

**Reprint
as at 26 November 2018**

**Social Security (Long-term Residential Care) Amendment
Act 2004**

Public Act 2004 No 101
Date of assent 6 December 2004

Social Security (Long-term Residential Care) Amendment Act 2004: repealed, on 26 November 2018, pursuant to section 455(1) of the Social Security Act 2018 (2018 No 32).

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this eprint. See the notes at the end of this eprint for further details.

This Act is administered by the Ministry of Social Development.

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Social Security (Long-term Residential Care) Amendment Act 2004.
- (2) In this Act, the Social Security Act 1964 is called “the principal Act”.

**Part 1
Preliminary**

2 Commencement

This Act comes into force on 1 July 2005.

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 the value of assets that people may retain before being required to use their assets to pay for the cost of contracted care services provided to them; and
- (b) to provide that people aged 50 to 64 who are single and have no dependent children are not required to pay for contracted care services provided to them out of assets; and
- (c) to clarify the obligations of people receiving long-term residential care in a hospital or rest home to pay for that care; and
- (d) to clarify the funder’s obligations to pay for contracted care services associated with long-term residential care; and

- (e) to limit the amount that residents who are assessed as requiring long-term residential care indefinitely are required to pay for that care; and
- (f) to clarify the procedures associated with needs assessment; and
- (g) to amend the means assessment and clarify the procedures associated with it.

Paragraph (b) was amended, as from 1 July 2005, by section 7 Social Security Amendment Act 2005 (2005 No 21) by substituting the word “single” for the word “unmarried”.

Part 2

Amendments to principal Act

4 Minor amendments to principal Act relating to new Part 4

- (1) Section 61EA(4) is amended by repealing paragraph (c), and substituting the following paragraph:
 - (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 contracted care services (as defined in that section) under section 141 or section 142; or.
- (2) Section 69C(5)(b) of the principal Act is amended by repealing subparagraph (ii), and substituting the following subparagraph:
 - (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 contracted care services (as defined in that section) under section 141 or section 142; and
- (3) Section 75(3) of the principal Act is amended by omitting 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 2000, and whose financial means to pay for those services have been assessed under section 69F of this Act”, and substituting the words “a person who is a resident assessed as requiring care (as defined in section 136) in respect of whom a funder (as defined in that section) is paying some or all of the cost of contracted care services (as defined in that section) under section 141 or section 142”.

Long-term residential care

5 New Part 4 inserted

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

Part 4

Long-term residential care in hospital or rest home

136 Interpretation

In this Part, unless the context otherwise requires,—

applicable asset threshold is the value of assets that is applied to determine whether a resident assessed as requiring care must use his or her assets to pay the cost of contracted care services provided to the person; and the applicable asset thresholds are set out in Part 1 of Schedule 27

contracted care services means—

- (a) services that are provided to a resident assessed as requiring care that are—
 - (i) provided in a hospital or rest home; and
 - (ii) provided and paid for in accordance with an agreement made under the New Zealand Public Health and Disability Act 2000 between a funder and a provider, or in accordance with a notice issued under section 88 of that Act; and
- (b) in relation to a person, the kinds of services referred to in paragraph (a) that a funder determines are necessary to meet the person's assessed care needs

cost of contracted care services means the cost of contracted care services as that cost is specified in an agreement under the New Zealand Public Health and Disability Act 2000 or a notice under section 88 of that Act

date of means assessment has the meaning given in section 145

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

eligible person means a person who—

- (a) is either—
 - (i) aged 65 or over; or
 - (ii) aged between 50 and 64, and is single and has no dependent 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

funder means an entity responsible under the New Zealand Public Health and Disability Act 2000 for paying, in accordance with this Part, some or all of the cost of contracted care services provided to a resident assessed as requiring care

maximum contribution, in relation to a resident assessed as requiring care who is residing in a particular region, means the weekly amount, inclusive of goods and services tax, that is set by notice in the *Gazette* under section 152 as the maximum contribution applying to that region, and is the maximum that any resident assessed as requiring care may be required to pay for contracted care services provided in that region

needs assessment means an assessment, carried out under section 137, that assesses whether an eligible person requires long-term residential care in a hospital or rest home indefinitely

provider means a person who provides long-term residential care in a hospital or rest home; and, in relation to a resident assessed as requiring care, means the person providing that care to the resident

region means any geographical area defined by the Director-General of Health as being a region for the purpose of identifying maximum contributions (such as, for example, a District Health Board area, or a district of a territorial authority)

resident assessed as requiring care means an eligible person who—

- (a) has been needs assessed as requiring long-term residential care in a hospital or rest home indefinitely; and
- (b) is receiving contracted care services from a provider.

