

Social Security (Long-term Residential Care) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill makes a number of significant changes to the income and asset testing regime that applies to older people in long-term residential care and who have been assessed as requiring that care indefinitely. The current regime is contained in sections 69E and 69F and Schedule 27 of the Social Security Act 1964. This Bill replaces those provisions with a new *Part 4* and *Schedule 27* of that Act.

The key changes are—

- to progressively increase the value of assets that people may retain before being required to use those assets to pay for specified care services required for their long-term residential care (increasing the **applicable asset thresholds**);
- to remove asset testing for those aged 50 to 64 who are presently required to use their assets to pay for their care;
- to exclude from the income test the earnings of the spouse of a person in care, and the first \$780 per person per year of income from assets;
- to specify that \$636 per week is the **maximum contribution**. This is the maximum that people are required to contribute towards the cost of specified care services provided to them. As from 1 July 2005 this amount will be annually CPI adjusted;
- to set out the regime in a clearer and more comprehensive manner.

The first 3 changes come into force on 1 July 2005, but the others take effect from the commencement date, which is 28 days after Royal assent.

Progressive increase of applicable asset thresholds

The current applicable asset thresholds are \$15,000 for single people and \$30,000 for married couples. Assets above these values must be used to pay for residential care. From 1 July 2005, the applicable asset threshold for single people and for married couples where both partners are in care is increased to \$150,000. For married people where the spouse is not in care, the applicable asset threshold will increase to \$55,000. However, the value of the spouse's house and car is excluded from the calculation of assets. From 1 July 2006, both the new figures increase by \$10,000 annually till 2025.

These increased thresholds mean that people in care, and their spouses, will retain significantly more of their assets than under the current regime. Many more people will contribute only from income, and not from assets, towards the cost of their care. As a result of the change, a significant number of residents will be immediately eligible for public funding.

The new thresholds are prospective only. No refunds are payable for payments made, or liabilities incurred, before the new thresholds apply.

Removal of asset testing for 50 to 64 year olds

At present, people who are aged 50 to 64, are unmarried, have no dependant children, and are "close in interest" to people aged 65 and more are subject to the income and asset testing regime set out in the Social Security Act 1964. From the commencement date, the close in interest requirement in section 69F(1)(b)(i) of that Act will cease. As from 1 July 2005, the regime is modified for this group so that they will not be required to be asset tested or to contribute assets to the cost of specified care services provided to them as part of their long-term residential care.

Changes to income test

At present, the income from earnings of the spouse of a person in care is treated as part of the assessed income of the person in care. This is seen as causing hardship and providing a disincentive for spouses to engage in paid employment. As from 1 July 2005, income that is earned by a spouse's personal effort will not be treated as part of the assessed income of the person in care. In addition, from 1 July

2005, both the person and the person's spouse can earn up to \$780 per year from assets without that income being included in the income test.

Annual Consumer Price Index adjustment of maximum contribution

At present there is a cap, set by regulations, on the weekly amount that people who are assessed as requiring long-term residential care indefinitely are required to pay towards their care. The cap is \$636 per week, and has been since 1994. As from 1 July 2005, that amount will increase by an annual Consumer Price Index (CPI) adjustment. This will mirror the annual CPI adjustment that is made to New Zealand superannuation.

Clearer and more comprehensive provision

A number of important details associated with income and asset testing are currently either not clearly provided for at all, or are provided for in regulations and administrative practice. The Bill sets out some of these matters in more detail—

- *eligibility for Crown funding*: the Bill provides that only people who are eligible for publicly funded health or disability services are eligible for a needs assessment. A needs assessment that a person requires long-term residential care services is a prerequisite for funding under the *new Part 4*:
- *clothing allowance*: as a matter of practice, an annual clothing allowance is currently paid to certain people in long-term care. The Bill provides for entitlement to this allowance to be set out in regulations:
- *residential care loan scheme*: the Ministry of Health, through the Ministry of Social Development, has been operating a loan scheme for a number of years. The scheme applies to those whose assets are above the applicable asset threshold but incapable of realisation without extreme difficulty. The money loaned is used to pay for the person's care and is repaid when the assets (usually the family home) are eventually sold. The Bill recognises the existence of the scheme and sets out when it may be applied for:
- *exempt persons and elderly victims of crime*: certain classes of people have been exempt from the operation of the asset and income testing regime, generally by way of administrative direction. The Bill provides for these classes of people to be defined or identified in regulations.

The current regime does not recognise same sex couples. It is proposed that in future it will, but this is to be achieved by way of comprehensive legislative changes that will recognise same sex couples, rather than in a piecemeal fashion. For that reason, the Bill does not provide for the immediate recognition of same sex couples.

Clause by clause analysis

Clause 1 gives the title of the Bill. The Bill amends the Social Security Act 1964, which is called “the principal Act” in the Bill and in this clause by clause analysis.

Part 1

Preliminary

Clause 2 provides that the Act comes into force 28 days after the date on which it receives the Royal assent. However, *new section 144*, which removes asset testing for people aged 50 to 64, takes effect on 1 July 2005, as does *new clause 2 of Part 1 of new Schedule 27* (which increases the amount of assets a person may retain before being required to contribute them towards the cost of long-term residential care services), and certain aspects of the income test as provided in *clause 1 of Part 3 of new Schedule 27*.

Clause 3 describes the purpose of the Act.

Part 2

Amendments to principal Act

Payment for long-term residential care services

Clause 4 inserts a *new Part 4* in the principal Act to replace section 69F of that Act. The new Part is about who pays for what when an older person who is assessed as requiring long-term residential care services indefinitely is residing in a rest home or hospital.

Part 4

Payment for long-term residential care services

New section 136 is the interpretation section for this Part. Key definitions include—

- **resident assessed as requiring care**, which means an eligible person (ie, a person who is eligible for publicly funded health and disability services and who is either aged 65 or over or is

aged between 50 and 64, is unmarried, and has no dependent children) who is needs assessed as requiring long-term residential care services indefinitely:

- **specified care services**, which means the services provided to a resident assessed as requiring care that are required for the person’s long-term residential care and that a funder determines are necessary to meet the person’s assessed care needs;
- **applicable asset threshold**, which means the value of assets a resident assessed as requiring care may retain before being required to contribute assets towards the cost of specified care services provided to the resident. The applicable asset thresholds are set out in *Part 1 of new Schedule 27*.

