

Social Security Amendment Bill

Government Bill

As reported from the Social Services Committee

Commentary

Recommendation

The Social Services Committee has examined the Social Security Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The Social Security Amendment Bill (the bill) aims to change the way in which social security is delivered to beneficiaries by the Department of Work and Income (the department). It removes all references to the community wage, which is replaced by two separate benefits: an unemployment benefit and a non-work-tested sickness benefit. It provides for job seeker agreements, which will set out the assistance to be provided by the department and the obligations of beneficiaries. Job seeker agreements may also include activities which will enhance the work readiness of beneficiaries, activities in the community and any participation in voluntary work. Under the provisions of the bill unpaid community work will no longer be mandatory. The bill also replaces the current three-tier work-test sanction regime with a single sanction regime targeted at serious non-compliance; it repeals the provisions relating to work

capacity assessment; and it increases the income thresholds for eligibility for a disability allowance.

Issues beyond the bill

Many of the submitters made suggestions and raised concerns that are beyond the scope of the bill. In particular, submitters believe:

- Many community organisations need Government support to overcome a lack of resources to meet the cost of providing support, supervision and training for job seekers while they are undertaking Government-approved voluntary work in community projects
- The department should have more discretion to apply sanctions
- The income cut-off regime for those receiving the disability allowance should take in to account the number of children the recipient has
- The work test on the Domestic Purposes Benefit and Widow's Benefit should be removed, and
- Unemployment and sickness benefits should be available to eligible 16 and 17 year olds.

We share these concerns. We are pleased to hear that the bill is only the first stage of the changes the Government intends to make in the area of social security. We hope that these issues will be considered by the Government as it moves to the next stage of changes.

We consider that the Government should take these issues into account as it prepares for the next stage of changes to social security.

Recognised community activities

Community work will be voluntary

Currently it is mandatory for recipients of the community wage to be available to take part in community work if directed; the bill stipulates that such activities are no longer mandatory. Many submitters support this change. They believe that it will restore the value of voluntary community work. They also suggest that with such work no longer mandatory, more community organisations will co-operate with the department to create volunteer opportunities and community work for job seekers.

Recognition of voluntary work

The bill provides that a beneficiary's voluntary work can be recognised in their job seeker agreement when it is undertaken for no remuneration for a non-profit community organisation or other person. Submitters are concerned that this reference in clause 5 to voluntary work for "any other person" could lead to the inclusion of work for individuals or organisations which are concerned with profit and which will inappropriately benefit from free labour.

To avoid this possibility, we recommend an amendment to clauses 5 and 18 to provide that the work must be of benefit to the community.

Types of activities in the community

The bill also defines activities in the community, which can sit alongside voluntary work in a job seeker agreement. These are activities associated with a community project under the supervision of a sponsor who is contracted by the department to provide that activity. Any organisation that meets the criteria is eligible to apply to the department to set up an activity in the community project. Some submitters express a concern that such activities could be open to abuse by the creation of bogus "community" projects supported by the department where private individuals or companies might benefit from the project. They are also concerned that where these activities are associated with community projects, there has been displacement of employed and potential workers. They believe this has occurred in local government and Crown-owned organisations, particularly schools and childcare centres.

We would be concerned if this continued to be the case. Such projects are designed to enhance the skills of beneficiaries and bring benefit to the community. They are not intended to subsidise commercial operations or personal gain. We believe that the guidelines for activities in the community and job seeker development activities should be reviewed, to ensure that abuse cannot occur.

We consider that the Government should review the Cabinet guidelines for employment products and services to ensure abuse does not occur and to ensure these activities create genuinely new work that will not displace workers.

Participation allowance

When beneficiaries take part in activities in the community their work will qualify for a participation allowance of \$21 per week to

cover their participation-related expenses. Subject to attendance by the beneficiary, this allowance will be paid to them by the organisation for whom they are working. The organisation will then seek reimbursement from the department. An additional allowance of up to \$20 per week may also be paid directly to the beneficiary for actual and reasonable costs.

Many submitters are concerned that the participation allowance will not be available to beneficiaries undertaking voluntary work. They believe this will create two classes of volunteer: one that will receive an allowance, and one that will not. They believe the availability of the allowance for only one type of activity will have the effect of compelling beneficiaries to undertake activity in the community rather than volunteer work.

We welcome the acknowledgement of the contribution beneficiaries make to their communities through their voluntary work. It is important that this ongoing work is recognised in their job seeker agreements. However, activities in the community are different from voluntary work in that they are discrete projects, approved by the department, designed to enhance the work skills of beneficiaries who would not have taken part in such activities except at the invitation of the department. It is appropriate that their costs in doing so are met. To extend the participation allowance to include those doing volunteer work would involve a significant fiscal cost. It would create two classes of volunteer as well: beneficiaries receiving an allowance and non-beneficiaries who will not. It would also require a level of monitoring that we believe would be inappropriate in the context of voluntary work.

For these reasons we are reluctant to amend the bill to extend the application of the participation allowance.

We consider that the Government should review the participation allowance.

New sanctions regime

The bill replaces the current three-tier work-test sanction regime with a single sanction regime targeted at serious non-compliance. For the first failure to meet their work-test obligations, the beneficiary's benefit is suspended until they recompile. The same is true of a second failure. After a third failure, the beneficiary's benefit is cancelled and a 13-week period of non-entitlement is invoked, but a provisional benefit may be paid to a beneficiary who undertakes an

approved activity. If the beneficiary completes six weeks of that activity, the remaining period of non-entitlement lapses and they may reapply for a benefit.

13 weeks too long

Many of the submitters are strongly opposed to retaining the 13-week period of non-entitlement for both a sanction for a third work-test failure and for the stand down for voluntarily leaving employment. They argue that such a long period is excessively punitive, it encourages crime and, when invoked for voluntary unemployment, it may be a disincentive to a beneficiary moving into full-time work. It may also encourage the proliferation of personal grievance cases as a way of avoiding the stand down. They recommend a reduced period of non-entitlement.

We have some sympathy with the view of submitters that 13 weeks of non-entitlement may be unnecessarily long. The Green Party believes it should be a maximum of four weeks. We are not convinced that the rationale for a 13-week stand down remains valid, but we believe further work is necessary to evaluate the effect of any change before it is made.

We consider that the Government should review the length of stand down in each context.

Still a complex regime

Beneficiary advocacy groups believe that the sanctions regime outlined in the bill is still too complex. They suggest a system where written notice is issued for the first failure to meet work-test obligations. For second and subsequent failures, the benefit would be suspended for four weeks or until recompliance, whichever came first.

We believe that the sanctions regime set out in the bill is much more straightforward than the existing three-tiered regime. We are reluctant to make further changes to it, such as the submitters propose, without the kind of review that we have suggested.

Provision for review

Some submitters suggest that a beneficiary may fail to meet the work-test obligations set out in their job seeker agreement in cases where those obligations may be unreasonable. They believe it is important that provision to review those obligations is made.

We agree that there should be provision for the review of the beneficiary's job seeker agreement before a work-test failure is counted. We recommend an amendment to new section 115 to provide for such a review.

Leaving employment

Clause 35, new section 115(4) and (5), provides that a sanction will be imposed when a full-time or part-time work-tested beneficiary leaves or is dismissed for misconduct from part-time work or employment less than 15 hours a week. The Wellington People's Centre suggests that, in the case of a beneficiary leaving work, this provision should be limited to those who leave without good and sufficient reason.

We agree with this suggestion. We recommend an amendment to new section 115(4) and (5) to provide that it will apply only to a beneficiary who leaves employment without good and sufficient reason or who is dismissed for misconduct. We note that new section 115(6) already is, in effect, a similar provision for those who are dismissed for misconduct without good and sufficient reason.

Other recommended amendments to sanctions regime

The bill is clear that no sanction is to apply to a failure to undertake and complete a recognised community activity, but as new section 102(3) is drafted such a failure could be counted as a work-test failure and possibly invoke a sanction. We recommend an amendment to new section 102(3) to make it clear that failure to undertake and complete a recognised community activity will not be counted as a work-test failure.

