continues to be entitled to receive the benefit until 31 December of the year in which he or she turns 18 years.

“(3) In this section, ‘parents’—

“(a) Means the parents or guardian or other person who had the care of the person most recently before he or she turned 16 years; but

“(b) Does not include the Director-General acting in his or her official capacity.

“60FD. **Independent youth benefits: persons incapacitated for work through sickness or accident**— Section 56 (which relates to medical examinations of applicants for sickness benefits) applies to—

“(a) An application for an independent youth benefit on the ground described in section 60F (6); and

“(b) A person in receipt of the benefit on that ground,— as if its references to ‘sickness benefit’ were references to ‘independent youth benefit’.”

(2) The entitlement to an independent youth benefit of a person who was receiving the benefit immediately before 1 January 1998 is determined by the law in force immediately before 1 January 1998.

(3) The following enactments are repealed:

(a) Section 8 of the Social Security Amendment Act (No. 3) 1993:

(b) Section 15 of the Social Security Amendment Act 1996:

(c) Section 8 of the Social Security Amendment Act (No. 3) 1997.

(4) This section comes into force on 1 January 1998.

**14. Accommodation supplement**—(1) Section 61EA (4) of the principal Act (as enacted by section 10 (1) of the Social Security Amendment Act (No. 3) 1993) is amended—

(a) By adding to paragraph (d) the word “; or”;

(b) By adding the following paragraph:

“(e) Has a psychiatric, intellectual, physical, or sensory disability, and—

“(i) Is receiving funding from a purchaser towards his or her accommodation costs; or

“(ii) A purchaser is funding his or her care (other than care in his or her own home) by any person or organisation.”

(2) This section is deemed to have come into force on 1 July 1995.

**15. Special benefit**—(1) Section 61G of the principal Act (as substituted by section 5 of the Social Security Amendment Act 1994) is amended by adding the following subsection:

“(2) A special benefit must not be fixed under this section in respect of the costs of residential care services supplied to a person who has a psychiatric, intellectual, physical, or sensory disability—

“(a) Who is receiving funding from a purchaser towards his or her accommodation costs (as that term is defined in section 61E); or

“(b) Where a purchaser is funding his or her care (other than care in his or her own home) by any person or organisation.”

(2) This section is deemed to have come into force on 1 July 1995.

**16. Conjugal status for benefit purposes**—Section 63 of the principal Act (as substituted by section 17 (1) of the Social Security Amendment Act 1978 and amended by section 17 of the Social Security Amendment Act (No. 2) 1991) is amended by inserting, after the word “Act,” the words “, or of assessing the financial means of any person under section 69F or section 69FA”.

**17. Special provisions applying to insurance payments**—(1) Section 68A (3) of the principal Act (as inserted by section 6 of the Social Security Amendment Act 1994) is

amended by omitting the word “disablement”, and substituting the word “disability”.

(2) Section 68A of the principal Act (as so inserted) is amended by repealing subsection (8), and substituting the following subsection:

“(8) For the purposes of this section,—

“ ‘Benefit’ includes the granting of special assistance under any welfare programme approved under section 124 (1) (d);

“ ‘Debt insurance payment’, in relation to any person, includes any payment made or provided on the occurrence of a contingency under a contract of insurance or by reason of the person’s membership of any society, organisation, or body whether corporate or unincorporate—

“(a) For the purpose of enabling the person to make payments that he or she is liable to make on account of any debt or liability; and

“(b) That is not for any reason treated as being the income of the person under this Act.”

**18. Disability allowance**—(1) Section 69C(1)(c) of the principal Act (as substituted by section 15(1) of the Social Security Amendment Act (No. 2) 1985) is amended by inserting, after the word “spouse”, the words “and any New Zealand superannuation or veteran’s pension payable to the person or the person’s spouse”.

(2) Section 69C of the principal Act (as inserted by section 12(1) of the Social Security Amendment Act 1975) is amended by repealing subsection (2) (as substituted by section 7(1) of the Social Security Amendment Act 1994), and substituting the following subsections:

“(2) A disability allowance is not payable to or on account of any such person unless the Director-General is satisfied that the disability of the person—

“(a) Is likely to continue for not less than 6 months; and

“(b) Has resulted in a reduction of the person’s independent function to the extent that the person requires—

“(i) Ongoing support to undertake the normal functions of life; or

“(ii) Ongoing supervision or treatment by a registered health professional.