Needs assessment

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 in a hospital or rest home indefinitely.
- (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.
- (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 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—
 - (a) the needs assessment were a service; and
 - (b) the person assessed were a consumer of that service; and
 - (c) the DHB or its delegate were a provider of that service.

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

- (1) An eligible person who has been needs assessed as requiring long-term residential care in a hospital or rest home indefinitely—
 - (a) is or becomes a resident assessed as requiring care if he or she receives contracted care services from a provider, and sections 139 to 142 therefore apply; and
 - (b) is entitled, under section 144, to apply for a means assessment in accordance with Schedule 27.
- (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
 - (c) about how to apply for a means assessment.

Liability to pay

139 Personal obligation to pay for care

- (1) A resident assessed as requiring care is liable to pay the cost of contracted care services provided to him or her.
- (2) The most that a resident assessed as requiring care may be required to pay towards the cost of contracted care services provided to him or her is the maximum contribution.
- (3) The amount that a resident assessed as requiring care is liable to pay under subsection (1) is reduced by whatever a funder must pay in respect of the resident under any of sections 140, 141, or 142.
- (4) Nothing in this section affects the liability of a resident assessed as requiring care to pay, under an agreement between the resident and a provider, for any services provided to the resident that are not contracted care services.

140 Funder's liability in respect of persons whose assets are above applicable asset threshold or who have not been means assessed

- (1) This section applies to—
 - (a) a resident assessed as requiring care who has been means assessed and found to have assets above the applicable asset threshold; and
 - (b) a resident assessed as requiring care who has not been means assessed, or for whom the result of a means assessment is not yet known.
- (2) If the cost of contracted care services provided to a person to whom this section applies exceeds the maximum contribution, the funder must pay the difference between the maximum contribution and the cost of contracted care services provided to the person.
- (3) The funder's liability under subsection (2) arises on the later of—
 - (a) the date on which the person is needs assessed as requiring long-term residential care in a hospital or rest home indefinitely; or
 - (b) the date on which the person commences receiving contracted care services from a provider.

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

- (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
 - (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 contracted 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).
- (4) If the person's assets are equal to or less than the applicable asset threshold more than 28 days before the date of means assessment that establishes that fact, the funder's liability arises on the date that is 28 days before the date of means assessment.

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 contracted care services provided to the person and the amount of any benefit received by the person under this Act.

- (2) In the case of an elderly victim of crime, the funder must pay the full cost of contracted care services provided to the person.
- (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
 - (b) in the case of a person to whom section 10 of the Social Security (Long-term Residential Care) Amendment Act 2004 applies, on the date on which this section comes into force.

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

- (1) This section applies to every resident assessed as requiring care who is aged 50 to 64 years, is single, and has no dependent children.
- (2) Every person to whom this section applies must be treated for the purposes of section 141 as if the person were a resident assessed as requiring care whose assets are equal to or less than the applicable asset threshold.
- (3) By way of explanation, the effect of subsection (2) is that a person to whom this section applies—
 - (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 contracted 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.

Means assessment

144 Application for means assessment

- (1) An eligible person who has been needs assessed as requiring long-term residential care in a hospital or rest home indefinitely may apply at any time for a means assessment.
- (2) An application for a means assessment must be made on a form provided for the purpose by the chief executive.
- (3) The chief executive must arrange for a means assessment to be conducted as soon as practicable after receiving an application.