If a beneficiary is paid a provisional benefit during a 13-week period of non-entitlement, but fails to complete six weeks of the approved activity, the provisional benefit must be repaid. The bill is silent about whether this applies when the beneficiary fails to complete the activity because they have entered full-time employment or have become sick. In practice, the department does not require repayment of the provisional benefit in these situations. To clarify this, we recommend an amendment to provide that any provisional benefit paid under new section 123B is not repayable if the person ceases to be subject to a work test (for example, they enter employment or become sick).

Job seeker agreements

The bill provides for the creation of a job seeker agreement (the agreement), an individually tailored agreement between the department and the beneficiary. It will contain the responsibilities and obligations of both parties to the agreement. It will include the work-test obligations of the beneficiary and any job seeker development activities they will undertake. It will include any activities in the community or voluntary work the beneficiary chooses to do. The agreement will also set out the assistance to be provided by the department.

Power imbalance and partnership

Submitters express a concern that there is a power imbalance between the beneficiary and the department in the creation of job seeker agreements. They believe that the agreement cannot be a genuine contract if the beneficiary is not entitled to representation. They believe more emphasis needs to be placed on the partnership between the beneficiary and the department. The bill stipulates that the agreement must be satisfactory to the chief executive; submitters argue it should be satisfactory to both parties. They also suggest a provision allowing for the review of the agreement if the beneficiary requests it (the bill already provides for the chief executive to review it).

We believe the agreement between the department and the beneficiary must be a genuine one, with the expectation that the beneficiary should co-operate in its development and that it should be promptly developed and signed. We note that there is nothing to prevent the beneficiary being represented, but we recommend amendments to clause 32, new sections 105B and 105C, to ensure that the job seeker agreement is developed through a process of negotiation, in a timely and co-operative manner, and with the possibility of review.

Job seeker development activities

The focus of job seeker development activities is on getting people into suitable work or improving their prospects of obtaining suitable sustainable employment. Such activities (defined in clause 34, new section 110(1)) may include work assessment; participation in a

programme or seminar to increase particular skills or enhance motivation; participation in a work experience or work exploration activity; or participation in employment-related training.

Priority of job seeker development activities

The New Zealand Christian Council of Social Services is concerned that preference will be placed on job seeker development activities over recognised community activities. It believes that recognised community activities could suffer if a beneficiary was directed into a job seeker development activity; it believes such activities should not be given a lower status.

We agree that recognised community activities are important. However, we also see the value in job seeker development activities, which are carefully targeted to meet specific needs. Because they are more likely to assist a beneficiary to find employment, we believe these activities should take precedence.

Rights of appeal

Some submitters are concerned that beneficiaries will not have a general right to challenge the nature of a particular activity. They believe that in the past beneficiaries have been sent to activities that have been inappropriate, but there were no rights of appeal against such decisions.

We believe it is sufficient that while beneficiaries are not given rights of review or appeal relating to the general specification of job seeker development activities, they do have rights of review and appeal against a decision or determination of the chief executive relating to their participation in a job seeker development activity or its inclusion in a job seeker agreement.

The sickness benefit

The bill removes all references to the community wage and separates out the (non-work-tested) sickness benefit and the unemployment benefit. Generally, submitters support this separation.

Some submitters are concerned that the beneficiary has to accept the medical practitioner or psychologist appointed by the chief executive of the department (the chief executive), with no process to review the appointment. The Combined Beneficiaries Union sees no

need for the days of the week to be included in a sickness beneficiary's working week to be stipulated in the bill (clause 14, new section 54C(2)).

We note that that new section 54B(3) requires the medical practitioner or psychologist to be agreed between the beneficiary and the chief executive in the first instance. It is only after failing to reach agreement that the chief executive may unilaterally nominate a medical practitioner or psychologist. It is correct that there is no review process in relation to the decision to nominate the medical practitioner or psychologist. However, section 53A of the Social Security Act 1964 provides a right of appeal to a Medical Appeal Board in relation to decisions or determinations of the chief executive made on medical grounds, usually in reliance on the medical practitioner's or psychologist's report.

We accept that it is unnecessary for the bill to stipulate the days of the working week in regard to the sickness benefit. The provision relates to the abatement of the sickness benefit where income is earned by the beneficiary, but it is not necessary to include this particular provision in legislation. We recommend that clause 14, new section 54C(2) be deleted.

Employment and accident insurance rights

Employment relationship

A few submitters argue that although beneficiaries in an activity are not working in a paid relationship, it is nevertheless an employment relationship. They believe that those on placement need the full rights and protection given to employees under the law.

We do not accept that beneficiaries on an activity are working in the nature of an employment relationship. Clause 40, new section 123C(3) makes this clear, and the Employment Relations Act 2000 excludes a volunteer from the definition of "employee".

Accident insurance protections

Ken McKinnon, an Associate Professor in Law at the University of Waikato, is concerned that beneficiaries undertaking an activity will not be covered for work-related injuries under sections 32 and 33 of the Accident Insurance Act 1998. He believes this is important if the beneficiary suffers a heart attack, stroke or gradual process or disease arising out of their work.

We believe it is unlikely that beneficiaries will suffer from such conditions since it is unlikely many would be undertaking the activities long enough for this to happen. If such cases did arise, applying these provisions to beneficiaries would give them greater protections than other non-workers (such as students) and would require funding apart from the Employers' Account, which is funded only by employer premiums.

We consider that the Government should review this issue as it prepares new accident insurance legislation.

Health and Safety in Employment Act 1992 provisions

Under clauses 9 and 40 (new section 123C) the provisions of the Health and Safety in Employment Act 1992 will apply to a beneficiary doing work as part of a recognised community activity. This includes voluntary work. However, we believe the extension of these provisions to voluntary work will impose significant additional duties on the voluntary work provider. It will also give protections to beneficiaries undertaking voluntary work as part of their job seeker agreement that are not available to other volunteers. For these reasons, we recommend that clauses 9 and 40 (new section 123C) be amended to ensure only activities in the community will be covered by the Health and Safety in Employment Act 1992, not voluntary work.

We consider that the Government should take this issue into account as it reviews the Health and Safety in Employment Act.

Authors and artists

Carol Handyside, an artist from Paekakariki, explained that writers and artists often receive income from their work in one large lump sum. For those who receive the community wage, the abatement of their benefit is calculated on a per week basis. She believes it would be fairer if it was calculated on an annualised basis.

We acknowledge this concern and recognise the broader issue for all beneficiaries.

We consider that the Government should review this issue.

Minority report of ACT and National Recommendation

The ACT Party and the National Party believe that the Social Security Amendment Bill should not proceed.

Introduction

The Social Security Amendment Bill effectively removes sanctions on work tested job seekers who refuse to participate in community work. It separates community work from other activities, making it effectively the only activity that job seekers cannot be sanctioned for refusing to participate in.

This change in policy is not supported by ACT and National, who believe community work is one of the best and most cost effective options available to assist job seekers to retain their work habits and find employment. This is most important for very long-term registered unemployed job seekers who may have lost their motivation and confidence.

We note that since the election, the numbers of long-term unemployed have grown; those registered unemployed over six months have increased from 138,000 to 155,000, and those over one year from 89,000 to 108,000.

ACT and National believe that without the ability to resort to compulsion, the numbers of long-term unemployed will continue to grow.

Community work and voluntary work

ACT and National believe that the contents of the bill in respect of community work flies in the face of international policy direction, and New Zealand's experience.

Community work is a cost effective intervention, with some statistics showing around 50 percent of participants having some form of positive outcome.

We believe that the Department of Work and Income Regional Commissioners should have the ability to decide on the numbers and levels involved in any activity, and should have the same ability to require job seekers to participate in community work programmes as any other.

Sanctions

ACT and National do not agree with the collapsing of the sanction options, and support the retention of minor penalties for minor non-compliance. This is in keeping with treating job seekers as similarly as possible to those in paid work.

Sickness benefit

ACT and National believe that the benefits of the creation of the Department of Work and Income one stop shop, and case management with a work focus, should be used for all working age beneficiaries who have the capacity to return to work at a future point.

The level of payment of the sickness benefit is the same as the community wage, and under current arrangements, recipients of the community wage-sickness benefit do not have the work test applied.