“(2A) A disability allowance is not payable to or on account of any person except to the extent that—

“(a) The person has additional expenses of an ongoing kind arising from the person’s disability (subject to section 68A); and

“(b) The assistance towards those expenses available under this Act or any other enactment is insufficient to meet them.

“(2B) A disability allowance is not payable under this section in respect of any of the costs of residential care services supplied to any person who has a psychiatric, intellectual, physical, or sensory disability—

“(a) Who is receiving funding from a purchaser towards his or her accommodation costs (as that term is defined in section 61E); or

“(b) Where a purchaser is funding his or her care (other than care in his or her own home) by any person or organisation.”

(3) Section 69C of the principal Act (as so inserted) is amended by adding the following subsections:

“(6) Despite subsection (2) (a), the Director-General may grant a disability allowance under this section to any person who would otherwise qualify for it and—

“(a) Whose life expectancy is less than 6 months; or

“(b) It is not possible to determine whether the disability is likely to continue for not less than 6 months but that is a reasonably possible prognosis.

“(7) Where any person, whose application for a disability allowance has been declined only on the grounds that the disability is likely to last less than 6 months, subsequently shows to the satisfaction of the Director-General that the disability in respect of which that application was made—

“(a) Is likely to last for 6 months or more; or

“(b) Has continued for 6 months or more,—

and that the person would otherwise have been entitled to receive a disability allowance since the date of the original application, the Director-General must grant a disability allowance to that person commencing on the date of the original application.

“(8) In this section,—

“‘Disability’ has the meaning ascribed to it by section 21 (1) (h) of the Human Rights Act 1993:

“‘Registered health professional’ has the same meaning as in the Health and Disability Commissioner Act 1994.”

(4) Section 7 (1) of the Social Security Amendment Act 1994 is consequentially repealed.

(5) This section is deemed to have come into force on 1 July 1995.

**19. Financial means assessments for home-based disability support services**—The principal Act is amended by inserting, after section 69F (as inserted by section 15 (1) of the Social Security Amendment Act (No. 3) 1993), the following section:

“69FA. (1) In this section and in Schedule 30,—

“ ‘Cash assets’ has the same meaning as in section 61E; but does not include any assets or any amount of cash assets excluded by regulations made under section 132D:

“ ‘Home-based disability support services’ means disability services supplied to a person, being services in relation to the person’s domestic affairs (other than medical services, personal care services, attendant care services, and relief care services) that support and allow the person to remain in his or her home and are of a kind that are funded by a purchaser:

“ ‘Income’ has the same meaning as in section 3 (1); but includes—

“(a) Any benefit or allowance received under or pursuant to—

“(i) This Act or the Social Welfare (Transitional Provisions) Act 1990; or

“(ii) The War Pensions Act 1954 (other than a war disability pension); and

“(b) The gross amount of any payment received in consideration of providing board and lodgings to any person in excess of 2—

but does not include any amount specified in regulations made under section 132D:

“ ‘Medical services’ means services supplied to a person by a registered health professional (within the meaning of the Health and Disability Commissioner Act 1994) relating to the treatment or relief of the person’s disability condition or the rehabilitation of the person from that condition.

“(2) This section applies to any person who has been assessed by a purchaser as requiring home-based disability support services and who—

“(a) Is not a child; and

“(b) Is not entitled to be the holder of a community services card issued pursuant to the Health Entitlement Cards Regulations 1993 (S.R. 1993/169).

“(3) The Director-General may, from time to time, on application by or on behalf of any person to whom this section applies, assess in accordance with Schedule 30 the weekly amount that person is required to pay toward the cost of the home-based disability support services supplied to that person, and that person is required to pay the amount so assessed in accordance with the assessment.

“(4) For the purposes of Schedule 30,—

“(a) Every \$100 of cash assets over \$5,400 held by a married person or a single person with a dependent child or children; and

“(b) Every \$100 of cash assets over \$2,700 held by any other person—

is deemed to be \$1 per week of income, and the income of a married person includes the income of his or her spouse.