145 Date of means assessment

In this Part, **date of means assessment** means,—

- (a) in the case of a first means assessment conducted under this Part, the date on which the application for the means assessment is received:

- (b) in the case of a review of a means assessment for which the person has applied under section 150(1)(a), the date on which the application for the review is received:
- (c) in the case of a review under section 150(1)(b), the date of means assessment that applied to the earlier, apparently mistaken, means assessment:
- (d) in the case of a review under section 150(1)(c), the date, determined by the chief executive, on which the person's circumstances changed:
- (e) in the case of a review under section 150(2), the date on which the chief executive initiated the review.

146 Means assessment as to assets

- (1) The first stage of a means assessment is a means assessment as to assets, conducted under Part 2 of Schedule 27.
- (2) The means assessment as to assets must assess the value of the non-exempt assets of the person as at the date of means assessment and must determine whether those assets are above, equal to, or less than the applicable asset threshold.
- (3) By way of explanation, if a person's assets are assessed as being above the applicable asset threshold, the person must (in accordance with section 139) pay the cost of contracted care services up to the maximum contribution, but if the cost of contracted care services exceeds that amount then the additional costs will be paid by the funder in accordance with section 140.

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.
- (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 as at the date of means assessment and must determine a weekly contribution, up to the maximum contribution, that the person must pay from income towards the cost of contracted care services provided to the person.
- (4) A means assessment as to income must also determine—
 - (a) whether the assets of the person became equal to or less than the applicable asset threshold more than 28 days before the date of means assessment; or
 - (b) the date, being a date during the 28 days before the date of means assessment, on which the person's assets became equal to or less than the applicable asset threshold.

- (5) The purpose of subsection (4) is to determine when the funder's liability arises under section 141.

148 Notice of means assessment (including reviews)

- (1) Every means assessment (including a reviewed 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 or whose means assessment is reviewed, whether the person has assets above the applicable threshold or, if the person's assets are equal to or less than the applicable threshold, what the person's weekly contribution from income is assessed as being.

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

- (1) Every person listed in subsection (2) is obliged to advise the Department of any change in the financial or other circumstances of a person who has been means assessed, or of that person's spouse or partner, if the person—
- (a) knows or ought to know of the change of circumstances; and
 - (b) knows or ought to know that the change might mean that the means assessment is no longer accurate.
- (2) The people with the obligation under subsection (1) are as follows:
- (a) the person who has been means assessed;
 - (b) the spouse or partner of the person who has been means assessed;
 - (c) the holder of an enduring power of attorney (given in accordance with Part 9 of the Protection of Personal and Property Rights Act 1988) who acts under the enduring power of attorney in relation to the property of the means tested person or the spouse or partner;
 - (d) the provider who provides services to the person who has been means assessed.
- (3) 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 150(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 were reviewed, the result would be different from the result of the person's latest means assessment.

150 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;
 - (b) the chief executive has reason to believe 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 or partner, the circumstances of the person have changed as a result of—
 - (i) the spouse or partner becoming a resident assessed as requiring care; or
 - (ii) the death of the spouse or partner; or
 - (iii) the chief executive determining under section 63 that the conjugal status of the person's spouse or partner has changed for the purpose of this Part.
- (2) In the case only of a person who has been means assessed and been found to have assets above the applicable threshold, the chief executive may review the person's means assessment at any time if the chief executive considers that the person's assets have fallen, or are about to fall, to a level where they are equal to or less than the applicable asset threshold.
- (3) Nothing in subsection (2) obliges the chief executive to 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).
- (4) A review must assess the assets and, if necessary, the income of the person as at the date of means assessment.
- (5) Section 147(4) applies if a review under this section determines that, as at the date of means assessment, the assets of the person were equal to or less than the applicable asset threshold.

151 Conjugal status for purpose of means assessment

- (1) The chief executive's discretion under section 63 to regard certain people as husband and wife, or as single, and to determine the date on which they may be so regarded, applies for the purposes of this Part to a resident assessed as requiring care as if the resident were an applicant for a benefit.
- (2) The chief executive may not determine that, for the purposes of this Part, a person is single by reason only that the person or his or her spouse or partner—
 - (a) is a resident assessed as requiring care; or

- (b) has become unable to affirm his or her marriage or civil union.