The definition of **long-term residential care services**, which replaces the expression “residential care disability services” as used in section 69F and elsewhere in the principal Act, is defined in section 3(1) of the principal Act. The new definition, which is the same in substance as the one it replaces, is inserted by way of a consequential amendment to section 3 of the principal Act, as set out in *Schedule 2*.

Needs assessment

New section 137 provides for the needs assessment of eligible people. A needs assessment determines whether an eligible person requires long-term residential care services indefinitely.

New section 138 sets out the effect on a person of being assessed as requiring long-term residential care services indefinitely. The effects are that—

- *new sections 139 to 142* apply. Those sections are about the respective obligations of the person to pay for his or her long-term residential care and of funders to pay some or all of the cost of specified care services provided to the person:
- the person is entitled to be means assessed;
- the person must be notified about means assessment and other relevant matters.

Liability to pay

New section 139 sets out the basic rule about payment for long-term residential care. People who are residents assessed as requiring care

must pay for their own long-term residential care services. However, the amount the person is liable to pay is reduced by whatever amount a funder is liable to pay under any of *new sections 140 to 142* towards the cost of specified care services provided to the person. If the cost, as set by the provider, of the person's long-term residential care services is greater than the cost of the specified care services that the funder determines are necessary for the person's assessed care needs, then the person receiving the services must pay the difference between the 2 costs.

New section 140 provides that a funder is liable to pay the difference between the maximum contribution (set by *new section 153* at \$636 per week, to be CPI adjusted annually from 1 July 2005) and the cost of specified care services provided to the person. The effect of this is that, as at present, no-one who has been needs assessed as requiring long-term residential care is liable to pay more than \$636 per week (or the relevant figure following annual CPI adjustments) towards the cost of specified care services.

New section 141 sets out the funder's liability with respect to those residents assessed as requiring care whose assets are equal to or less than the applicable asset threshold. These people will have a contribution determined following a means assessment as to income under *Part 3 of new Schedule 27* (see *new section 147*). The funder must pay the difference between this contribution and the cost of specified care services provided to the person.

New section 142 sets out the funder's liability with respect to exempt persons and elderly victims of crime. In the case of exempt persons, the funder must pay the difference between any benefit received under the principal Act and the cost of specified care services. In the case of elderly victims of crime, the funder must pay the full cost of specified care services provided to the person.

New section 143 sets out what happens when the assets of a person whose assets have been assessed as equal to or less than the applicable asset threshold increase to above the applicable asset threshold.

New section 144 relates to people aged 50 to 64 who are unmarried and have no dependent children. At present, if those people are "close in interest to people aged 65 years or more", they are treated in the same way as any other resident assessed as requiring care. This means they must pay for their own residential care unless, following an asset and income test, they are entitled to pay a lesser amount. When the Act comes into force, the situation remains the

same except that the “close in interest” requirement no longer applies. However, as from 1 July 2005, people in this category will no longer be required to contribute assets to the cost of their specified care services. All people in this category will be treated as if they have assets below the applicable asset threshold and therefore will pay towards the cost of specified care services only the contribution determined following a means test as to income.

Means assessment

New sections 145 to 148 provide for the means assessment of persons who are assessed as requiring long-term residential care indefinitely. The assessment is in 2 parts—

- first, an assessment of the value of assets of the person, which are taken to include certain assets of the person’s spouse. If the person’s assets are above the applicable asset threshold, the person must contribute those assets to pay for the cost of specified care services, until the assets are reduced to the applicable asset threshold;
- second, once the value of a person’s assets is equal to or less than the applicable asset threshold, the person’s income (which is taken to include some of the income of the person’s spouse) is assessed and a contribution is determined.

New section 149 provides that a person who has assets above the applicable asset threshold but whose assets can be realised only with extreme difficulty may apply for a loan under the residential loan scheme operated by the Ministry of Health. The Ministry of Social Development and its predecessors, as agent for the Minister of Health, has been operating a loan scheme since the early 1960s for people who have extreme difficulty realising their assets, where those assets are required to pay for their care. The loan is secured by a caveat over the property. When the property is sold, the amount advanced to pay for care is repaid from the proceeds.

New section 150 imposes an obligation on those who have been means assessed, their spouses, and any provider to advise the Department of any change in circumstances that may render a means assessment no longer accurate. It also imposes an obligation on funders to ensure that residents assessed as requiring care are advised of their right to apply for a review of their means assessments, and are advised when changes are made to the tests used in

means assessments (such as increases in the applicable asset thresholds) that may affect the outcome of their means assessments.

New section 151 provides for the review of means assessments. The chief executive must conduct a review on request by a resident assessed as requiring care, and in other specified circumstances, and may conduct a review in other circumstances. The chief executive need not conduct a review following a change in the tests used in means assessments unless the person concerned requests a review. The section sets out when any new assessment takes effect.

New section 152 provides for the chief executive to determine conjugal status for the purpose of means assessment. For other purposes under the principal Act, the chief executive determines conjugal status under section 63. The tests required in the context of means assessment are not the same as apply in other contexts. This is because the parties to the marriage or de facto relationship are, necessarily, no longer living together, and the party in care may be or become incapable of making decisions about whether the marriage or de facto relationship should be treated as over.

Miscellaneous

New section 153 provides that the maximum contribution is \$636 per week (which is the current level), and that, on 1 July 2005 and annually thereafter, it is automatically adjusted by the movement in the all groups index number in the New Zealand Consumer Price Index.

New section 154 provides that, if regulations made under *section 155* so provide, a clothing allowance may be paid to certain residents assessed as requiring care. At present, an annual clothing allowance is paid under administrative rules to people receiving residential care disability services if they have very little in the way of assets or income available. This section provides for the payment of the clothing allowance to be provided for under regulations in future.

New section 155 is the regulation-making power for this Part, and replaces section 132B of the principal Act. As under section 132B, regulations may provide for the benefit entitlements and rates of benefit payable to the spouses of residents assessed as requiring care. The details of who qualifies as an exempt person and as an elderly victim of crime will be set out in regulations. The regulations may also prescribe details relating to means assessment, such as the rate of personal allowance, the rules relating to deprivation of assets

and income, adding to the list of exempt assets, and adding to the list of income that is not to be counted as income for the purposes of a means test as to income.

