



Social Security (Long-term Residential Care) Amendment Act 2006

Public Act 2006 No 67
Date of assent 21 November 2006
Commencement see section 2

Contents

	Page
1 Title	2
2 Commencement	2
3 Principal Act amended	2

Part 1

Amendments to principal Act

Subpart 1—Amendments to Part 1

4 Disability allowance	2
------------------------	---

Subpart 2—Amendments to Part 4

5 New sections 136AA and 136AB inserted	3
136AA Purpose of this Part	4
136AB Overview of this Part	4
6 Interpretation	5
7 Effect of being assessed as requiring long-term residential care in hospital or rest home indefinitely	6
8 Personal obligation to pay for care	6
9 Funder's liability in respect of persons whose assets are equal to or below applicable asset threshold	7
10 Funder's liability in respect of exempt persons and elderly victims of crime	7
11 Residents assessed as requiring care aged 50 to 64 not required to pay out of assets	7
12 Date of means assessment	7
13 Means assessment as to income	8
14 New section 147A inserted	8
147A Deprivation of assets and income	8
15 Obligation to advise change of circumstances and right to apply for review	8

16	Review of means assessment	9
17	Maximum contribution set by <i>Gazette</i> notice	10
18	Regulations relating to this Part	10
	Subpart 3—Other amendments	
19	Amendment to Schedule 27	10
20	Further amendments to Schedule 27	10
	Part 2	
	Consequential amendment	
21	Amendment to Social Security (Long-term Residential Care) Regulations 2005	11
	Schedule	12
	Further Amendments to Schedule 27	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Social Security (Long-term Residential Care) Amendment Act 2006.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act amended

This Act amends the Social Security Act 1964.

Part 1
Amendments to principal Act

Subpart 1—Amendments to Part 1

4 Disability allowance

(1) Section 69C is amended by repealing subsection (2B) and substituting the following subsections:

“(2B) A disability allowance is not payable under this section in respect of—

“(a) expenses arising from the disability of a person who is a resident assessed as requiring care (as defined in section 136) in respect of whom a funder (as defined in that

- section) is paying some or all of the cost of contracted care services (as defined in that section) under section 141 or section 142; or
- “(b) expenses arising from the disability of a person that are costs of residential care services supplied to the person if—
- “(i) the person has a psychiatric, intellectual, physical, or sensory disability; and
- “(ii) the person’s accommodation costs (as defined in section 61E) or care (other than care in his or her own home) is wholly or partly funded under the New Zealand Public Health and Disability Act 2000.
- “(2C) For the avoidance of doubt, nothing in paragraph (b) of subsection (2B) prevents the payment of a disability allowance to a person to whom that paragraph applies for expenses that are not costs of residential care services supplied to that person.”
- (2) Any money received by a person by way of a disability allowance must be repaid as a debt due to the Crown if the disability allowance was granted in respect of an application that—
- (a) was made after 14 June 2006; and
- (b) was made in respect of expenses referred to in section 69C(2B)(a) of the principal Act (as inserted by this section).
- (3) If, on an application made between 18 May 2006 and 18 May 2007, a disability allowance is granted to or on account of a person referred to in section 69C(2B)(b) of the principal Act (as inserted by this section) for expenses that are not costs of residential care services supplied to that person, then, despite section 80(1) of the principal Act, the disability allowance commences on the later of—
- (a) the date the person became entitled to receive it; or
- (b) 18 May 2006.

Subpart 2—Amendments to Part 4

5 New sections 136AA and 136AB inserted

The following sections are inserted immediately before section 136:

“136AA Purpose of this Part

The purpose of this Part is to—

- “(a) specify the circumstances in which certain older persons are required to pay for their own long-term residential care; and
- “(b) specify the circumstances in which a funder must contribute toward the cost of those persons’ long-term residential care; and
- “(c) provide for those persons to apply for a means assessment to determine if, and how much, a funder must contribute toward the cost of their long-term residential care; and
- “(d) provide that those persons are not required to pay more than the maximum contribution (which amount is specified by *Gazette* notice) for their long-term residential care, if that care is provided by a provider who has a contract with a funder to provide long-term residential care to older persons.

“136AB Overview of this Part

“(1) This Part sets out the regime for determining liability in respect of the cost of providing long-term residential care to an eligible person who—

- “(a) has been needs assessed as requiring long-term residential care in a hospital or rest home indefinitely; and
- “(b) receives that care in a hospital or rest home that is a hospital or rest home funded under the New Zealand Public Health and Disability Act 2000 to provide such care.

“(2) This Part provides—

- “(a) for the needs assessment of an eligible person to determine whether the person requires long-term residential care in a hospital or rest home indefinitely; and
- “(b) for the means assessment of an eligible person who has been needs assessed as requiring long-term residential care in a hospital or rest home indefinitely to determine the amount that the person is liable to pay for the cost of his or her care; and
- “(c) for a maximum contribution, which is the most that an eligible person who has been needs assessed as requiring long-term residential care indefinitely may be

required to pay for the cost of his or her assessed care needs provided in a hospital or rest home that has a contract with a funder to provide long-term residential care to eligible persons; and

“(d) for determination of the extent to which a funder is liable to pay the cost of the long-term residential care provided to an eligible person who has been needs assessed as requiring long-term residential care indefinitely.