Miscellaneous

152 Maximum contributions set by *Gazette* notice

- (1) The Director-General of Health must, by notice in the *Gazette*, set the maximum contribution that applies in each region.
- (2) The amount of maximum contribution set for each region is the lowest amount that a funder in the region must pay (in accordance with agreements made under the New Zealand Public Health and Disability Act 2000 or notices issued under section 88 of that Act) to providers in that region for long-term residential care provided to residents assessed as requiring care.
- (3) However, if the amount identified under subsection (2) for a region is less than \$636, the maximum contribution for that region must be set at \$636.

153 Residential care loan scheme

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

- (a) the person's assets are above the applicable asset threshold; and
- (b) the person meets the criteria for eligibility for the residential care loan scheme as notified by the Director-General of Health in the *Gazette*.

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;
- (b) residents assessed as requiring care who have entered into a loan agreement with the Crown under the residential care loan scheme.
- (2) The amount of the clothing allowance must be set by regulations made under section 155.

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 spouse or partner of a resident assessed as requiring care, where some or all of the cost of the resident's contracted care services are being paid for by a funder under this Part;
- (b) identifying a class or classes of exempt persons;
- (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:
 - (e) prescribing, for the purpose of means assessment, rules relating to deprivation of property, income, or both, and the circumstances in which those rules apply:
 - (f) prescribing the gifting period and the allowable gifts, or the value of any allowable gifts, for the purpose of Part 2 of Schedule 27:
 - (g) amending the maximum value of pre-paid funerals for the purposes of paragraph (d) of the definition of **exempt assets** in Part 2 of Schedule 27:
 - (h) prescribing assets, or an amount of assets, that are exempt assets for the purpose of paragraph (f) of the definition of **exempt assets** in Part 2 of Schedule 27:
 - (i) increasing the income-from-assets exemption in accordance with subsection (2):
 - (j) prescribing an amount or type of income, or an amount of a certain type of 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:
 - (k) prescribing the amount of personal allowance, as defined in Part 3 of Schedule 27:
 - (l) providing for any other matters contemplated by this Part, necessary for its administration, or necessary for giving it full effect.
- (2) The income-from-assets exemption (as defined in Part 3 of Schedule 27) must be increased on 1 July 2006, and on every following 1 July, by an amount that reflects the movement in the All Groups index number of the New Zealand Consumers Price Index (published by Statistics New Zealand) for the year ending on the previous 1 March.
- (3) If the adjusted amount of income-from-assets exemption 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 income-from-assets exemption as it was before it was rounded up.
- (4) The Director-General of Health must, as soon as practicable after 1 July in each year, give notice in the *Gazette* of the current amount of the income-from-assets exemption.
- (5) This section does not limit any other power given in this Act to make regulations.

eligible person: paragraph (a)(ii) in the new section 136 was amended, as from 1 July 2005, by section 7 Social Security Amendment Act 2005 (2005 No 21) by substituting the word “single” for the word “unmarried”.

Subsection (1) of the new section 143 was amended, as from 1 July 2005, by section 7 Social Security Amendment Act 2005 (2005 No 21) by substituting the word “single” for the word “unmarried”.

Subsections (1), and (2)(b) and (c) of the new section 149 were amended, as from 1 July 2005, by section 7 Social Security Amendment Act 2005 (2005 No 21) by inserting the words “or partner” after the word “spouse”.

Subsection (1)(c) of the new section 150 was amended, as from 1 July 2005, by section 7 Social Security Amendment Act 2005 (2005 No 21) by inserting the words “or partner” after the word “spouse”.

Subsections (1) and (2) of the new section 151 were amended, as from 1 July 2005, by section 7 Social Security Amendment Act 2005 (2005 No 21) by substituting the word “single” for the word “unmarried”.

Subsection (2) of the new section 151 was amended, as from 1 July 2005, by section 7 Social Security Amendment Act 2005 (2005 No 21) by inserting the words “or partner” after the word “spouse”.

Subsection (2)(b) of the new section 151 was amended, as from 1 July 2005, by section 7 Social Security Amendment Act 2005 (2005 No 21) by inserting the words “or civil union”.