The restoration of a separate sickness benefit is therefore simply window dressing. However, its removal sends the wrong signal to recipients and staff, blurring the clear intention that the sickness benefit provides temporary assistance, until recipients are able to return to the workforce.

Summary

ACT and National consider this bill regressive in terms of assisting long-term unemployed job seekers back to work and signals a weakening of job seeker's reciprocal obligations in return for income support.

This is in contrast to international policy direction. Further, it disregards the success of community work in New Zealand in which over 30,000 job seekers have participated, and over 4,000 organisations assisted.

The evidence is clear that registered long-term unemployment continues to deteriorate. There is every reason to believe that this bill will only add to the continued growth of registered long-term unemployment.

The ACT Party and the National Party recommend that the Social Security Amendment Bill not proceed.

Committee process

The Social Security Amendment Bill was referred to the committee on 12 September 2000. The closing date for submissions was 13 October 2000. We received and considered 28 submissions from interested groups and individuals. We heard 17 submissions in both Wellington and Auckland. Hearing evidence took four hours and 21 minutes; consideration took five hours and 10 minutes.

We received advice from the Ministry of Social Policy, the Department of Labour and the Department of Work and Income.

Committee membership

Taito Phillip Field (Chairperson)
Mahara Okeroa (Deputy Chairperson)
Sue Bradford
Helen Duncan
Dr Liz Gordon
Dr Muriel Newman
Jill Pettis
Katherine Rich
Bob Simcock
Belinda Vernon

Key to symbols used in reprinted bill**As reported from a select committee****Struck out (majority)**

[Subject to this Act, **]**

Text struck out by a majority

New (majority)

[Subject to this Act, **]**

Text inserted by a majority

<Subject to this Act,>

Words struck out by a majority

<Subject to this Act,>

Words inserted by a majority

Social Security Amendment Bill

Government Bill

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Schedule
Enactments amended

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Social Security Amendment Act **2000**.
- (2) In this Act, the Social Security Act 1964¹ is called “the principal Act”.

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¹ 1964 No 136

2 Commencement

- (1) **Part 1** comes into force on **1 December 2000**.
- (2) **Part 2** comes into force on **1 January 2001**.
- (3) **Part 3 and the Schedule** come into force on **1 July 2001**.

- (4) The rest of this Act comes into force on the day after the date on which the Act receives the Royal assent.

3 Purpose

The purpose of this Act is to amend the Social Security Act 1964 to—

- (a) remove the requirement that work-tested beneficiaries undertake community work; and
- (b) provide that activity in the community and voluntary work will be options that work-tested beneficiaries may undertake; and
- (c) disestablish the community wage, and re-establish an unemployment benefit and a non-work-tested sickness benefit; and
- (d) change the work test so that it focuses, through job seeker agreements, on assisting work-tested beneficiaries to gain employment; and
- (e) simplify the sanctions regime for failure to comply with the work test and related obligations; and
- (f) abolish the work capacity assessment process; and
- (g) increase the income thresholds for eligibility to the disability allowance.

4 Sections 47 to 51 and heading repealed

- (1) The principal Act is amended by repealing sections 47 to 51 (which relate to work capacity assessment), and the heading immediately above section 47.
- (2) The principal Act is consequentially amended by repealing sections 12J(3), 53A(1)(bb), and 132E.
- (3) The Social Security Amendment Act 1998 is consequentially amended by repealing sections 15(1), 16(1) and (4), and 17.

Part 1

Amendments to principal Act coming into force on 1 December 2000

5 General specification of organised activities

- (1) Section 110(3)(f) of the principal Act is amended by omitting the words “(including community work)”.
- (2) Section 110(3) is amended by inserting, after paragraph (h), the following paragraph:

- “(ha) participation in a **recognised community activity**, which is participation in either of the following:
- “(i) **activity in the community**, which is an activity associated with a community project under the supervision of a sponsor who is contracted by the chief executive to provide that activity: 5
- “(ii) **voluntary work**, which is work undertaken for no remuneration (other than any reimbursement of direct expenses) for a non-profit community organisation or other person~~,~~ and that is of benefit to the community; but does not include activities in the community, or work undertaken as part of a work experience or work exploration activity:” 10
- 6 Direction to participate in organised activity** 15
- (1) Section 111(1) of the principal Act is amended by inserting, after the word “activities”, the words “(other than a recognised community activity)”.
- (2) Section 111 of the principal Act is amended by inserting, after subsection (1), the following subsection: 20
- “(1A) The chief executive may request a person to whom the work test applies to participate in a recognised community activity if the chief executive considers that the activity—
- “(a) would, or is likely to, assist the person improve his or her prospects for employment; and 25
- “(b) is suitable for the circumstances of that person.”
- 7 Penalties for failure to participate in organised activity**
- Section 116 of the principal Act is amended by inserting, after subsection (1), the following subsection:
- “(1A) Paragraphs (a) and (b) of subsection (1) do not apply if the relevant organised activity is a recognised community activity.” 30
- 8 Penalties for failure to participate in organised activity to satisfaction of chief executive**
- Section 118 of the principal Act is amended by inserting, after subsection (1), the following subsection: 35

“(1A) Subsection (1) does not apply if the relevant organised activity is a recognised community activity.”

9 Application of Health and Safety in Employment Act 1992 and Human Rights Act 1993

New (majority)

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| (1) | Section 123C(1) of the principal Act is amended by inserting, after the words “undertakes any work”, the words “(other than voluntary work)”. | 5 |
| (2) | Section 123C of the principal Act is amended by inserting, after subsection (1), the following subsection: | |
| “(1A) | Except as provided in subsection (1), nothing in this Part creates or implies an employment relationship between the person undertaking the work and the person providing it.” | 10 |

10 Amendments to Social Security (Participation Allowance) Regulations 1998

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| (1) | Regulations 3 and 4 and the second column of the Schedule of the Social Security (Participation Allowance) Regulations 1998 are amended by omitting the word “organised” wherever it appears. | 15 |
| (2) | The Schedule of the Social Security (Participation Allowance) Regulations 1998 is amended by omitting the words in the first column, and substituting the words “An activity in the community (as defined in the Act).” | 20 |
| (3) | The Schedule of the Social Security (Participation Allowance) Regulations 1998 is amended by omitting from paragraph (a) in the second column the words “was required”, and substituting the words “had undertaken”. | 25 |

Part 2

Amendments to principal Act coming into force on 1 January 2001

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| 11 | Rates of benefits, etc, may be increased by Order in Council | 30 |
| | Section 61H(1) of the principal Act is amended by inserting, after paragraph (a), the following paragraph: | |

“(aa) amend section 69C(1)(c); and”.

12 Disability allowance

Section 69C(1)(c) of the principal Act is amended by—

- (a) omitting the word “it”, and substituting the words “the income less 4.25% of that income”: 5
- (b) omitting the words “any one of the benefits referred to in paragraph (a) of this subsection”, and substituting the words “an invalid’s benefit”.

Part 3

Amendments to principal Act coming into force on 1 July 2001 10

Consequential amendments to definitions

13 Interpretation

- (1) Section 3(1) of the principal Act is amended by omitting from paragraph (a) of the definition of **benefit** the words “of this Act”, and substituting the words “or **Part 2**”. 15
- (2) Section 3(1) of the principal Act is amended by repealing paragraph (aa) of the definition of **benefit**.
- (3) Section 3(1) of the principal Act is amended by repealing paragraph (a) of the definition of **income-tested benefit**, and substituting the following paragraphs: 20
 - “(a) an unemployment benefit:
 - “(aa) a sickness benefit:”.
- (4) Section 3(1) of the principal Act is amended by omitting from paragraph (a) of the definition of **work-test married rate** the words “a community wage”, and substituting the words “an unemployment benefit or a sickness benefit”. 25
- (5) Section 3(1) of the principal Act is amended by repealing paragraph (a) of the definition of **work-tested beneficiary**, and substituting the following paragraph: 30
 - “(a) a person granted an unemployment benefit; or”.
- (6) Section 3(1) of the principal Act is amended by repealing paragraph (a) of the definition of **work-tested benefit**, and substituting the following paragraph: 35
 - “(a) an unemployment benefit; or”.