Clause 5 substitutes (by *Schedule 1*) a new *Schedule 27* for the Twenty-seventh Schedule of the principal Act.

Transitional provisions

Clause 6 defines terms that are used in *clauses 6 to 10*, which deal with transitional matters.

Clause 7 provides that people who have been assessed as requiring residential care disability services indefinitely are, after the commencement date, to be treated as having been assessed under *new section 137* as having been needs assessed as requiring long-term residential care indefinitely.

Clause 8 provides that financial means assessments conducted under section 69F of the principal Act (which is repealed) are to be treated as if they were means assessments conducted under *new Part 4* of the principal Act.

Clause 9 provides that people who, before the commencement date, were treated as exempt persons or elderly victims of crime must continue to be so treated, even if regulations defining those classes of person have not been made.

Clause 10 provides that no person is entitled, as a result of this Act coming into force, to a refund of money paid in respect of any period before the commencement date. The enactment of this Bill may alter the rights and liabilities of some people, and the clause confirms that it is not to operate retrospectively.

Consequential amendments

Clauses 11 and 12 provide for consequential amendments to the principal Act and other enactments, and for the consequential revocation of specified regulations.

Schedules

Schedule 1 sets out *new Schedule 27* of the principal Act. This schedule is in 3 Parts:

- *Part 1* sets out the applicable asset thresholds. Until 1 July 2005 they are the same as in the existing Twenty-seventh

Schedule. From 1 July 2005 the thresholds change, and from 1 July 2006 are increased by \$10,000 every year until 2025:

- *Part 2* sets out the definitions of **assets** and **exempt assets** for the purpose of means assessments as to assets:
- *Part 3* defines **income** and **personal allowance** for the purpose of means assessments as to income. It provides that the weekly contribution of a person is the person's weekly income less the personal allowance.

Schedule 2 sets out the consequential amendments to the principal Act.

Schedule 3 sets out the consequential amendments to other Acts.

Hon Ruth Dyson

Social Security (Long-term Residential Care) Amendment Bill

Government Bill

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Social Security (Long-term Residential Care) Amendment	
cl 1 9 Exempt persons and elderly victims of crime 10 No refunds in respect of periods before commencement date <i>Consequential amendments</i> 11 Consequential amendments to principal Act and other Acts 12 Consequential revocations	Schedule 1 New Schedule substituted Schedule 2 Consequential amendments to principal Act Schedule 3 Consequential amendments to other Acts

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Social Security (Long-term Residential Care) Amendment Bill.
 - (2) In this Act, the Social Security Act 1964¹ is called “the principal Act”.
- ¹ 1964 No 136

Part 1
Preliminary

2 Commencement

This Act comes into force on the day that is 28 days after the date on which it receives the Royal assent. 10

3 Purpose

The purpose of this Act is to amend, consolidate, and clarify provisions relating to long-term residential care provided to older people, and in particular—

- (a) to progressively increase, from **1 July 2005**, the value of assets that people may retain before being required to use their assets to pay for the cost of specified care services provided to them; and 15
- (b) to provide that, after **1 July 2005**, people aged 50 to 64 who are unmarried and have no dependent children cease to be required to pay for specified care services provided to them out of assets; and 20
- (c) to clarify the obligations of people receiving long-term residential care services to pay for those services; and

- (d) to clarify the funder’s obligations to pay for specified care services associated with long-term residential care; and
- (e) to specify the maximum contribution that people are required to pay towards the cost of specified care services, and provide for its annual adjustment; and 5
- (f) to clarify the procedures associated with needs assessment; and
- (g) to amend the means assessment and clarify the procedures associated with it. 10

Part 2

Amendments to principal Act

Long-term residential care services

4 New Part 4 inserted

The principal Act is amended by inserting, after section 135, the following heading and Part: 15

“Part 4

“Long-term residential care services

“136 Interpretation

In this Part, unless the context otherwise requires,— 20

“**applicable asset threshold** is the value of assets that is applied, on the date on which a means assessment as to assets is conducted, to determine whether a resident assessed as requiring care must use his or her assets to pay the cost of specified care services provided to the person; and the applicable asset thresholds are set out in **Part 1 of Schedule 27** 25

“**DHB** means a district health board established by or under section 19 of the New Zealand Public Health and Disability Act 2000

“**elderly victim of crime** means a resident assessed as requiring care who is assessed, in accordance with regulations made under **section 155**, as being an elderly victim of crime for the purposes of this Part 30

“**eligible person** means a person who—

“(a) is either— 35

“(i) aged 65 or over; or

“(ii) aged between 50 and 64, and is unmarried and has no dependant children; and

“(b) is eligible for publicly funded health and disability services under an Eligibility Direction issued under section 32, or continued under section 112, of the New Zealand Public Health and Disability Act 2000

“**exempt person** means a resident assessed as requiring care who belongs to a class of exempt persons, as those classes are defined in regulations made under **section 155** 5

“**funder** means an entity responsible under the New Zealand Public Health and Disability Act 2002 for paying, in accordance with this Part, some or all of the cost of specified care services provided to a resident assessed as requiring care 10

“**maximum contribution** means the maximum weekly amount that a resident assessed as requiring care is required to contribute towards the cost of specified care services provided to him or her, and is the amount referred to in **section 153** 15

“**needs assessment** means an assessment, carried out under **section 137**, that assesses whether an eligible person requires long-term residential care services indefinitely

“**provider** means a person who provides long-term residential care services; and, in relation to a resident assessed as requiring care, means the person providing those services to the resident 20

“**resident assessed as requiring care** means an eligible person who—

“(a) is needs assessed as requiring long-term residential care services indefinitely; and 25

“(b) is receiving long-term residential care services from a provider

“**specified care services** means the services provided to a resident assessed as requiring care— 30

“(a) that are required for the person’s long-term residential care; and

“(b) that a funder determines are necessary to meet the person’s assessed care needs.

“*Needs assessment* 35

“137 **Needs assessment**

“(1) A DHB may conduct a needs assessment of an eligible person at any time.