Subsection (1)(a) of the new section 155 was amended, as from 1 July 2005, by section 7 Social Security Amendment Act 2005 (2005 No 21) by inserting the words “or partner” after the word “spouse”.

6 New Schedule 27 substituted for Twenty-seventh Schedule

The principal Act is amended by repealing Schedule 27, and substituting Schedule 27, as set out in Schedule 1 of this Act.

Transitional provisions

7 Definitions used for purpose of transitional provisions

In this section and sections 8 to 11,—

commencement date means the date on which this Act comes into force

financial means assessment means a financial means assessment conducted under section 69F

section 69F means section 69F of the principal Act as it read immediately before its repeal by this Act.

8 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 in a hospital or rest home indefinitely.
- (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 deter-

mined but not notified by that date, that needs assessment must be determined, and its outcome notified to the person, as if it were a needs assessment conducted under section 137 of the principal Act.

9 Financial means assessment under section 69F to be treated as means assessment under Part 4 of principal Act

- (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.
- (3) A financial means assessment conducted under section 69F may be reviewed under section 150 of the principal Act as if it were a means assessment conducted under Part 4 of that 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 that Act apply.

10 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.
- (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, unless the refund relates to something other than the person's status as an exempt person or elderly victim of crime.
- (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.

11 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.

- (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.
- (3) However, nothing in subsection (1) or subsection (2) affects any rights that existed or accrued before the commencement date.

Related amendments

12 Related amendments to New Zealand Superannuation and Retirement Income Act 2001

- (1) Section 17 of the New Zealand Superannuation and Retirement Income Act 2001 is amended by repealing subsection (1), and substituting the following subsection:

- (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 or partner is, on or after 1 July 1993, a resident assessed as requiring care in respect of whom a funder (as defined in that section) is paying some or all of the cost of contracted care services (as defined in that section) under section 141 or section 142 of that Act.

- (2) Section 17 of the New Zealand Superannuation and Retirement Income Act 2001 is amended by repealing subsection (3), and substituting the following subsection:

- (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 or partner under Part 4 of that Act.

- (3) Section 19 of the New Zealand Superannuation and Retirement Income Act 2001 is amended by repealing subsection (5), and substituting the following subsection:

- (5) Subsection (3) does not apply to a resident assessed as requiring care (as defined in section 136 of the Social Security Act 1964) 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 contracted care services (as defined in that section) under section 141 or section 142 of that Act.

- (4) Section 20(1)(b) of the New Zealand Superannuation and Retirement Income Act 2001 is amended by repealing subparagraph (ii), and substituting the following subparagraph:

- (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 defined in that section) is paying some or all of the cost of contracted care services (as defined in that section) under section 141 or section 142 of that Act; and

The heading to section 12 was amended, as from 1 July 2005, by section 9(1) New Zealand Superannuation and Retirement Income Amendment Act 2005 (2005 No 42) by substituting the words

“New Zealand Superannuation and Retirement Income Act 2001” for the words “New Zealand Superannuation Act 2001”.

Subsection (1) was amended, as from 1 July 2005, by section 7 Social Security Amendment Act 2005 (2005 No 21) by inserting in the new s 17(1) the words “or partner” after the word “spouse”.

Subsection (2) was amended, as from 1 July 2005, by section 7 Social Security Amendment Act 2005 (2005 No 21) by inserting in the new s 17(3) the words “or partner” after the word “spouse”.

Section 12 was amended, as from 1 July 2005, by section 9(1) New Zealand Superannuation and Retirement Income Amendment Act 2005 (2005 No 42) by substituting the words “New Zealand Superannuation and Retirement Income Act 2001” for the words “New Zealand Superannuation Act 2001” wherever they appear.

Consequential amendments

13 Consequential amendments to principal Act and other Acts

- (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 manner set out in that schedule.

14 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).