“(5) In any case where the Director-General is satisfied that a person to whom this section applies, or that person’s spouse, has not realised any assets available for that person’s personal use, the Director-General may treat any such assets as being cash assets for the purposes of subsection (4).

“(6) Every assessment made by the Director-General under subsection (3) must state—

“(a) The date of the assessment; and

“(b) The amount that the person has been assessed as being required to pay toward the cost of the home-based disability support services supplied to that person—  
and the Director-General must supply a copy of that assessment to that person, and may supply the details specified in paragraphs (a) and (b) to the applicable purchaser.

“(7) The Director-General must from time to time review any assessment under this section, and may revise that assessment if—

“(a) The Director-General is satisfied the assessment is in error; or

“(b) The person to whom the assessment relates or his or her spouse fails to provide any relevant information requested or to answer any relevant question; or

“(c) After reviewing the assessment, the Director-General is satisfied that, owing to a change in circumstances of that person or his or her spouse, the assessment is no longer an accurate reflection of that person’s ability to pay for his or her home-based disability

support services, to take effect from such date as the Director-General determines, being a date on or after the date on which the change may reasonably be held to have occurred.

“(8) In any case where the Director-General is satisfied that any person—

“(a) Who has applied for an assessment under this section; or

“(b) Whose ability to pay for home-based disability support services has been assessed under this section—

or that person’s spouse has directly or indirectly deprived himself or herself of any income or assets, the Director-General, in the Director-General’s discretion, may assess or, as the case may be, revise the assessment of the person’s ability to pay for that person’s home-based disability support services as if that deprivation had not occurred.

“(9) Every person whose ability to pay for home-based disability support services has been assessed under this section must forthwith advise the Department of any change in the circumstances of that person or his or her spouse that affects that person’s ability to pay for his or her home-based disability support services.”

## **20. Commencement and payment of benefits—**

(1) Section 80BA of the principal Act (as inserted by section 35 of the Social Security Amendment Act 1996) is amended by repealing subsection (4), and substituting the following subsection:

“(4) If a stand down period applies under this section, benefits commence as follows:

“(a) Benefits except those described in paragraph (b) commence on the later of—

“(i) The day after the date on which the stand down period ends; or

“(ii) The day after the date on which the application for the benefit is received:

“(b) A benefit—

“(i) That is a widow’s benefit, a domestic purposes benefit, an invalid’s benefit, a sickness benefit, or a transitional retirement benefit; and

“(ii) For which the application is received within 28 days after the date on which the person becomes entitled to the benefit—

commences on the day after the date on which the stand down period ends.”

(2) Subsection (1) is deemed to have come into force on 1 April 1997.

(3) The Social Welfare (Transitional Provisions) Amendment Act (No. 2) 1993 is consequentially amended by repealing so much of the Second Schedule as relates to paragraph (b) of the proviso to section 80 (8) of the principal Act.

**21. Payment of benefits**—(1) Section 82 (1) of the principal Act (as substituted by section 23 (1) of the Social Security Amendment Act 1978) is amended by inserting, after the word “date”, the words “or such days or dates”.

(2) Section 82 (6) of the principal Act (as added by section 11 of the Social Security Amendment Act 1979) is amended by omitting the words “recover the amount so paid in advance from subsequent instalments of the benefit at such rate as the Director-General determines from time to time”, and substituting the words “the amount so paid in advance may be recovered under section 86 (1D)”.

**22. Recovery of payments made in excess of authorised rates**—(1) Section 86 (1C) of the principal Act (as inserted by section 20 of the Social Security Amendment Act (No. 2) 1985) is amended by inserting, after the word “entitled,”, the words “or payable to that person by way of a recoverable grant of special assistance under any such programme, or that is otherwise recoverable from the person under the terms and conditions of any such programme,”.

(2) Section 86 of the principal Act is amended by inserting, after subsection (1C) (as inserted by section 20 of the Social Security Amendment Act (No. 2) 1985), the following subsection:

“(1D) The Director-General may recover, as a debt due to the Crown at the suit of the Director-General or by deduction from any benefit payable or becoming payable to a person,—

“(a) Any advance payment of a benefit made to the person under section 82 (6):

“(b) Any amount described by this Act as a debt due to the Crown from the person for which no other method of recovery is specifically provided by this Act.”