- “(2) An eligible person may apply at any time to a DHB for a needs assessment.
- “(3) A needs assessment of an eligible person must ascertain whether the person requires long-term residential care services indefinitely. 5
- “(4) A DHB that receives a request under **subsection (2)** must arrange for a needs assessment to be conducted as soon as practicable.
- “(5) The date of a person’s needs assessment is the date shown as such on the assessment. 10
- “(6) A copy of the assessment must be provided to—
 “(a) the person to whom it applies; and
 “(b) the provider (if any) who is currently providing long-term residential care services to the person.
- “(7) For the purposes of a needs assessment (and, in particular, consent to a needs assessment), the Code of Health and Disability Services Consumers’ Rights (made under section 74 of the Health and Disability Commissioner Act 1994) applies as if— 15
 “(a) the needs assessment is a service; and 20
 “(b) the person assessed is a consumer of that service; and
 “(c) the DHB or its delegate is a provider of that service.
- “138 **Effect of being assessed as requiring long-term residential care services indefinitely**
- “(1) An eligible person who is needs assessed as requiring long-term residential care services indefinitely— 25
 “(a) is or becomes a resident assessed as requiring care if he or she receives long-term residential care services from a provider, and **sections 139 to 142** therefore apply; and
 “(b) is entitled, under **section 145**, to apply for a means assessment in accordance with **Schedule 27**. 30
- “(2) When a person is notified of the results of a needs assessment, the DHB must advise the person to whom it relates—
 “(a) of the amount of the maximum contribution; and
 “(b) of the person’s and the funder’s respective liabilities under **sections 139 to 142**; and 35
 “(c) about how to apply for a means assessment.

*“Liability to pay***“139 Personal obligation to pay for cost of care**

“(1) A resident assessed as requiring care must pay the cost of long-term residential care services provided to him or her, in accordance with an agreement with the provider who provides those services. 5

“(2) However, the amount that a person is liable to pay in accordance with **subsection (1)** is reduced by whatever amount the funder is liable to pay, under any of **sections 140, 141, and 142**, towards the cost of specified care services provided to the person. 10

“(3) Despite anything in this Part, if the cost of long-term residential care services provided to a person exceeds the cost of specified care services provided to that person, the person is liable to pay the difference in cost. 15

“140 Funder must pay costs of specified care services that exceed maximum contribution

“(1) If the cost of specified care services provided to a resident assessed as requiring care exceeds the maximum contribution, the funder must pay the difference between the maximum contribution and the cost of specified care services provided to the person. 20

“(2) The funder’s liability under **subsection (1)** arises on the later of—

“(a) the date on which the person is needs assessed as requiring long-term residential care services indefinitely; or 25

“(b) the date on which the person commences receiving long-term residential care services from a provider.

“141 Funder’s liability in respect of persons whose assets are at or below applicable asset threshold 30

“(1) This section applies to a resident assessed as requiring care who—

“(a) has been means assessed as to assets under **Part 2 of Schedule 27** and been found to have assets equal to or less than the applicable asset threshold; and 35

“(b) has had a contribution determined following a means assessment as to income under **Part 3 of Schedule 27**.

- “(2) In the case of a person to whom this section applies, the funder must pay the difference between the cost of specified care services provided to the person and the person’s contribution determined following a means assessment as to income.
- “(3) The funder’s liability under **subsection (2)** arises on the date on which the person’s assets are equal to or less than the applicable asset threshold, except as provided in **subsection (4)**. 5
- “(4) If the person’s assets are equal to or less than the applicable asset threshold more than 28 days before the date of the application for the assessment that establishes that fact, the funder’s liability arises on the date that is 28 days before the date of the application. 10
- “142 **Funder’s liability in respect of exempt persons and elderly victims of crime**
- “(1) In the case of an exempt person, the funder must pay the difference between the cost of specified care services provided to the person and the amount of any benefit received by the person under this Act. 15
- “(2) In the case of an elderly victim of crime, the funder must pay the full cost of specified care services provided to the person. 20
- “(3) The funder’s liability under **subsection (1) or subsection (2)** arises—
- “(a) on the date on which the person, being a resident assessed as requiring care, is confirmed under regulations made under **section 155** as being an exempt person or elderly victim of crime, as the case requires; or 25
- “(b) in the case of a person to whom **section 9** of the **Social Security (Long-term Residential Care) Amendment Act 2003** applies, on the date on which this section comes into force. 30
- “143 **What happens if person’s assets increase to above applicable asset threshold**
- “(1) If the value of the assets of a person to whom **section 141** applies increase to above the applicable asset threshold, the funder ceases to be liable to pay under **section 141(2)** as from a date (the **applicable date**) determined by the chief executive as being the date on which the value of the assets increased to above the applicable asset threshold. 35

“(2) If the funder has paid any amount under **section 141** in respect of the person for any period after the applicable date, the person must refund to the funder the amount paid in respect of that period, and the funder may recover the amount as a debt.

“144 **Residents assessed as requiring care aged 50 to 64 not required to pay out of assets** 5

“(1) This section applies to every resident assessed as requiring care who, on and after **1 July 2005**, is aged 50 to 64 years, is unmarried, and has no dependent children.

“(2) Every person to whom this section applies must, on and after **1 July 2005**, be treated for the purposes of **section 141** as if they were residents assessed as requiring care whose assets are equal to or less than the applicable asset threshold. 10

“(3) By way of explanation, the effect of **subsection (2)** is that, on and after **1 July 2005**, a person to whom this section applies— 15

“(a) may not be means tested as to assets, and, if the person has already been means tested as to assets, the result of that test is to be disregarded; and

“(b) is not required to pay for specified care services out of assets, but is required to pay only the contribution (as determined by a means test as to income under **Part 3 of Schedule 27**) towards the cost of those services. 20

“Means assessment

“145 **Application for means assessment**

“(1) An eligible person who has been needs assessed as requiring long-term residential care services indefinitely may apply at any time for a means assessment. 25

“(2) An application for a means assessment must be made on a form provided for the purpose by the chief executive.