- (7) Section 3(1) of the principal Act is amended by inserting in paragraph (e) of the definition of **work-tested benefit**, after the word “includes”, the words “a sickness benefit,”.
- (8) Section 3(1) of the principal Act is amended by omitting from paragraph (c) of the definition of **work-tested spouse** the words “a community wage earner, or a person granted”, and substituting the words “a person granted an unemployment benefit, a sickness benefit, or”.
- (9) Section 3(1) of the principal Act is amended by repealing the definitions of **community wage**, **community wage earner**, **job seeker contract**, and **organised activity**.

Re-establishment of sickness benefit

14 New sections 54 to 54F inserted

The principal Act is amended by inserting, after the heading “*Sickness Benefits*” (which follows section 53A), the following sections:

“54 Sickness benefit: standard eligibility requirements

- “(1) A person is entitled to a sickness benefit if he or she satisfies the criteria in **subsections (2), (3), and (4)**, and—
- “(a) is not in full-time employment, is willing to undertake it, but because of sickness, injury, or disability is limited in his or her capacity to seek, undertake, or be available for full-time employment; or
- “(b) is in employment, but is losing earnings because, through sickness or injury, he or she is not actually working, or is working only at a reduced level.
- “(2) An applicant for a sickness benefit must be—
- “(a) aged 18 years or over; or
- “(b) aged 16 years or over, be married, and have 1 or more dependent children.
- “(3) An applicant for a sickness benefit must have resided continuously in New Zealand for at least 2 years at any time.
- “(4) An applicant for a sickness benefit must have—
- “(a) no income; or
- “(b) an income of less than the amount that would fully abate the benefit.
- “(5) Nothing in **subsection (4)** affects the entitlement of a person to receive a sickness benefit if, during a temporary period, the

person has income sufficient to fully abate the benefit but otherwise fulfils the conditions of entitlement to the benefit.

- “(6) For the purposes of **subsection (1)(b)**, any payment made by a person to any other person who acts as his or her substitute during a period of sickness or injury may be treated as a loss of earnings by the first-mentioned person. 5

“54A **Sickness benefit: grounds of hardship**

- “(1) The chief executive may grant a sickness benefit under **section 54** to a person who meets the criteria in **subsections (1) and (2)** of that section, but who does not meet the other criteria set out in that section, if— 10
- “(a) the person is suffering hardship; and
 - “(b) the person is not qualified to receive any other benefit; and
 - “(c) the person is unable to earn sufficient income to support the person and his or her spouse and any dependent children. 15
- “(2) The chief executive may grant a sickness benefit under **section 54** to a person who, if the person met the criteria in **section 54(2)**, would be eligible under **subsection (1)** of this section to be granted a sickness benefit, but only if the person— 20
- “(a) is unmarried and aged 16 or 17; and
 - “(b) is either pregnant or undergoing treatment in a rehabilitation programme recognised by the chief executive.

“54B **Sickness benefit: medical examinations** 25

- “(1) A person who applies for a sickness benefit must include in the application a certificate by—
- “(a) a medical practitioner; or
 - “(b) a registered dentist (in respect of a condition that is within the ambit of his or her profession); or 30
 - “(c) a registered midwife (in respect of a pregnancy, child-birth, or any related condition that is within the ambit of his or her profession).
- “(2) The certificate under **subsection (1)** must—
- “(a) certify that the applicant’s capacity for work is affected by sickness, injury, or disability; and 35
 - “(b) indicate the nature of the sickness, injury, or disability, the extent to which the applicant’s capacity for work is

affected by it, and the length of time that effect is likely to last; and

“(c) contain such other particulars as the chief executive may require.

“(3) The chief executive may at any time require an applicant for a sickness benefit or a sickness beneficiary to submit himself or herself for examination by a medical practitioner or psychologist. The medical practitioner or psychologist must be agreed for the purpose between the applicant or beneficiary and the chief executive, or, failing agreement, must be nominated by the chief executive. 5 10

“(4) A medical practitioner or psychologist who conducts an examination under **subsection (3)** must prepare a report that states whether the applicant’s or beneficiary’s capacity for work is affected by sickness, injury, or disability, and how long that effect is likely to continue; and must send a copy of the report to the chief executive. 15

“54C **Sickness benefit: payment**

A sickness benefit is paid in respect of a 5-day working week.

Struck out (majority)

“(2) The days of the week to be included in a sickness beneficiary’s working week are determined by the chief executive after consultation with the beneficiary, but must not include— 20
 “(a) a Saturday, except with the agreement of the beneficiary; or
 “(b) a Sunday. 25

“54D **Rates of sickness benefit**

“(1) A sickness benefit must be paid to a sickness beneficiary at the appropriate rate in the Ninth Schedule, unless **subsection (2)** applies.

“(2) The appropriate rate in the Eighth Schedule that was payable immediately before 1 July 1998 must, until the appropriate rate in the Ninth Schedule is equal to or greater than that rate, be paid to a person who— 30
 “(a) was a sickness beneficiary immediately before 1 July 1998; and 35

- “(b) continued to receive that benefit until it was changed to a community wage; and
- “(c) continued to receive the community wage on the grounds of sickness, injury, or disability until the community wage was changed to a sickness benefit; and 5
- “(d) has continued since then to receive a sickness benefit.
- “(3) If no payment is made under this section in respect of the spouse of a sickness beneficiary, the chief executive may increase the rate of sickness benefit payable to the beneficiary by an amount not exceeding the amount specified in clause 2 of the Ninth Schedule in respect of any person who for the time being has the care of the home of the beneficiary. 10
- “(4) An applicant is entitled to be paid the rate in clause 5 of the Ninth Schedule during any period when the applicant’s spouse is ineligible for a benefit because of— 15
- “(a) the application of section 60H (which relates to voluntary unemployment or loss of employment through misconduct, etc); or
- “(b) a strike, either by himself or herself, or by fellow members of the same employees organisation (as defined in section 91(2)) at the same place of employment. 20
- “54E **Obligations of spouse of sickness beneficiary**
From the time that payment of the sickness benefit commences, the spouse of a person granted a sickness benefit at a work-test married rate must— 25
- “(a) comply with any request under section 60HA; or
- “(b) if he or she is a work-tested spouse, comply with the work test.
- “54F **Transfer from community wage to sickness benefit on 1 July 2001** 30
- “(1) This section applies to a person who, immediately before **1 July 2001**, was—
- “(a) in receipt of a community wage on the ground of the person’s sickness, injury, or disability; and
- “(b) either— 35
- “(i) was fulfilling the conditions of entitlement to the community wage on that ground; or
- “(ii) was eligible to be granted a community wage on that ground under former section 90.

- “(2) On **1 July 2001**, in relation to a person to whom this section applies,—
- “(a) the community wage becomes a sickness benefit as if it were granted under **section 54**; and
- “(b) the person ceases to be subject to the work test; and 5
- “(c) any sanctions to which the person was subject under any of former sections 115, 116, or 118 cease to apply.
- “(3) For the avoidance of doubt, the operation of **subsection (2)** does not affect—
- “(a) the rate of benefit paid to the person and his or her spouse (if any); and 10
- “(b) in relation to the person’s spouse, any of the following:
- “(i) the requirements of **section 54E**:
- “(ii) any exemption from the work-test under section 105: 15
- “(iii) a sanction under any of former sections 115 to 118 applying to the spouse.
- “(4) In this section, **former section** means a section of this Act as it was before **1 July 2001**.”