**23. Deduction notices for debts**—(1) Section 86A (1) of the principal Act (as inserted by section 26 of the Social Security Amendment Act (No. 3) 1993) is amended by omitting the words “section 86 of”.

(2) Section 86A of the principal Act (as so inserted) is amended by inserting, after subsection (1), the following subsections:

“(1A) For the avoidance of doubt, it is declared that a deduction notice may be issued under subsection (1), despite the fact that the debt to the Crown under this Act may not be recovered by civil action in a court of law because of the Limitation Act 1950.

“(1B) A deduction notice may be issued under subsection (1) to the Accident Rehabilitation and Compensation Insurance Corporation requiring that Corporation to deduct the amount due from any sum of compensation in respect of loss of earnings or loss of potential earning capacity that is payable, or becomes payable, to the debtor under the Accident Rehabilitation and Compensation Insurance Act 1992.

“(1C) A deduction notice under subsection (1) may be issued to recover—

“(a) Any amount that may be recovered as a debt due to the Crown under section 27X (as saved by section 256 (1) of the Child Support Act 1991):

“(b) Any amount of maintenance debt (within the meaning of section 61CA).”

(3) Section 86A (1A) of the principal Act (as inserted by subsection (2)) applies to all debts to the Crown recoverable under the principal Act, whether or not the Limitation Act 1950 prevented recovery of the debt by civil action in a court of law before the coming into force of this section.

#### **24. Money payable out of Crown Bank Account—**

(1) Section 124 (1) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:

“(d) Any money that may be appropriated by Parliament for the purpose of granting special assistance under any welfare programme established and approved by the Minister of Social Welfare under the authority of, and for the purposes of, this paragraph.”

(2) Section 124 of the principal Act is amended by inserting, after subsection (1A) (as inserted by section 28 (1) of the Social Security Amendment Act (No. 3) 1993), the following subsection:

“(1B) As soon as practicable after approving a welfare programme pursuant to subsection (1)(d), the Minister must publish in the *Gazette* and lay before the House of Representatives a copy of the programme.”

(3) The following enactments are consequentially repealed:

(a) Section 18 (2) of the Department of Social Welfare Act 1971:

(b) Section 24 of the Social Security Amendment Act 1975:

(c) Section 34 (1) of the Social Security Amendment Act 1976.

(4) It is declared that the Minister of Social Welfare or, as the case may require, the Minister of Social Security has always had the power under section 124 (1) (d) of the principal Act to establish and approve any welfare programme for special assistance for the purposes of that section; and every such welfare programme that has at any time been so approved, and any payments or grants of special assistance and actions taken under it, are confirmed and declared to be and always to have been valid.

**25. Certain grounds of discrimination in Human Rights Act 1993 not to apply**—The principal Act is amended by inserting, after section 126A (as inserted by section 2 of the Social Security Amendment Act (No. 4) 1996), the following section:

“126B. Nothing in—

“(a) Section 44 of the Human Rights Act 1993 applies or ever applied; or

“(b) Section 24 of the Human Rights Commission Act 1977 ever applied—

to anything done, before 31 December 1999, which—

“(c) In relation to the granting of any benefit or assistance under or pursuant to this Act, or the granting of any assistance analogous to a benefit, by the Department of Social Welfare, is or was done pursuant to—

“(i) A direction given pursuant to section 5 (2); or

“(ii) A welfare programme approved by the Minister of Social Welfare under section 124 (1) (d); or

“(iii) Any document (including a manual) of the type referred to in section 22 (1) of the Official Information Act 1982; and

“(d) Would otherwise be or have been unlawful by reason of the prohibited grounds of discrimination in section 21 (1) (a) or (b) of the Human Rights Act 1993; or

“(e) In relation to anything done before 1 February 1994, would otherwise have been unlawful under section 24 (1) of the Human Rights Commission Act 1977 on the grounds of sex or marital status.”

**26. Offences**—Section 127 (e) of the principal Act (as inserted by section 29 (1) of the Social Security Amendment Act (No. 3) 1993) is amended by inserting, after the expression “section 69F”, the words “or section 69FA”.