“(3) When the chief executive receives an application for a means assessment in the prescribed form, he or she must arrange for a means assessment to be conducted as soon as practicable. 30

“(4) The date of the application for the means assessment is the date on which the application is received.

- “146 **Means assessment as to assets**
- “(1) The first stage of a means assessment is a means test as to assets, conducted under **Part 2 of Schedule 27**.
- “(2) The means test as to assets must assess the value of the non-exempt assets of the person (which may include assets of the person’s spouse) and determine whether those assets are above, below, or equal to the applicable asset threshold. 5
- “(3) By way of explanation, if a person’s assets are assessed as above the applicable asset threshold, the person must (in accordance with **section 139**) pay the cost of his or her long-term residential care services, except that the cost of specified care services that exceed the maximum contribution will be paid for by the funder in accordance with **section 140**. 10
- “147 **Means assessment as to income**
- “(1) The second stage of a means assessment is a means assessment as to income, conducted under **Part 3 of Schedule 27**. 15
- “(2) A means assessment as to income must be conducted if the person’s assets, as assessed by a means assessment as to assets, are equal to or less than the applicable asset threshold.
- “(3) The means assessment as to income must assess the annual income of the person (which may include income of the person’s spouse) and determine a weekly contribution that the person must pay from income towards the cost of specified care services provided to the person. 20
- “148 **Result of means assessment** 25
- “(1) Every means assessment, whether it relates only to assets or to both assets and income, must be in writing and a copy must be provided to the person to whom it relates.
- “(2) The provider, the funder, and the Ministry of Health must be advised, with respect to every person who is means assessed,— 30
- “(a) whether the person has assets above the applicable asset threshold; and
- “(b) if not, what the person’s weekly contribution from income is assessed as. 35

“149 Loan scheme

A person who has been means assessed as to assets may apply for a loan under the residential loan scheme operated by the Ministry of Health if—

- “(a) the person’s assets are above the applicable asset threshold; and 5
- “(b) the assets can be realised only with extreme difficulty.

“150 Obligation to advise change of circumstances and right to apply for review

“(1) Every person who has been means assessed, the spouse of every person who has been means assessed, and every provider is obliged to advise the Department of any change in circumstances relating to the person, to his or her spouse, or to both, that may render the means assessment no longer accurate. 10 15

“(2) Every funder is obliged to take all practicable steps to ensure that every resident assessed as requiring care—

- “(a) is advised of the right, under **section 151(1)(a)**, to apply for a review of the person’s means assessment; and
- “(b) is notified whenever a change is made to the tests used in means assessments (such as an increase to applicable asset thresholds, or a change to the personal allowance) that might mean that, if the person’s means assessment was reviewed, the result would be different from the result of the person’s latest means assessment. 20 25

“151 Review of means assessment

“(1) The chief executive must review a person’s means assessment in each of the following circumstances:

- “(a) the person applies for a review on a form provided for the purpose by the chief executive: 30
- “(b) the chief executive is satisfied that there was a mistake in the earlier assessment, whether as a result of wrong information being supplied or otherwise:
- “(c) in the case of a person who has a spouse, the circumstances of the person have changed as a result of— 35
 - “(i) the spouse becoming a resident assessed as requiring care; or
 - “(ii) the death of the spouse; or

- “(iii) the chief executive determining under **section 152** that the person’s spouse is no longer to be treated as a spouse for the purposes of this Part.
- “(2) The chief executive may review a person’s means assessment if the chief executive considers that, for any reason, the result of a new means assessment is likely to be different from the result of the person’s latest means assessment. 5
- “(3) The chief executive need not conduct a review of a means assessment following a change in the tests used in means assessments (such as an increase to applicable asset thresholds or a change to the personal allowance) unless the person to whom the means assessment relates applies for a review under **subsection (1)(a)**. 10
- “(4) If, following a review under **subsection (1)** or **subsection (2)**, the results of the person’s means assessment are different from those under the latest means assessment, the new assessment takes effect on the date determined by the chief executive as the date on which the difference can reasonably be said to have arisen. 15
- “(5) If the difference in result is solely or principally attributable to a change in the tests used in means assessments, the new assessment takes effect on the later of— 20
- “(a) the date on which the new tests came into force; or
- “(b) 28 days before the date on which the chief executive received the person’s request for a review. 25
- “(6) A copy of a reviewed assessment, or the result only of the assessment, must be sent to the people referred to in **section 148**.
- “152 **Conjugal status for purpose of means assessment**
- “(1) The chief executive may determine, for the purposes of means assessment,— 30
- “(a) that a married resident assessed as requiring care has no spouse if, immediately before becoming a resident assessed as requiring care, the resident was living apart from his or her spouse; and 35
- “(b) that an unmarried person is the spouse of a resident assessed as requiring care if the person was living in a relationship in the nature of marriage with the resident

- immediately before he or she became a resident assessed as requiring care.
- “(2) The chief executive may, in his or her discretion, determine that, for the purposes of means assessment, a person (A) who is, or has been regarded as, the spouse of a resident assessed as requiring care (B) is no longer B’s spouse if the chief executive is satisfied that—
- “(a) A and B were married but—
- “(i) the marriage has been dissolved under the Family Proceedings Act 1980; or
- “(ii) A and B should be regarded as unmarried because, even if they were not physically living apart by virtue of B’s need for long-term residential care, they would be living apart; or
- “(b) A and B were in a relationship in the nature of marriage but are no longer in that relationship.
- “(3) If the chief executive makes a determination under this section, the chief executive may also determine the date on which, for the purposes of means assessment, a person became a spouse or ceased to be a spouse.

“Miscellaneous

- “153 **Maximum contribution**
- “(1) The maximum contribution is \$636 per week.
- “(2) On **1 July 2005**, and every following 1 July, the maximum contribution must be adjusted by the movement in the All Groups index number of the New Zealand Consumer Price Index (published by Statistics New Zealand) for the year ending on 1 March of the year of the adjustment.
- “(3) If the adjusted maximum contribution is not a whole number of dollars—
- “(a) it must be rounded up to the nearest whole number of dollars; but
- “(b) the adjustment made in the following year must be based on the maximum contribution as it was before it was rounded up.
- “(4) On or before **1 July 2005**, and every year thereafter, the Minister must give notice in the *Gazette* of the maximum contribution that applies from 1 July in the year of the notice until the close of 30 June in the following year.