15 Consequential amendments relating to sickness benefit 20

- (1) The principal Act is consequentially amended by omitting from each of the following provisions the words “community wage on the grounds of sickness, injury, or disability”, and substituting in each case the words “sickness benefit”:
- (a) section 12J(2)(e): 25
- (b) section 53A(1)(ba):
- (c) section 66(1):
- (d) the second proviso to section 72(b).
- (2) Section 53A(1)(ba) of the principal Act is amended by omitting the words “person’s community wage”, and substituting the words “person’s sickness benefit”. 30
- (3) The principal Act is consequentially amended by omitting from each of the following sections the words “a community wage” wherever they appear, and substituting in each case the words “an unemployment benefit or a sickness benefit”:
- (a) section 61(1): 35
- (b) section 61E(1):
- (c) section 69C(1)(a) and (5)(a):
- (d) section 77(2) and (3):
- (e) section 80BD(3). 40

- (4) Section 60FD of the principal Act is consequentially amended by omitting the words “Sections 92(1) to (3) and 97(3)”, and substituting the expression “**Section 54B(1) to (3)**”.
- (5) Section 60FD of the principal Act is consequentially amended by omitting the words “community wage”, and substituting the words “sickness benefit”. 5
- (6) Section 60H(1) of the principal Act is consequentially amended by repealing paragraph (c) of the definition of **employment**, and substituting the following paragraph:
“(c) in the case of any other work-tested beneficiary, full-time employment”. 10
- (7) Section 61(1A) of the principal Act is consequentially amended by omitting the words “a community wage under section 89”, and substituting the words “a sickness benefit under **section 54A** or an unemployment benefit under section 90”. 15
- (8) Section 70A(1)(b) of the principal Act is amended by repealing subparagraph (iv), and substituting the following subparagraphs:
“(iv) a sickness benefit; or 20
“(v) an unemployment benefit; or”.
- (9) Section 80B of the principal Act is consequentially amended by repealing subparagraph (iv) of paragraph (a) of the definition of **income**, and substituting the following subparagraphs:
“(iv) a community wage paid before **1 July 2001**: 25
“(v) a sickness benefit:
“(vi) an unemployment benefit:”.
- (10) The principal Act is consequentially amended by omitting from each of the following provisions the words “community wage granted on the grounds of sickness, injury, or disability”, and substituting in each case the words “sickness benefit”: 30
(a) section 80(5)(c):
(b) section 80(14)(a):
(c) section 80BA(4)(b)(i). 35

Clarifying references to chief executive

- 16 Independent youth benefits: unmarried persons**
Section 60FA(3)(b) of the principal Act is amended by inserting, after the words “chief executive”, the words “of the Department of Child, Youth and Family Services”. 5
- 17 Independent youth benefits: persons enrolled in full-time course of secondary instruction**
Section 60FC(3)(b) of the principal Act is amended by inserting, after the words “chief executive”, the words “of the Department of Child, Youth and Family Services”. 10

Re-establishment of unemployment benefit

- 18 New heading and section 88A substituted**
Sections 87 and 88 and the heading to Part 2 of the principal Act are repealed, and the following headings and section substituted: 15

“Part 2**“Unemployment benefit and work testing****“88A Interpretation**

In this Part, unless the context otherwise requires,—

“**activity in the community** means an activity associated with a community project under the supervision of a sponsor who is contracted by the chief executive to provide that activity 20

“**job-search activity** means an activity undertaken by a work-tested beneficiary for the purpose of seeking or obtaining employment 25

“**job seeker agreement** means an agreement of the kind described in **section 105A**

“**job seeker development activity** means an activity defined by the chief executive under **section 110** as being a job seeker development activity 30

“**recognised community activity** means an activity in the community or voluntary work

“**voluntary work** means work undertaken by a person for no remuneration (other than any reimbursement of direct expenses) for a non-profit community organisation or other person<, and that is of benefit to the community>; but does not 35

include activities in the community, or work undertaken as part of a work experience or work exploration activity.

“Unemployment benefit”.

19 Community wage: standard eligibility requirements

- (1) Section 89(1) of the principal Act is amended by repealing paragraphs (b) and (c). 5
- (2) Section 89(4)(b) of the principal Act is amended by omitting the words “community wage under the appropriate income test referred to in the Ninth Schedule”, and inserting the word “benefit”. 10
- (3) Section 89(5) of the principal Act is amended by—
 - (a) omitting the words “the community wage”, and substituting the words “the benefit”;
 - (b) omitting the words “the wage”, and substituting the words “the benefit”. 15
- (4) Section 89(6) of the principal Act is repealed.
- (5) Section 89 of the principal Act is amended by omitting the words “a community wage” wherever they appear, and substituting in each case the words “an unemployment benefit”.
- (6) The heading to section 89 of the principal Act is amended by omitting the words “**Community wage**”, and substituting the words “**Unemployment benefit**”. 20

20 Community wage: grounds of hardship

- (1) Section 90(1) of the principal Act is amended by inserting, after the expression “89(1)”, the expression “and (2)”. 25
- (2) Section 90 of the principal Act is amended by omitting the words “a community wage” wherever they appear, and substituting in each case the words “an unemployment benefit”.
- (3) Section 90 of the principal Act is amended by adding the following subsection: 30
 - “(3) Despite section 91, the chief executive may, during the period between the end of 1 academic year and the start of the next, grant an unemployment benefit under section 89 to a full-time student who is aged 16 or 17 if the chief executive is satisfied that— 35
 - “(a) section 60FA(1)(b) applies to the student; or

- “(b) the student is married.”
- (4) The heading to section 90 of the principal Act is amended by omitting the words “**Community wage**”, and substituting the words “**Unemployment benefit**”.
- 21 Community wage: ineligibility** 5
- (1) Section 91(1)(a) of the principal Act is amended by inserting, after the expression “90(2)”, the expression “or **(3)**”.
- (2) Section 91(1) of the principal Act is amended by omitting the words “a community wage”, and substituting the words “an unemployment benefit”. 10
- (3) The heading to section 91 of the principal Act is amended by omitting the words “**Community wage**”, and substituting the words “**Unemployment benefit**”.
- 22 Sections 92 to 96 repealed**
- Sections 92 to 96 of the principal Act are repealed. 15
- 23 New section 97 substituted**
- The principal Act is amended by repealing section 97, and substituting the following section:
- “**97 Unemployment benefit: obligations on beneficiaries**
- “(1) A person granted an unemployment benefit is subject to the work test from the time that payment of the unemployment benefit commences. 20
- “(2) From the time that payment of an unemployment benefit commences, the spouse of a person granted an unemployment benefit at a work-test married rate must— 25
- “(a) comply with a request under section 60HA; or
- “(b) if he or she is a work-tested spouse, comply with the work test.”
- 24 New section 98 substituted**
- The principal Act is amended by repealing section 98, and substituting the following section: 30
- “**98 Unemployment benefit: payment**
- “(1) Payment of an unemployment benefit commences in accordance with section 80.

- “(2) An unemployment benefit must be paid in weekly instalments, in accordance with section 82.
- “(3) An unemployment benefit is paid in respect of a 5-day working week.
- “(4) The days of the week to be included in the working week of a person granted an unemployment benefit are determined by the chief executive after consultation with the beneficiary, but must not include—
- “(a) a Saturday, except with the agreement of the beneficiary; or
- “(b) a Sunday.
- “(5) Payment of an unemployment benefit may be suspended or cancelled in accordance with sections 80 to 82. This provision does not limit any other provision in this Act.”
- 25 Community wage: rates**
- (1) Section 99(1) of the principal Act is amended by—
- (a) omitting the words “A community wage must be paid to a community wage earner”, and substituting the words “An unemployment benefit must be paid to a person granted the benefit”;
- (b) omitting the words “, unless subsection (2) applies”.
- (2) Section 99(2) of the principal Act is repealed.
- (3) Section 99(3) of the principal Act is consequentially amended by—
- (a) omitting the words “community wage earner”, and substituting the words “person granted an unemployment benefit”;
- (b) omitting the words “community wage”, and substituting the words “unemployment benefit”;
- (c) omitting the words “an earner” and “the earner”, and substituting the words “a beneficiary” and “the beneficiary”, respectively.
- (4) Section 99(4) of the principal Act is consequentially amended by—
- (a) omitting the words “a community wage”, and substituting the words “an unemployment benefit”;
- (b) omitting the words “community wage”, and substituting the words “unemployment benefit”.