“(3) This section is by way of explanation only. If a provision of this or any other Act is inconsistent with this section, the other provision prevails.”

6 Interpretation

(1) Section 136 is amended by repealing the definitions of **contracted care services** and **cost of contracted care services** and substituting the following definitions:

“**contracted care services** means services that are—

“(a) provided by a contracted care provider; and

“(b) provided to an eligible person who has been needs assessed as requiring long-term residential care in a hospital or rest home indefinitely; and

“(c) in relation to a particular person, the services necessary to meet the person’s assessed long-term residential care needs

“**cost of contracted care services** means, in relation to a resident assessed as requiring care, the amount that—

“(a) is the cost of the contracted care services provided by a contracted care provider to meet the resident’s assessed long-term residential care needs; and

“(b) is specified in the service agreement or section 88 notice that applies to the contracted care provider as the price payable for those services, whether or not the services provided to the resident are wholly or partly funded under that agreement or notice”.

(2) Section 136 is amended by inserting the following definitions in their appropriate alphabetical order:

“**contracted care provider** means a provider that—

“(a) has a service agreement; or

“(b) accepts payment under a section 88 notice

“**personal allowance** means an amount of benefit, specified in regulations made under section 155, that a person is not required to contribute to the cost of contracted care services provided to the person

“**section 88 notice** means a notice given under section 88 of the New Zealand Public Health and Disability Act 2000 in respect of the provision of long-term residential care to eligible persons

“**service agreement** means a service agreement entered into between a funder and provider under section 25 of the New Zealand Public Health and Disability Act 2000 in respect of the provision of long-term residential care to eligible persons.”

- (3) Paragraph (b) of the definition of **resident assessed as requiring care** in section 136 is amended by adding “irrespective of whether a funder has any liability to pay for any of the cost of his or her care”.

7 **Effect of being assessed as requiring long-term residential care in hospital or rest home indefinitely**

Section 138(1) is amended by repealing paragraphs (a) and (b) and substituting the following paragraphs:

“(a) receives contracted care services if he or she is receiving long-term residential care from a contracted care provider, irrespective of whether a funder has any liability to pay for any of the cost of his or her care; and

“(b) is, or becomes, a resident assessed as requiring care as soon as he or she receives contracted care services and sections 139 to 142 therefore apply; and

“(c) is entitled, under section 144, to apply for a means assessment in accordance with Schedule 27.”

8 **Personal obligation to pay for care**

Section 139 is amended by repealing subsection (1) and substituting the following subsection:

- “(1) The following people are liable to pay the cost of long-term residential care provided to them in a hospital or rest home:
- “(a) a resident assessed as requiring care; and

“(b) any other eligible person receiving long-term residential care from a provider.”

9 Funder’s liability in respect of persons whose assets are equal to or below applicable asset threshold

Section 141(4) is amended by omitting “28” in each place where it appears and substituting “90” in each case.

10 Funder’s liability in respect of exempt persons and elderly victims of crime

Section 142 is amended by repealing subsection (1) and substituting the following subsections:

“(1) In the case of an exempt person, the funder must pay the amount determined in accordance with the following formula:

$$p = c - (b - a)$$

where—

- p is the amount the funder must pay
- c is the cost of contracted care services provided to the exempt person
- b is the amount of any benefit received by the exempt person
- a is the personal allowance.

“(1A) By way of explanation, the effect of subsection (1) is that the funder pays the cost of contracted care services provided to an exempt person, but the exempt person contributes the amount of any benefit that he or she receives, less the amount of the personal allowance.”

11 Residents assessed as requiring care aged 50 to 64 not required to pay out of assets

Section 143(2) is amended by omitting “section 141 as if the person were a resident assessed as requiring care whose assets are” and substituting “Part 4 as if the person were a resident assessed as requiring care who has been means assessed and found to have assets”.

12 Date of means assessment

Section 145 is amended by adding the following paragraph:

“(f) in the case of a review under section 150(2A)—

- “(i) conducted by the chief executive in the event of a general adjustment of rates of benefits or allowances, the date of that general adjustment; or
- “(ii) conducted as a result of advice received by the Department under section 149(1), the date on which that advice was received; or
- “(iii) conducted by the chief executive in any other case, the date on which the chief executive initiated the review.”

13 Means assessment as to income

Section 147(4) is amended by omitting “28” in each place where it appears and substituting “90” in each case.

14 New section 147A inserted

The following section is inserted after section 147:

“147A Deprivation of assets and income

- “(1) If the chief executive is satisfied that a person who has applied for a means assessment, or the spouse or partner of that person, has directly or indirectly deprived himself or herself of any income or property (other than an exempt asset), the chief executive may in his or her discretion conduct the means assessment as if the deprivation had not occurred.
- “(2) If the chief executive is satisfied that a person who has been means assessed, or the spouse or partner of that person, has directly or indirectly deprived himself or herself of any income or property (other than an exempt asset), the chief executive may in his or her discretion include that income or property in a review of the person’s means assessment under section 150 as at the date of means assessment as if the deprivation had not occurred.”