“154 **Clothing allowance**

- “(1) Regulations may be made under **section 155** that provide for payment of a clothing allowance to either or both of the following class of person:
- “(a) residents assessed as requiring care who have been means assessed and found to have assets equal to or less than the applicable asset threshold: 5
 - “(b) residents assessed as requiring care who have entered into a loan agreement as provided for in **section 149**.
- “(2) The amount of the clothing allowance must be set by regulations made under **section 155**. 10

“155 **Regulations relating to this Part**

- “(1) The Governor-General may, by Order in Council, make regulations for all or any of the following matters:
- “(a) prescribing the benefit entitlements and rates of benefit payable to the spouses of residents assessed as requiring care, where some or all of the cost of the resident’s specified care services are being paid for by a funder under this Part: 15
 - “(b) identifying a class or classes of exempt persons: 20
 - “(c) prescribing how a person is to be assessed as being, or no longer being, an elderly victim of crime:
 - “(d) providing, in accordance with **section 154**, for payment of a clothing allowance, and setting the amount of any clothing allowance payable: 25
 - “(e) prescribing, for the purpose of means assessment, rules relating to deprivation of assets, income, or both, and the circumstances in which those rules apply:
 - “(f) increasing the amount referred to in **paragraph (b)** of the definition of **assets** in **Part 2 of Schedule 27**, which is the amount that may be gifted each year without being treated as part of the assets of a person or of his or her spouse: 30
 - “(g) prescribing assets that are exempt assets for the purpose of **paragraph (f)** of the definition of **exempt assets** in **Part 2 of Schedule 27**: 35
 - “(h) prescribing income that is not to be included in a means assessment as to income, as provided for in **paragraph (k)** of the definition of **income** in **Part 3 of Schedule 27**:

- “(i) prescribing the amount of personal allowance, as defined in **clause 1 of Part 3 of Schedule 27**;
- “(j) providing for any other matters contemplated by this Part, necessary for its administration, or necessary for giving it full effect. 5
- “(2) This section does not limit any other power given in this Act to make regulations.”
- 5 New Schedule 27 substituted for Twenty-seventh Schedule**
- The principal Act is amended by repealing the Twenty-seventh Schedule, and substituting **Schedule 27**, as set out in **Schedule 1** of this Act. 10
- Transitional provisions*
- 6 Definitions used for purpose of transitional provisions**
- In this section and **sections 7 to 10**,— 15
- commencement date** means the date on which this Act comes into force
- section 69F** means section 69F of the principal Act as it read immediately before its repeal by this Act
- financial means assessment** means a financial means assessment conducted under section 69F. 20
- 7 Assessment as needing residential care disability services indefinitely to be treated as needs assessment under section 137**
- (1) Every person who, immediately before the commencement date, had been notified as being, or had been treated as having been, assessed as requiring residential care disability services indefinitely (as referred to in section 69F(1)) must, on and after the commencement date, be treated as a person who has been needs assessed under **section 137** of the principal Act as requiring long-term residential care services indefinitely. 25
30
- (2) If an assessment has been conducted for the purposes of section 69F before the commencement date, but the result has not been determined, or has been determined but not notified by that date, that needs assessment must be determined, and 35

its outcome notified to the person, as if it were a needs assessment conducted under **section 137** of the principal Act.

- 8 Financial means assessment under section 69F to be treated as means assessment under Part 4 of principal Act** 5
- (1) The result of a financial means assessment conducted under section 69F is to be treated as if it were a result following a means assessment under **Part 4** of the principal Act.
- (2) A copy of every financial means assessment under section 69F is taken to have been provided as required by **section 148** of the principal Act. 10
- (3) A financial means assessment conducted under section 69F may be reviewed under **section 151** of the principal Act, in which case any new means assessment must be conducted in accordance with **sections 146 and 147** of the principal Act, and **Part 4** and **Schedule 27** of the principal Act apply. 15
- 9 Exempt persons and elderly victims of crime**
- (1) Until regulations are made under **section 155** of the principal Act that define the classes of exempt person, and that identify how a person is to be assessed as being an elderly victim of crime, every person who, immediately before the commencement date, was treated as an exempt person or an elderly victim of crime must continue to be so treated. 20
- (2) If, as a result of regulations referred to in **subsection (1)**, a person who was previously treated as an exempt person or an elderly victim of crime is found not to be an exempt person or elderly victim of crime (as the case may be), no refund may be sought from that person of any payment made by a funder in respect of the person before the regulations came into force. 25
- (3) If, as a result of regulations referred to in **subsection (1)**, a person who was previously not treated as an exempt person or an elderly victim of crime is found to be an exempt person or elderly victim of crime (as the case may be), no refund may be sought by the person of any payment made to a provider by the person in respect of any period before the regulations came into force, unless the refund relates to something other than the person's status as an exempt person or elderly victim of crime. 30 35

- 10 No refunds in respect of periods before commencement date**
- (1) No person is entitled, as a result of this Act coming into force, to a refund of any amount that the person has paid, or to a rebate of any amount that the person is liable to pay, for residential care disability services provided before the commencement date. 5
- (2) No provider is entitled, as a result of this Act coming into force, to payment from a funder in respect of services provided to a person, or class of persons, before the commencement date. 10
- (3) However, nothing in **subsection (1)** or **subsection (2)** affects any rights that existed or accrued before the commencement date.