- (5) The heading to section 99 of the principal Act is amended by omitting the words “**Community wage**”, and substituting the words “**Unemployment benefit**”.
- 26 New section 99A inserted**
 The principal Act is amended by inserting, after section 99, 5
 the following section:
- “99A **Transfer from community wage to unemployment benefit on 1 July 2001**
- “(1) This section applies to a person who, immediately before **1 July 2001**, was— 10
- “(a) in receipt of a community wage on a ground other than the person’s sickness, injury, or disability; and
- “(b) either—
- “(i) was fulfilling the conditions of entitlement to the community wage; or 15
- “(ii) was eligible to be granted a community wage under former section 90.
- “(2) On **1 July 2001**, in relation to a person to whom this section applies, the community wage becomes an unemployment benefit as if it were granted under section 89. 20
- “(3) For the avoidance of doubt, the operation of **subsection (2)** does not affect, in relation to a person to whom this section applies and his or her spouse (if any),—
- “(a) the rate of benefit paid; and
- “(b) the obligations under **section 97**; and 25
- “(c) any requirement to undertake an organised activity under former section 111; and
- “(d) any exemption from the work test under section 105; and
- “(e) a sanction applying under any of former sections 115 to 30
 118.
- “(4) In this section, **former section** means a section of this Act as it was before **1 July 2001**.”
- 27 Section 100 repealed**
 Section 100 of the principal Act is repealed. 35

*Amendments relating to work test and job seeker agreements***28 Section 101 repealed**

Section 101 of the principal Act is repealed.

29 New section 102 substituted

The principal Act is amended by repealing section 102, and substituting the following section: 5

“102 Application and obligations of work test

“(1) The work test applies to a person while he or she is a work-tested beneficiary, and the person is subject to the obligations of the work test set out in **subsection (2)** from the date on which the work-tested benefit is first paid. 10

“(2) The work test obligations are—

“(a) to be available for, and take reasonable steps to obtain, suitable employment; and

“(b) to accept any offer of suitable employment, whether full-time employment, part-time work, temporary employment, or employment that is seasonal or subsidised; and 15

“(c) to attend and participate in an interview for any opportunity of suitable employment to which the beneficiary is referred by the chief executive; and 20

“(d) when required by the chief executive, to attend and participate in any interview with an officer of the department or other person on behalf of the chief executive; and 25

“(e) when required by the chief executive, to co-operate in the development of a job seeker agreement to the satisfaction of the chief executive, and then to sign it; and

“(f) when required to by the chief executive, to select at least 1 job seeker development activity from a list of activities that the chief executive considers are suitable for the beneficiary, and to include it or them in the beneficiary’s job seeker agreement; and 30

“(g) once the person has signed a job seeker agreement,—
“(i) to undertake the job-search activities set out in the agreement; and 35

“(ii) to undertake and complete any job seeker development activity or recognised community activity set out in the agreement (subject to the

chief executive taking reasonable steps to arrange for the beneficiary to undertake the activity); and
 “(iii) to undertake and complete any other activities set out in the agreement.

Struck out (majority)

“(3) If a recognised community activity is included in a beneficiary’s job seeker agreement, no sanction under **section 117** may be imposed if the beneficiary fails to undertake or complete that activity. 5

New (majority)

“(3) The failure by a beneficiary to undertake or complete a recognised community activity, as set out in his or her job seeker agreement, is not a failure to comply with a work test obligation for the purpose of **section 115(1)(a)**. 10

“(4) The employment referred to in **subsection (2)(a)** is,—
 “(a) for a part-time work-tested beneficiary, part-time work;
 “(b) for any other work-tested beneficiary, full-time employment. 15

“(5) The work test obligations apply,—
 “(a) in the case of a person granted the unemployment benefit, on the same days as are included in the person’s working week under **section 98**; and 20
 “(b) in the case of any other work-tested beneficiary, on any 5 days of the week determined by the chief executive after consultation with the beneficiary, which must not include—
 “(i) a Saturday, except by agreement with the beneficiary; or 25
 “(ii) a Sunday.”

30 New section 104A inserted

The principal Act is amended by inserting, after **section 104**, the following section: 30

“104A Transitional provision dealing with deferrals

- “(1) This section applies to a work-tested beneficiary who, immediately before **1 July 2001**, was subject to a deferral of work test obligations granted under section 107 of the principal Act before its repeal on that date. 5
- “(2) On and after **1 July 2001**, the deferral becomes an exemption from the work test as if the exemption were granted under section 105, and,—
- “(a) if the deferral was granted for a time, that time applies to the exemption; and 10
- “(b) if the deferral was granted on conditions, those conditions apply to the exemption; and
- “(c) if, in granting the deferral, the chief executive required the person to participate in 1 or more organised activities, that requirement continues to apply as if the organised activities were job seeker development activities included in a job seeker agreement signed by the beneficiary.” 15

31 Exemption from obligations

Section 105 of the principal Act is amended by repealing subsection (5), and substituting the following subsections: 20

- “(5) A beneficiary who has been granted an exemption from the work test may be required to attend an interview with an officer of the department or other person on behalf of the chief executive. Failure to attend or participate in the interview may result in sanctions under **section 117** being imposed. 25
- “(5A) A person granted an exemption must notify the chief executive as soon as practicable of any change in the person’s circumstances that may affect his or her entitlement to the exemption.” 30

32 New heading and sections 105A to 105D inserted

The principal Act is amended by inserting, after section 105, the following heading and sections:

*“Job seeker agreements***“105A Description of job seeker agreement and responsibilities arising from it**

- “(1) A job seeker agreement is a statutory agreement in which—
- “(a) the chief executive sets out what the department will do to assist a work-tested beneficiary to obtain employment, improve his or her employment prospects, or both; and 5
 - “(b) the beneficiary acknowledges the responsibilities arising out of receipt of the benefit or (in the case of a work-tested spouse) payment of part of the benefit in respect of the spouse. 10
- “(2) A job seeker agreement—
- “(a) must include an acknowledgment by the beneficiary that he or she is subject to the work test obligations (as set out in **section 102**); and 15
 - “(b) must specify the job-search activities the beneficiary will undertake; and
 - “(c) may include any job seeker development activities, recognised community activities, or other activities that the beneficiary agrees to undertake; and 20
 - “(d) must explain the sanctions that may be imposed if the beneficiary fails to comply with certain parts of the work test (as set out in **section 117**); and
 - “(e) must specify the assistance the department will give to assist the beneficiary obtain employment or improve his or her employment prospects, and any conditions on which the assistance will be provided or to which it is subject. 25
- “(3) A signed job seeker agreement does not create or imply an employment relationship between the chief executive and the beneficiary, nor does it create rights or obligations that are enforceable in any court or tribunal. 30
- “(4) Nothing in **subsection (3)** affects section 10A, or sections 12J to 12R. 35

“105B Entering into and reviewing job seeker agreement

Struck out (majority)

- “(1) A work-tested beneficiary must, when required to do so by the chief executive,—
- “(a) co-operate in developing a job seeker agreement for the beneficiary; and
 - “(b) once the agreement is satisfactory to the chief executive, sign it.
- “(2) Failure to comply with **subsection (1)** when required may result in sanctions under **section 117** being imposed.

5

New (majority)

- “(1) A job seeker agreement should be developed through a process of negotiation between the beneficiary and the chief executive in which the parties aim to promptly conclude and sign an agreement acceptable to both of them. 10
- “(2) If, despite reasonable efforts by the chief executive, the beneficiary does not co-operate in the prompt development of a job seeker agreement, or does not sign it within a reasonable period once it is satisfactory to the chief executive, the chief executive may conclude that the beneficiary has failed his or her work test obligations under **section 102(2)(e)**. 15
- “(2A) At any time after a job seeker agreement is signed, a beneficiary may ask for a review of the agreement; but, until a review is complete, the beneficiary must comply with the job seeker agreement in its current form. 20
- “(2B) When a beneficiary asks for a review of his or her job seeker agreement, the chief executive must review it as soon as practicable and may, by agreement with the beneficiary, amend the job seeker agreement. 25
- “(3) The chief executive may at any time review a beneficiary’s job seeker agreement, and may then,—
- “(a) by agreement with the beneficiary, amend the agreement; or

30

- “(b) require the beneficiary to co-operate in the development of a replacement job seeker agreement to the satisfaction of the chief executive, and then to sign the new agreement.
- “(4) An agreement entered into under **subsection (3)(b)** replaces any earlier agreement and is for all purposes to be treated as an agreement entered into under **subsection (1)**. 5
- “105C **Department to explain to beneficiaries their rights and obligations** 10
 The chief executive must take reasonable and appropriate steps to make every work-tested beneficiary aware, before he or she signs a job seeker agreement, of—
- “(a) his or her obligations arising from payment of a work-tested benefit; and
- “(b) the import and consequences of signing a job seeker agreement; and 15
- “(c) the consequences of failure to comply with the work test and, in particular, the sanctions that may be imposed under **section 117**; and
- New (majority)**
- “(ca) the beneficiary’s right under **section 105B(2A)** to ask for a review of his or her job seeker agreement; and 20
- “(d) the beneficiary’s rights under sections 10A and 12J to review and appeal decisions relating to the job seeker agreement.
- “105D **Job seeker contracts to have effect as job seeker agreements** 25
 Every job seeker contract that was in effect under this Act on **30 June 2001** continues in effect, in relation to a work-tested beneficiary, after that date as if it were a job seeker agreement entered into under **section 105B**, and remains in effect until— 30
- “(a) the person to whom it applies ceases to be a work-tested beneficiary; or
- “(b) it is replaced by a new job seeker agreement entered into under **section 105B**.”