**27. Regulations exempting income and assets from assessment of financial means of people requiring certain disability services**—The principal Act is amended by inserting, after section 132C (as inserted by section 5 of the Social Security Amendment Act (No. 6) 1996), the following section:

“132D. Without limiting the general power to make regulations conferred by section 132, the Governor-General may from time to time, by Order in Council, make regulations—

- “(a) Defining terms to be excluded as cash assets for the purpose of section 69FA; and
- “(b) Specifying that certain amounts of cash assets or income are not to be included within the financial means assessment of a person under that section.”

**28. Eighteenth Schedule amended**—(1) The Eighteenth Schedule of the principal Act (as substituted by section 34 (1) of the Social Security Amendment Act (No. 3) 1993) is amended by repealing Part IV.

(2) This section is deemed to have come into force on 1 July 1995.

**29. New Schedule 30 added**—The principal Act is amended by adding Schedule 30 set out in the Schedule.

**30. Consequential amendments**—(1) The Schedule of the Social Security Amendment Act (No. 3) 1997 is amended by—

- (a) Omitting, from the item relating to section 69C (1) (a), the expression “section 60F (1) (c) (i)”, and substituting the expression “section 60F (6)”;
- (b) Omitting, from the item relating to section 71A, the expression “section 60F (1) (c) (i)”, and substituting the expression “section 60F (6)”;
- (c) Omitting, from the item relating to section 72 (b), the expression “section 60F (1) (c) (i)”, and substituting the expression “section 60F (6)”.

(2) This section comes into force on 1 January 1998.

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## SCHEDULE

Section 29

NEW SCHEDULE 30 OF PRINCIPAL ACT

Section 69FA

## "SCHEDULE 30

## METHOD OF CALCULATING ABILITY TO MAKE PAYMENTS TOWARDS COSTS OF HOME-BASED DISABILITY SUPPORT SERVICES UNDER SECTION 69FA

1. In this Schedule, 'specified outgoings', in relation to any person, means the annual total of—

- (a) The maximum rate for the time being of an invalid's benefit that would be payable to the person if he or she was qualified to receive such a benefit;
- (b) An amount of \$10 per week (for the purpose of paying costs incidental to the provision of home help);
- (c) The following employment-related expenses of the person and his or her spouse, calculated on an annual basis:
  - (i) Fees or subscriptions payable on an annual or regular basis to any employees organisation (within the meaning of the Employment Contracts Act 1991);
  - (ii) Contributions to any superannuation scheme;
  - (iii) Contributions to any employee welfare fund;
  - (iv) Any other essential costs of that employment (not including travel to and from work) to the extent that they are not reimbursed by the employer;
- (d) The person's accommodation costs (within the meaning of section 61E);
- (e) The person's telephone rental (being the standard line charge and base user charge including hire of a basic telephone applicable to a person living in the place where the person lives), calculated on an annual basis;
- (f) The cost of the person's ongoing and regular medical and pharmaceutical expenses, calculated on an annual basis;
- (g) The cost of the person's regular essential expenses (being expenses other than the cost of food, clothing, travel, running a motor vehicle, life insurance, house and contents insurance, hire purchase, entertainment, and personal savings), calculated on an annual basis.

2. The Director-General must calculate the amount of the person's annual income and specified outgoings, and must deduct the amount of the specified outgoings from the annual income.

3. If the result of the calculation specified in clause 2 is \$0 or less than \$0, the Director-General must assess the amount the person is required to contribute towards the cost of the home-based disability support services supplied to that person as \$0.

4. If the result of the calculation specified in clause 2 is greater than \$0 but less than the total cost of the home-based disability support services supplied to the person, the Director-General must assess that result as the amount the person is required to contribute towards the cost of those services.

5. If the result of the calculation specified in clause 2 is equal to or greater than the total cost of the home-based disability support services supplied to the person, the Director-General must assess the amount the person is required to contribute towards the cost of those services as the total cost of those services.

SCHEDULE—*continued*

NEW SCHEDULE 30 OF PRINCIPAL ACT—*continued*

“SCHEDULE 30—*continued*

METHOD OF CALCULATING ABILITY TO MAKE PAYMENTS TOWARDS COSTS OF HOME-BASED DISABILITY SUPPORT SERVICES UNDER SECTION 69FA—*continued*

6. The Director-General must convert an assessment made under clauses 3 to 5 to a weekly amount.

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This Act is administered in the Department of Social Welfare.

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