Consequential amendments

- 11 Consequential amendments to principal Act and other Acts** 15
- (1) The principal Act is consequentially amended in the manner set out in **Schedule 2**.
- (2) The Acts specified in **Schedule 3** are consequentially amended in the matter set out in that schedule. 20
- 12 Consequential revocations**
- The following regulations are revoked:
- (a) Social Security (Asset Limits) Order 1998 (SR 1998/309);
- (b) Social Security (Disability Services—Financial Assessment) Regulations 1994 (SR 1994/32). 25
-

Schedule 1
New Schedule substituted

s 5

Schedule 27
Means assessment under Part 4

s 136

Part 1
Applicable asset thresholds

5

1 Applicable asset thresholds applying until 30 June 2005
The applicable asset thresholds that apply until the close of 30 June 2005 are as follows:

- (a) for a resident assessed as requiring care who has no spouse—\$15,000: 10
- (b) for a resident assessed as requiring care who has a spouse who is also a resident assessed as requiring care—\$30,000:
- (c) for a resident assessed as requiring care who has a spouse who is not a resident assessed as requiring care—\$45,000. 15

2 Applicable asset thresholds applying for the years from 1 July 2005 to 30 June 2026

The applicable asset thresholds that apply from 1 July in the year specified in column 1 to 30 June in the following year are as set out in the following table: 20

Year	Amount applying to resident assessed as requiring care who has no spouse; or whose spouse is also a resident assessed as requir- ing care	Amount applying to a resident assessed as requiring care whose spouse is not a resident assessed as requiring care	
	\$	\$	
2005	150,000	55,000	
2006	160,000	65,000	30
2007	170,000	75,000	
2008	180,000	85,000	
2009	190,000	95,000	
2010	200,000	105,000	
2011	210,000	115,000	35
2012	220,000	125,000	
2013	230,000	135,000	
2014	240,000	145,000	
2015	250,000	155,000	
2016	260,000	165,000	40
2017	270,000	175,000	

Part 1—continued

Year	Amount applying to resident assessed as requiring care who has no spouse; or whose spouse is also a resident assessed as requiring care	Amount applying to a resident assessed as requiring care whose spouse is not a resident assessed as requiring care	
	\$	\$	5
2018	280,000	185,000	
2019	290,000	195,000	
2020	300,000	205,000	
2021	310,000	215,000	10
2022	320,000	225,000	
2023	330,000	235,000	
2024	340,000	245,000	
2025	350,000	255,000	

Part 2 15

Means assessment relating to assets

1 Definitions

For the purpose of a means assessment as to assets conducted under **section 146**,—

assets, in relation to the person being means tested, means the assets of the person and his or her spouse (if any) that are capable of being realised by the person or his or her spouse; and includes— 20

(a) the value of any right, under a contract or arrangement with any person, to be paid or repaid money on termination of a licence to occupy part of any property, building, or premises, adjusted to take into account any conditions or restrictions on that right: 25

(b) the value of assets that have, at any time during the previous 5 years, been gifted; but both the person and the person’s spouse may gift up to \$5,000 in each of those 5 years without those gifts being treated as assets for the purpose of this paragraph: 30

(c) the value of any property (other than property that would be an exempt asset) that the chief executive, in his or her discretion, is satisfied that the person or his or her spouse has directly or indirectly deprived himself or herself of 35

exempt assets, in relation to the person being means tested, means— 40

Part 2—*continued*

- (a) any interest in a residential dwelling that is the principal residence of the person’s spouse or a dependant child of the person:
- (b) any interest in one car or similar vehicle that is for the personal use of the person’s spouse: 5
- (c) the value of any ex gratia payment by the Government of New Zealand or the Government of any other country to the person because the person or his or her spouse was a prisoner of war or civilian internee of Japan during the Second World War: 10
- (d) the value of any pre-paid funeral of the person or of the person’s spouse, up to a value of \$10,000 for each:
- (e) a lump sum paid to the person under Schedule 1 of the Injury Prevention, Rehabilitation, and Compensation Act 2001, or a lump sum payment of an independence allowance under Part 13 of the Accident Insurance Act 1998 or Part 4 of Schedule 1 of that Act; but this exemption applies only in the first 12 months after the payment is made: 15
- (f) any assets, or amount of assets, of the person or his or her spouse declared by regulations made under **section 155** to be exempt assets. 20

Part 3

Means assessment relating to income

- 1 Definitions** 25
- For the purpose of a person’s means assessment as to income under **section 147**—
- income** means the following, and in every case is the income after deduction of income tax:
- (a) the income of the person and his or her spouse that is within the meaning given in section 3(1): 30
- (b) any benefit received by the person:
- (c) 50% of any amount received by the person and by his or her spouse by way of a pension under a superannuation scheme registered under the Superannuation Schemes Act 1989: 35

Part 3—*continued*

- (d) 50% of any amount received by the person and by his or her spouse under an annuity paid in respect of a policy of life insurance—
- (i) offered or entered into in New Zealand by a life insurer (as that term is defined in paragraph (a) of the definition of **life insurer** in section OB 1 of the Income Tax Act 1994); or 5
 - (ii) offered or entered into outside New Zealand by a life insurer (as so defined) that is resident in New Zealand within the meaning of section OE 1 or section OE 2(1) of that Act: 10
- (e) the value of any income referred to in **paragraphs (a) to (d)** that the chief executive, in his or her discretion, is satisfied that the person or his or her spouse has directly or indirectly deprived himself or herself of— 15
- but does not include the following:
- (f) the income of the person's spouse that is earned by the spouse's personal effort; but this exemption does not apply until **1 July 2005**;
 - (g) any amount of income received by the spouse that is within paragraph (d) of the definition of **income** in section 3; but this exemption does not apply until **1 July 2005**: 20
 - (h) any clothing allowance payable to the person under regulations made under **section 155**: 25
 - (i) the first \$780 per year earned by the person, and the first \$780 per year earned by the person's spouse, from assets; but this exemption does not apply until **1 July 2005**;
 - (j) any amount paid by a funder in respect of the cost of specified care services provided to the person: 30
 - (k) any amount specified in regulations made under **section 155**
- personal allowance** means an amount of weekly income, specified in regulations made under **section 155**, that the person is not required to contribute to the cost of specified care services provided to the person. 35

Part 3—*continued*

- 2 Annual income**
For the purposes of a means assessment as to income, a person's annual income is his or her estimated income (as defined in **clause 1**) for the period of 52 weeks commencing on the date of the assessment. 5
- 3 Weekly income**
A person's weekly income is the person's annual income divided by 52.
- 4 Weekly contribution**
The weekly contribution payable by a person whose income is assessed is the person's weekly income less the personal allowance. 10
-

s 11(1) **Schedule 2**
Consequential amendments to principal Act

Section 3(1)

Insert, after the definition of **living with a parent**,—

“**long-term residential care services** means personal health services (as defined in section 6 of the New Zealand Public Health and Disability Act 2000) that— 5

“(a) are supplied to a person who is residing for the time being in a hospital care institution or rest home within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001; and 10

“(b) are provided by a person who is certified as required by section 9(a) of the Health and Disability Services (Safety) Act 2001”.