Schedule 1
New Schedule substituted

s 6

Schedule 27
Means assessment under Part 4

s 136

1
Applicable asset thresholds

1 Applicable asset thresholds

- (1) The table set out in subclause (2) lists the applicable asset thresholds that apply annually from 1 July 2005.
- (2) In the table—
- (a) Column A applies to every resident assessed as requiring care—
- (i) who has no spouse or partner; or
 - (ii) whose spouse or partner is also a resident assessed as requiring care; or
 - (iii) whose spouse or partner is not a resident assessed as requiring care but who has elected, under clause 2, to have Column A apply to him or her rather than Column B ; and
- (b) Column B applies to every resident assessed as requiring care—
- (i) whose spouse or partner is not a resident assessed as requiring care; and
 - (ii) who has not elected, under clause 2, to have Column A apply to him or her.

Year	Column A	Column B
	\$	\$
1 July 2005 to 30 June 2006	150,000	55,000
1 July 2006 to 30 June 2007	160,000	65,000
1 July 2007 to 30 June 2008	170,000	75,000
1 July 2008 to 30 June 2009	180,000	85,000
1 July 2009 to 30 June 2010	190,000	95,000
1 July 2010 to 30 June 2011	200,000	105,000
1 July 2011 to 30 June 2012	210,000	115,000
1 July 2012 to 30 June 2013	220,000	125,000
1 July 2013 to 30 June 2014	230,000	135,000

Year	Column A	Column B
1 July 2014 to 30 June 2015	240,000	145,000
1 July 2015 to 30 June 2016	250,000	155,000
1 July 2016 to 30 June 2017	260,000	165,000
1 July 2017 to 30 June 2018	270,000	175,000
1 July 2018 to 30 June 2019	280,000	185,000
1 July 2019 to 30 June 2020	290,000	195,000
1 July 2020 to 30 June 2021	300,000	205,000
1 July 2021 to 30 June 2022	310,000	215,000
1 July 2022 to 30 June 2023	320,000	225,000
1 July 2023 to 30 June 2024	330,000	235,000
1 July 2024 to 30 June 2025	340,000	245,000
1 July 2025 to 30 June 2026	350,000	255,000

2 Certain residents may elect which threshold to apply

A resident assessed as requiring care whose spouse or partner is not a resident assessed as requiring care may elect to have Column A of the table in clause 1 apply to him or her instead of having Column B of the table in clause 1 apply.

3 Explanation of election

The effect of making an election under clause 2 is that the person's applicable asset threshold will increase, but the value of any interest in the residential dwelling and the car of the person's spouse or partner will be included in the calculation of the person's assets (see paragraphs (a) and (b) of the definition of **exempt assets** in Part 2).

2

Means assessment as to assets

4 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 or partner (if any) that are capable of being realised by the person or his or her spouse or partner; and includes—

- (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:

- (b) the value of assets that have been gifted by the person, the person's spouse or partner, or both during the prescribed gifting period immediately before the date of means assessment; but does not include any allowable gifts, or the value of any allowable gifts, prescribed by regulations made under section 155:
- (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 or partner has directly or indirectly deprived himself or herself of

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

- (a) any interest in a residential dwelling that is the principal residence of the person's spouse or partner or a dependent child of the person; but this exemption does not apply to a person who has made an election under clause 2:
- (b) any interest in one car or similar vehicle that is for the personal use of the person's spouse or partner; but this exemption does not apply to a person who has made an election under clause 2:
- (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 or partner was a prisoner of war or civilian internee of Japan during the Second World War:
- (d) the value of any pre-paid funeral of the person or of the person's spouse or partner, up to a value of \$10,000 (or such other amount as may be prescribed by regulations made under section 155) 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:
- (f) any assets, or amount of assets, of the person or his or her spouse or partner declared by regulations made under section 155 to be exempt assets.