15 Obligation to advise change of circumstances and right to apply for review

Section 149 is amended by inserting the following section after subsection (1):

“(1A) However, subsection (1) does not apply if—

- “(a) a funder has no liability under section 140 or section 142 in respect of the cost of contracted care services provided to the person who has been means assessed; or
- “(b) the person who has been means assessed has been found to have assets equal to or less than the applicable asset threshold and the change relates to the value of that person’s assets, or to the value of the assets of that person’s spouse or partner.”

16 Review of means assessment

(1) Section 150 is amended by inserting the following subsection after subsection (2):

“(2A) In the case only of a person who has been means assessed and been found to have assets equal to or less than the applicable asset threshold, the chief executive—

- “(a) may review the person’s means assessment annually; and
- “(b) may, if the chief executive considers that the person’s annual income has changed or is about to change, review the person’s means assessment at any time.”

(2) Section 150(3) is amended by inserting “or subsection (2A)” after “subsection (2)”.

(3) Section 150 is amended by repealing subsection (4) and substituting the following subsections:

“(4) A review must review the person’s means assessment as to assets and, if necessary, the person’s means assessment as to income unless subsection (4A) applies.

“(4A) A review must review the person’s means assessment as to income only (and not the person’s means assessment as to assets) if the review is conducted under—

- “(a) subsection (1)(a) and the person has been means assessed and found to have assets equal to or less than the applicable asset threshold; or
- “(b) subsection (2A).

“(4B) A review under this section is conducted as at the date of means assessment.”

17 Maximum contribution set by *Gazette* notice

Section 152 is amended by repealing subsection (2) and substituting the following subsection:

- “(2) By way of explanation, the amount of the maximum contribution set for a region is the amount agreed at a national level between funder representatives and provider representatives as being the amount that funders in that region are to pay to providers in that region for providing rest-home-level care services.”

18 Regulations relating to this Part

- (1) Section 155(1)(e) is amended by omitting “means assessment” and substituting “section 147A”.
- (2) Section 155(1)(k) is amended by omitting “, as defined in Part 3 of Schedule 27”.
- (3) Section 155(2) is amended by omitting “2006”, and substituting “2007”.

Subpart 3—Other amendments**19 Amendment to Schedule 27**

- (1) Clause 5 of Schedule 27 is amended by repealing the definition of **income-from-assets exemption** and substituting the following definition:

“**income-from-assets exemption** means the amount of income derived from assets each year not exceeding the following (or such other amount or amounts as may be prescribed by regulations made under section 155):

- “(a) \$805, if the person is single; or
 - “(b) \$1,610, if the person’s spouse or partner is a resident assessed as requiring care; or
 - “(c) \$2,415 if the person’s spouse or partner is not a resident assessed as requiring care”.
- (2) Regulation 5 of the Social Security (Long-term Residential Care) Amendment Regulations 2006 is revoked.

20 Further amendments to Schedule 27

Schedule 27 is amended in the manner set out in the Schedule.

Part 2

Consequential amendment

21 Amendment to Social Security (Long-term Residential Care) Regulations 2005

Regulation 9B of the Social Security (Long-term Residential Care) Regulations 2005 is amended by omitting all the words occurring before paragraph (a) and substituting “For the purposes of section 147A of the Act, instances of deprivation of property or income include, but are not limited to, the following:”.

s 20

Schedule Further Amendments to Schedule 27

Clause 4

Definition of **assets**: omit “tested” and substitute “assessed”.

Paragraph (c) of the definition of **assets**: repeal.

Clause 5

Paragraph (a) of the definition of **income**: omit “and” and substitute “or”.

Paragraph (c) of the definition of **income**: repeal and substitute:

“(c) 50% of any amount received by the person or by his or her spouse or partner by way of a pension that—

“(i) is from any superannuation scheme, whether or not that scheme is constituted in New Zealand; and

“(ii) is not New Zealand superannuation; and

“(iii) is not an overseas pension:”.

Paragraph (d) of the definition of **income**: repeal and substitute:

“(d) 50% of any amount received by the person or by his or her spouse or partner under an annuity paid in respect of a policy of life insurance (whether or not issued in New Zealand):”.

Paragraph (e) of the definition of **income**: repeal.

Paragraph (i) of the definition of **income**: omit “, and the income-from-assets exemption of the person’s spouse or partner”.

Definition of “**personal allowance**”: repeal.

Clause 8

Add “(as defined in section 136)”.

Legislative history

9 May 2006	Introduction (Bill 46–1)
16 May 2006	First reading and referral to Social Services Committee
13 September 2006	Reported from Social Services Committee
7 November 2006	Second reading
14 November 2006	Committee of the whole House (Bill 46–2)
15 November 2006	Third reading
21 November 2006	Royal assent

This Act is administered by the Ministry of Health.