- 33 Sections 106 to 109 and heading repealed**
Sections 106 to 109 and the heading immediately above section 106 of the principal Act are repealed.
- 34 New heading and sections 110 to 112 substituted**
The principal Act is amended by repealing sections 110 to 112, and the heading immediately above section 110, and substituting the following heading and sections:
- “Job seeker development activities*
- “110 Defining job seeker development activities**
- “(1) A job seeker development activity is an activity defined from time to time by the chief executive under this section as a job seeker development activity. 10
- “(2) The activities that the chief executive may define as job seeker development activities include, but are not limited to,—
- “(a) work assessment: 15
- “(b) participation in a programme or seminar to increase particular skills or enhance motivation:
- “(c) participation in a work experience or work exploration activity:
- “(d) participation in employment-related training. 20
- “(3) The chief executive may define an activity or category of activity as a job seeker development activity only if the chief executive is satisfied that the activity—
- “(a) is likely to increase the prospect for self-reliance of beneficiaries who participate in it by increasing their awareness of, and participation in, opportunities for employment, and for self-betterment, education, or training; or 25
- “(b) is likely to strengthen incentives for persons who participate in it to remain in employment or move into unsubsidised employment. 30
- “(4) The chief executive must specify any conditions that apply to an activity that he or she defines as a job seeker development activity.
- “(5) The chief executive must define a range of job seeker development activities, and may define different job seeker development activities for different geographical locations. 35
- “(6) The chief executive’s discretion to define job seeker development activities is subject to any direction by the Minister.

“111 Assistance provided by department

- “(1) If, following a requirement under **section 102(2)(f)**, a beneficiary has included 1 or more job seeker development activities from the list in his or her job seeker agreement, then the chief executive must take reasonable steps to arrange for the beneficiary to undertake those activities. 5
- “(2) If a beneficiary’s job seeker agreement includes any other job seeker development activity, then the chief executive may take reasonable steps to arrange for the beneficiary to undertake that activity, but only if the chief executive considers the activity— 10
- “(a) is suitable for the circumstances of the beneficiary; and
- “(b) is likely to improve his or her employment prospects.
- “(3) If a beneficiary’s job seeker agreement includes a recognised community activity, the chief executive may take reasonable steps to arrange for the beneficiary to undertake the recognised community activity, but only if— 15
- “(a) the chief executive considers the recognised community activity is suitable for the beneficiary to undertake; 20
- and
- “(b) there are no job seeker development activities or other activities specified in the agreement that would be more suitable for the beneficiary to undertake.
- “(4) If a beneficiary’s job seeker agreement specifies other assistance that the Department will give the beneficiary, then the chief executive must provide that specified assistance, subject to any conditions set out in the job seeker agreement. 25

“112 Organised activities to have effect as job seeker development activities

- “(1) A work-tested beneficiary who, immediately before **1 July 2001**, was required to participate in an organised activity (other than a recognised community activity) is obliged to continue to participate in that activity as if the activity were a job seeker development activity included in the beneficiary’s job seeker agreement. 30
- “(2) The obligation to continue participating in the activity continues until the beneficiary enters into a job seeker agreement.” 35

35 New sections 115 to 117 substituted

The principal Act is amended by repealing sections 115 to 118, and substituting the following sections:

“115 Failure to comply with work test

- “(1) The sanctions in **section 117** may be imposed on a beneficiary if the chief executive considers that the beneficiary has, without a good and sufficient reason,—
- “(a) in the case of a work-tested beneficiary, failed to comply with any of the work test obligations as set out in **section 102**; or
 - “(b) in the case of a beneficiary granted an exemption from the work test, failed to attend an interview as required under **section 105(5)**.

New (majority)

“(1A) Before determining that a beneficiary has failed to comply with any work test obligation, the chief executive must review the beneficiary’s job seeker agreement (if the beneficiary has one).

- “(2) A beneficiary has a good and sufficient reason for not undertaking or completing an activity in the beneficiary’s job seeker agreement if—
- “(a) doing so was dependent upon the provision by the department of any assistance specified in the person’s job seeker agreement; and
 - “(b) that assistance was either not supplied, or not supplied to the extent, or in the manner, specified in the agreement.
- “(3) A beneficiary who has 1 or more dependent children has a good and sufficient reason for not participating in or completing any job seeker development activity in his or her job seeker agreement if the activity involves participation during hours when it would be unreasonable to expect any dependent child of the person to be without that person’s supervision.
- “(4) A full-time work-tested beneficiary who leaves <, without good and sufficient reason,> or is dismissed for misconduct from part-time work or employment averaging less than 15 hours a week is treated as someone to whom **subsection (1)** applies.

- “(5) A part-time work-tested beneficiary who leaves <, without good and sufficient reason,> or is dismissed for misconduct from employment averaging less than 15 hours a week is treated as someone to whom **subsection (1)** applies.
- “(6) Section 60H(6) and (7) applies to **subsections (4) and (5)**, with all necessary modifications. 5
- “116 **Failure to participate in activity under section 60HA**
The sanctions in **section 117** may be imposed on a person who is required to comply with a request under section 60HA if the chief executive considers that the person has, without a good and sufficient reason, failed to comply with a request under that section. 10
- “117 **Sanctions that may be imposed for failures**
- “(1) The sanctions that the chief executive must apply in respect of failures under **section 115 or section 116** are,— 15
- “(a) for a first failure, suspension of the person’s benefit until the person recomplies:
- “(b) for a second failure (being a failure that occurs after the person has recomplied following a first failure), suspension of the person’s benefit until the person recomplies: 20
- “(c) for a third failure (being a failure that occurs after the person has recomplied following a second failure), cancellation of the benefit.
- “(2) A person whose benefit is cancelled under **subsection (1)(c)**— 25
- “(a) is not entitled to receive any benefit for 13 weeks from the date of cancellation; and
- “(b) if the person wishes to again become entitled to a benefit, must apply for the benefit and establish his or her eligibility for it.
- “(3) **Subsection (2)** is subject to sections 120 and 121, and to sections 123 to 123B.” 30
- 36 Calculation of failure rate**
- (1) Section 119(1) of the principal Act is consequentially amended by omitting the expression “section 115 or section 116 or section 118”, and substituting the expression “**section 117**”. 35

- (2) Section 119(1) of the principal Act is consequentially amended by omitting paragraph (a), and substituting the following paragraph:
- “(a) may count applicable failures only while the same benefit has been continuously paid in respect of the beneficiary; but”.
- (3) Section 119(2) of the principal Act is consequentially amended by omitting the words “any of sections 115, 116, and 118”, and substituting the expression “**section 115 or section 116**”.
- 37 New section 122 substituted**
The principal Act is amended by repealing section 122, and substituting the following section:
- “122 **Meaning of recompliance**
In relation to a failure under **section 115 or section 116**, a person recomplies (for the purpose of **section 117**) if the person remedies the relevant failure or, if it is not possible to remedy the failure, the person undertakes to the satisfaction of the chief executive,—
- “(a) in the case of a work-tested beneficiary, some other activity specified in the person’s job seeker agreement or, if there is no other activity specified, a job seeker development activity approved by the chief executive; or
- “(b) in any other case, some other activity of the kind specified in section 60HA and approved by the chief executive.”
- 38 Effect of ceasing to be subject to obligation to comply with section 60HA or work test**
- (1) Section 123(1) of the principal Act is consequentially amended by omitting from paragraph (a) the expression “section 115 or section 116”, and substituting the expression “**section 117**”.
- (2) Section 123(1)(b) of the principal Act is amended by inserting, after subparagraph (i), the following subparagraph:
- “(ia) ceases to be a beneficiary who is required to comply with a request under section 60HA (other

than because of the imposition of that suspension or 13-week period); or”.