3

Means assessment relating to income

5 Definitions

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 or partner that is within the meaning given in section 3(1):
- (b) any benefit received by the person:
- (c) 50% of any amount received by the person and by his or her spouse or partner by way of a pension under a superannuation scheme registered under the Superannuation Schemes Act 1989:
- (d) 50% of any amount received by the person and by his or her spouse or partner 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
 - (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:
- (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 or partner has directly or indirectly deprived himself or herself of,—

but does not include the following:

- (f) the income of the person's spouse or partner that is earned by the personal effort of the spouse or partner:
- (g) any amount of income received by the spouse or partner that is within paragraph (d) of the definition of income in section 3:
- (h) any clothing allowance payable to the person under regulations made under section 155:
- (i) the income-from-assets exemption of the person, and the income-from-assets exemption of the person's spouse or partner:
- (j) any amount paid by a funder in respect of the cost of contracted care services provided to the person or his or her spouse or partner:
- (k) any amount or type of income, or amount of a certain type of income, specified in regulations made under section 155

income-from-assets exemption means the first \$780 (or such other amount as is prescribed by regulations made under section 155) per year that is derived from assets

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 contracted care services provided to the person.

6 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 5) for the period of 52 weeks commencing on the date of means assessment.

7 Weekly income

A person's weekly income is the person's annual income divided by 52.

8 Weekly contribution

The weekly contribution payable by a person whose income is assessed is the person's weekly income less the personal allowance.

Clauses 1 to 5 of the new Schedule 27 were amended, as from 1 July 2005, by section 7 Social Security Amendment Act 2005 (2005 No 21) by inserting the words "or partner" after the word "spouse" wherever it appears.

income: paragraph (f) in clause 5 of the new Schedule 27 was amended, as from 1 July 2005, by section 7 Social Security Amendment Act 2005 (2005 No 21) by substituting the words "personal effort of the spouse or partner" for the words "spouse's personal effort".

Schedule 2

Consequential amendments to principal Act

s 13(1)

Section 3(1)

Insert, in the appropriate alphabetical order:

hospital means a hospital care institution as defined in section 58(4) of the Health and Disability Services (Safety) Act 2001

rest home means a rest home as defined in section 58(4) of the Health and Disability Services (Safety) Act 2001.

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

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 in a hospital or rest home”.

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

- (ii) includes an emergency benefit paid to the spouse or partner 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 or partner** and substitute the words “long-term residential care in a hospital or rest home”.

Omit the expression “section 132B” from paragraph (d) of the definition of **work-tested spouse or partner** and substitute the expression “section 155”.

work-test married rate: paragraph (c)(ii) was amended, as from 1 July 2005, by section 7 Social Security Amendment Act 2005 (2005 No 21) by inserting the words “or partner” after the word “spouse”.

work-tested spouse: both items relating to this definition were amended, as from 1 July 2005, by section 7 Social Security Amendment Act 2005 (2005 No 21) by inserting the words “or partner” after the word “spouse”.

Section 3(3)

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

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.

Section 11(2)

Repeal paragraph (d) and substitute:

- (d) conducting or reviewing a means assessment under Part 4 (relating to payment for contracted care services as defined in section 136), or determining whether any such means assessment is correct; or

Section 11A(1)(c)

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

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”.

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.

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 in a hospital or rest home”.

Omit from paragraph (b) the words “(being a spouse or partner who is not receiving residential care disability services)” and substitute the words “(being a spouse or partner who is not receiving long-term residential care in a hospital or rest home)”.

The second item relating to section 42(2) was amended, as from 1 July 2005, by section 7 Social Security Amendment Act 2005 (2005 No 21) by inserting the words “or partner” after the word “spouse” in both places it appears.

Section 61A(1)(b)

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

Section 63

Omit the words “section 69F or”.

Insert, after the expression “section 69FA”, the words “or Part 4”.

Section 69E

Repeal.

Section 69F

Repeal.

Section 75(1)

Omit the words “care institution (within the meaning of section 58(4) of the Health and Disability Services (Safety) Act 2001)”.

Section 127

Repeal paragraph (e) and substitute:

- (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
Consequential amendments to other Acts

s 13(2)

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.

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)

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.

New Zealand Public Health and Disability Act 2000 (2000 No 91)

Omit so much of Schedule 9 as relates to section 69E, section 69F, and section 75(3) 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.

Eprint notes**1 *General***

This is an eprint of the Social Security (Long-term Residential Care) Amendment Act 2004 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *About this eprint*

This eprint is not an official version of the legislation under section 18 of the Legislation Act 2012.

3 *Amendments incorporated in this eprint*

Social Security Act 2018 (2018 No 32): section 455(1)