Repeal the definition of **residential care disability services**. 15

Omit the words “residential care disability services” from paragraph (b)(ii) of the definition of **work-test married rate** and substitute the words “long-term residential care services”.

Repeal paragraph (c)(ii) of the definition of **work-test married rate** and substitute— 20

“(ii) includes an emergency benefit paid to the spouse of a resident assessed as requiring care (as defined in **section 136**) under regulations made under **section 155**”.

Omit the words “residential care disability services” from paragraph (d) of the definition of **work-tested spouse** and substitute the words “long-term residential care services”. 25

Section 3(3)

Omit the words “section 69E of this Act” and substitute the words “a means assessment under **Part 4**”. 30

Section 10A

Insert after subsection (1B):

“(1C) For the purposes of subsection (1), a person in respect of whom a decision or determination is made under **Part 4** or under regulations made under **section 155** is to be treated as a beneficiary.” 35

Section 11(2)

Repeal paragraph (d) and substitute—

Section 11(2)—continued

“(d) conducting or reviewing a means assessment under **Part 4** (relating to payment for long-term residential care services); or”.

Section 11A(1)(c)

Omit the words “a financial means assessment has been made” and substitute “a means assessment under **Part 4** has been conducted”. 5

Section 12J(1)

Omit the words “or Part 2” from paragraph (a) and substitute the words “, Part 2, or **Part 4**”.

Omit the expression “section 132B” from paragraph (e) and substitute the expression “**section 155**”. 10

Insert after subsection (1A):

“(1B) Subsection (1) applies to a person in respect of whom a decision or determination is made under **Part 4** or under regulations made under **section 155** as if the person were a beneficiary.” 15

Section 42(2)

Omit the words “(other than a person whose financial means have been assessed under section 69F) is receiving residential care disability services” and substitute the words “(other than a person who has been means assessed under **Part 4**) is receiving long-term residential care services”. 20

Omit from paragraph (b) the words “(being a spouse who is not receiving residential care disability services)” and substitute the words “(being a spouse who is not receiving long-term residential care services)”. 25

Section 61A(1)(b)

Omit the expression “section 132B” and substitute the expression “**section 155**”.

Section 61EA(4)

Repeal paragraph (c) and substitute: 30

“(c) 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 specified care services under any of **sections 140, 141, and 142**; or”. 35

Section 63

Omit the words “section 69F or”.

Section 63—continued

Insert, after the expression “section 69FA”, the words “, or of determining whether, for the purposes of **Part 4**, a person aged 50 to 64 is unmarried,”.

Section 69C(5)(b)

Repeal subparagraph (ii) and substitute the following: 5

“(ii) 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 specified care services under any of **sections 140, 141, and 142**; and”.

Section 69E

Repeal.

Section 69F

Repeal.

Section 75(3)

Omit the words “a person who is a patient in a hospital receiving residential care disability services that are wholly or partly funded under the New Zealand Public Health and Disability Act 2002, and whose financial means to pay for those services have been assessed under section 69F of this Act” and substitute “a person who is a resident assessed as requiring care (as defined in **section 136**) who is a patient in a hospital, and in respect of whom a funder (as defined in that section) is paying some or all of the cost of specified care services under any of **sections 140, 141, and 142**”.

Section 127

Repeal paragraph (e) and substitute— 25

“(e) a more favourable means assessment under section 69FA than he or she would otherwise have been entitled to; or

“(f) a more favourable means assessment under **Part 4** than he or she would otherwise have been entitled to—”.

Section 132B

Repeal.

Schedule 3 s 11(2)
Consequential amendments to other Acts

- Disabled Persons Community Welfare Act 1975** (1975 No 122)
Omit section 25A(1)(c) and substitute:
- “(c) is not a resident assessed as requiring care, as that term is defined in **section 136** of the Social Security Act 1964.” 5
- Health and Disability Services (Safety) Act 2001** (2001 No 93)
Omit so much of Schedule 2 as relates to the definition of **residential care disability services**.
- Income Tax Act 1994** (1994 No 164) 10
Omit so much of Schedule 20 as relates to section 69E of the Social Security Act 1964.
- Injury Prevention, Rehabilitation, and Compensation Act 2001** (2001 No 49)
Omit so much of Schedule 6 as relates to section 69F of the Social Security Act 1964. 15
- New Zealand Public Health and Disability Act 2000**
(2000 No 91)
Omit so much of Schedule 9 as relates to section 69E or section 69F of the Social Security Act 1964. 20
- New Zealand Superannuation Act 2001** (2001 No 84)
Omit section 17(1) and substitute:
- “(1) This section applies to any person who is not a resident assessed as requiring care (as defined in **section 136** of the Social Security Act 1964) and whose spouse is, on or after 1 July 1993, a resident assessed as requiring care in respect of whom a funder (as also defined in that section) is paying some or all of the cost of specified care services under **section 141** or **section 142** of the Social Security Act 1964.” 25
- Omit section 17(3) and substitute: 30
- “(3) Any benefit payable to a person to whom this section applies is not subject to abatement in respect of any income of the person that has been included in a means assessment of the person’s spouse under **Part 4** of the Social Security Act 1964.”
- Omit section 19(5) and substitute: 35
- “(5) Subsection (3) does not apply to a resident assessed as requiring care (as defined in **section 136** of the Social Security Act

New Zealand Superannuation Act 2001 (2001 No 84)—
continued

1964) who is a patient in a hospital and in respect of whom a funder (as also defined in that section) is paying some or all of the cost of specified care services under **section 141 or section 142** of the Social Security Act 1964.”

Omit section 20(1)(b)(ii) and substitute:

“(ii) a resident assessed as requiring care (as defined in **section 136** of the Social Security Act 1964) in respect of whom a funder (as also defined in that section) is paying some or all of the cost of specified care services under **section 141 or section 142** of the Social Security Act 1964.”

War Pensions Amendment Act 2003 (2003 No 18)

Omit so much of Schedule 2 as relates to section 69E of the Social Security Act 1964.