New (majority)

- (3) Section 123(1)(b)(ii) of the principal Act is amended by adding the words “or an exemption from complying with section 60HA”.

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39 Effect of employment on non-entitlement period

- (1) Section 123A(1) of the principal Act is amended by omitting the expression “section 115 or section 116”, and substituting the expression “**section 117**”.
- (2) Section 123A(3) is repealed.

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40 New sections 123B and 123C substituted

The principal Act is amended by repealing sections 123B and 123C, and substituting the following sections:

“123B Effect of participation in certain activities on non-entitlement period

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- “(1) This section applies to a person who—
- “(a) is subject to a 13-week period of non-entitlement under section 60H or **section 117**; and
- “(b) is participating in 1 or more **approved activities**, which are any of the following approved by the chief executive for the purpose:
- “(i) job seeker development activities;
- “(ii) recognised community activities;
- “(iii) part-time work (in the case of a part-time work-tested beneficiary).
- “(2) If a person to whom this section applies participates satisfactorily in the approved activity or activities for a continuous period of 6 weeks,—
- “(a) the remainder of the period of non-entitlement lapses; and
- “(b) if the person wishes to again become entitled to a benefit, the person must apply for the benefit and establish his or her eligibility for it.
- “(3) Despite **subsection (2)(b)**, if the person applies for a benefit, the chief executive must grant the person a benefit during the

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person's satisfactory participation in the approved activity or activities.

- “(4) Payment of a benefit granted under **subsection (3)** is subject to the condition that the person is liable to repay the whole of any amount paid during the non-entitlement period if he or she fails to complete a continuous period of 6 weeks of satisfactory participation in an approved activity or activities, or fails to continue satisfactory participation until the end of the non-entitlement period (whichever is earlier). 5

New (majority)

- “(4A) No obligation to repay under **subsection (4)** arises if the reason for the person's failure is that he or she— 10
- “(a) ceases to be a work-tested beneficiary or a beneficiary required to comply with a request under section 60HA; or
- “(b) obtains, under section 105, an exemption from the work test or an exemption from complying with section 60HA. 15

- “(5) If the person is still entitled to the benefit at the end of the period of satisfactory participation or non-entitlement (as the case may be), payment of the benefit is no longer subject to the condition in **subsection (4)**. 20

- “(6) Any amount the person is liable to repay under this section may be recovered by the chief executive under section 86(1A).

“123C **Application of Health and Safety in Employment Act 1992 and Human Rights Act 1993** 25

- “(1) In this section, **person A** is a person who, in accordance with his or her job seeker agreement, or under **section 122** or **section 123B**, is doing work as part of a job seeker development activity or *<a recognised community activity>* <an activity in the community>. 30

- “(2) The Health and Safety in Employment Act 1992 and the Human Rights Act 1993 apply to person A and the person providing the work that person A is doing, as if person A were the employee of the person providing the work. 35

- “(3) Except as provided in **subsection (2)**, nothing in this Part creates or implies an employment relationship between person A and the person providing the work.”

41 Regulations

Section 123D of the principal Act is amended by repealing paragraphs (b) and (c). 5

42 Consequential amendments relating to changes to Part 2 of principal Act

- (1) Section 12J(4) of the principal Act is consequentially amended by omitting the words “which relates to the general specification of organised activities”, and substituting the words “defining job seeker development activities”. 10
- (2) Section 80 of the principal Act is amended by—
- (a) omitting from subsection (5)(a) the words “a community wage”, and substituting the words “an unemployment benefit”: 15
 - (b) repealing subsections (6) and (7):
 - (c) inserting in subsection (8)(b), after the words “was cancelled”, the words “or suspended”.
- (3) Section 80C(1) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph: 20
- “(c) the person is subject to a sanction of suspension of 100% of a benefit under **section 117**.”
- (4) Section 113 of the principal Act is consequentially amended by— 25
- (a) omitting from subsection (1) the expression “sections 115 to 118”, and substituting the expression “**section 117**”:
 - (b) omitting the words “or reduce”, “or reducing”, and “or reduction” wherever they appear. 30
- (5) Section 120(1) of the principal Act is amended by omitting the expression “section 115 or section 116”, and substituting the expression “**section 117**”.
- (6) Section 120(2) of the principal Act is repealed.
- (7) Section 121 of the principal Act is amended by omitting the expression “section 115 or section 116”, and substituting the expression “**section 117**”. 35

- (8) The Social Security (Penalties for Unsatisfactory Participation) Regulations 1998 (SR 1998/269) are revoked.

43 Ninth Schedule amended

- (1) The principal Act is amended by repealing the heading to the Ninth Schedule, and substituting the following heading: “**Rates of unemployment benefits and sickness benefits**”. 5
- (2) Clause 1(aa) of the Ninth Schedule of the principal Act is amended by omitting the words “aged 18 or 19”, and substituting the words “under the age of 20”. 10
- (3) Clause 1(a) of the Ninth Schedule of the principal Act is amended by omitting the words “of or over the age of 18 years and”.
- (4) Clause 5 of the Ninth Schedule of the principal Act is amended by omitting the words “community wage”, and substituting the word “benefit”. 15

44 Consequential amendments to other enactments

The enactments specified in the **Schedule** are amended in the manner set out in that schedule.

Schedule Enactments amended

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- Child Support Act 1991** (1991 No 142)
- Omit paragraph (c)(iii) of the definition of **social security benefit** in section 2(1) and substitute: 5
- “(iii) an unemployment benefit:
“(iv) a sickness benefit.”
- Omit from section 30(3) the words “community wage”, and substitute the words “unemployment benefit”. 10
- Repeal the definition of **gross married rate of community wage** in section 30(5). 10
- Insert in section 30(5), in its appropriate alphabetical order:
- “**gross married rate of unemployment benefit**, in relation to any child support year, means the rate specified in clause (1)(h) of the Ninth Schedule of the Social Security Act 1964 15
and before any diminution based on income, in force on 1 January in the immediately preceding child support year, increased by the total amount of income tax deductions that would be required to make the rate a gross, rather than a net rate (as determined in accordance with the section NC 6(1D) 20
of the Income Tax Act 1994)”.
- Education Act 1989** (1989 No 80)
- Omit from the definition of **benefit** in section 226A the words “a community wage under Part 2 of” and substitute the words “an unemployment benefit or a sickness benefit under”. 25
- Omit from the definition of **benefit** in section 238B the words “a community wage under Part 2 of” and substitute the words “an unemployment benefit or a sickness benefit under”.
- Income Tax Act 1994** (1994 No 164)
- Omit from paragraph (b) of the definition of **full-time earner** in section KC 3(3) the words “or community wage”. 30
- Omit from the definition of **income-tested benefit** in section OB 1 the words “community wage” and substitute the words “unemployment benefit, sickness benefit”.
- Social Security (Reciprocal Obligations: Exemptions and Deferrals) Regulations 1998** (SR 1998/270) 35
- Omit from regulation 1 the words “Reciprocal Obligations: Exemptions and Deferrals” and substitute the words “Exemptions under Section 105”.

Social Security (Reciprocal Obligations: Exemptions and Deferrals) Regulations 1998 (SR 1998/270)—continued

Insert in regulation 4(2), after paragraph (c):

“(ca) the person’s capacity for work is limited by sickness, injury, or disability; or

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“(cb) the person is engaged in full-time study of a kind approved by the chief executive; or”.

Omit from regulation 6(2)(a) the words “organised activity” and substitute the words “job seeker development activity”.

Revoke regulation 7.

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Legislative history

8 August 2000

Introduction (Bill 56–1)

12 September 2000

First reading and referral to the Social Services Committee.



