

Social Security (Social Assistance) Amendment Act 2005

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Social Security (Social Assistance) Amendment Act 2005.
- (2) In this Act, the Social Security Act 1964 is called “the principal Act”.

2 Commencement

- (1) Sections 4(3) and 7(3) come into force on 1 July 2005.
- (2) Sections 9(1) and (3) and 10(1) come into force on 1 May 2005.
- (3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to Social Security Act 1964

3 Interpretation

- (1) The definition of **benefit** in section 3(1) of the principal Act is amended by repealing subparagraph (ia) of paragraph (b).
- (2) The definition of **income-tested benefit** in section 3(1) of the principal Act is amended by repealing paragraph (h).
- (3) The definition of **transitional retirement benefit** in section 3(1) of the principal Act is repealed.

4 Interpretation

- (1) The definition of **beneficiary** in section 61E(1) of the principal Act is amended by omitting, from paragraph (b), the words “, a transitional retirement benefit,”.
- (2) The definition of **cash assets** in section 61E(1) of the principal Act is amended by repealing paragraph (a)(i), and substituting the following subparagraph:

- “(i) money saved with a bank or other institution, money invested with a bank or other institution, or money banked with a bank or other institution:”.
- (3) The definition of **owner** in section 61E(1) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:
- “(ba) a licence to occupy, where the premises are a residential unit in a retirement village (as those terms are defined in the Retirement Villages Act 2003); or”.

5 Accommodation supplement

Section 61EA(3) of the principal Act is amended by inserting, after the word “superannuation”, the words “or a veteran’s pension”.

6 Disability allowance

- (1) Section 69C(1)(a) of the principal Act is amended by omitting the words “on the ground specified in section 60F(6), or a transitional retirement benefit”.
- (2) Section 69C(5)(a) of the principal Act is amended by omitting the words “or a transitional retirement benefit”.

7 Rates of benefits for sole parents may be reduced

- (1) Section 70A(1)(b) of the principal Act is amended by repealing subparagraph (iia).
- (2) Section 70A(1) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:
- “(c) who, in respect of any dependent child in the care of the beneficiary, fails or refuses—
- “(i) to identify who is in law the other parent of that child; or
 - “(ii) to make an application for formula assessment of child support, when required to do so by section 9 of the Child Support Act 1991; or
 - “(iii) to attend and give in evidence all information that is required of the beneficiary during a hearing of a proceeding under the Child Support Act 1991, as required under section 122 of that Act.”

- (3) Section 70A(3) of the principal Act is amended by inserting, after paragraph (b), the following paragraphs:
- “(ba) the beneficiary or any of the beneficiary’s children would be at risk of violence if the beneficiary carried out or took steps to carry out any of the actions referred to in subparagraphs (i) to (iii) of subsection (1)(c); or
- “(bb) there is a compelling circumstance, other than a circumstance mentioned elsewhere in this subsection, for the beneficiary’s failure or refusal to carry out any of the actions set out in subparagraphs (i) to (iii) of subsection (1)(c), and, even if the beneficiary carried out the action, there is no real likelihood of child support being collected in the foreseeable future from the other parent, or, as the case may be, the other parent’s estate; or”.
- (4) Section 70A of the principal Act is amended by repealing subsection (4), and substituting the following subsections:
- “(4) A reduction of the rate of benefit under subsection (2) in respect of a dependent child in the care of the beneficiary ceases to apply to a beneficiary who subsequently carries out the action referred to in subparagraph (i), (ii), or (iii) of subsection (1)(c) that the beneficiary failed or refused to carry out in respect of that child.
- “(5) If a beneficiary’s rate of benefit has been reduced under subsection (2), it must be reduced by a further \$6 if the circumstances in subsection (6) exist.
- “(6) The circumstances are that—
- “(a) a period of not less than 13 weeks has elapsed after the date on which the beneficiary’s rate of benefit was reduced under subsection (2); and
- “(b) during the period referred to in paragraph (a), the chief executive has given the beneficiary a reasonable opportunity to reconsider his or her decision not to carry out the action referred to in subparagraphs (i) to (iii) of subsection (1)(c) that led to that reduction.
- “(7) A further reduction made under subsection (5) to a beneficiary’s rate of benefit must not exceed \$6, regardless of the number of the beneficiary’s dependent children to whom subsection (1)(c) applies.

- “(8) A reduction of the rate of benefit under subsection (5) ceases to apply where the rate of benefit has ceased to be reduced under subsection (2).
- “(9) For the purposes of this section—
“**violence** has the same meaning as in section 3 of the Domestic Violence Act 1995.”
- (5) Despite anything in section 70A(5) (as inserted by subsection (4) of this section), no further reduction under section 70A(5) may be made with effect earlier than 1 July 2005.

8 Commencement of benefits

- (1) Section 80(2)(b) of the principal Act is amended by omitting the words “a transitional retirement benefit,”.
- (2) Section 80(14)(b) of the principal Act is amended by omitting the words “A transitional retirement benefit or”.

9 Interpretation

- (1) Section 80B of the principal Act is amended by repealing the definitions of **average income** and **average income calculation period**, and substituting the following definitions:

“**average income**, in relation to a person, means the person’s specified income divided by the number of weeks in the average income calculation period

“**average income calculation period**, in relation to a person, means—

- “(a) if the person has made an election under section 80BA(1A), the period of 52 weeks immediately before the later of—

“(i) the date the person became entitled to receive the benefit; or

“(ii) if the person’s employment terminated or the person is given notice of termination of employment before he or she applied for the benefit, the date the person’s employment ceased; or

- “(b) in any other case, the period of 26 weeks immediately before the later of the dates referred to in subparagraphs (i) and (ii) of paragraph (a)”.

- (2) The definition of **income** in section 80B of the principal Act is amended by repealing subparagraph (x) of paragraph (a).

- (3) Section 80B of the principal Act is amended by adding the following definition:

“**specified income**, in relation to a person, means—

- “(a) the person’s income in the average income calculation period; and
“(b) the amount of any redundancy payment or retirement payment, before the deduction of income tax, not included in the person’s income under paragraph (a) and made to the person—
“(i) before the person’s employment ceased; or
“(ii) in the 52 weeks after the date on which the employment ceased.”

10 Calculation of stand down

- (1) Section 80BA of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) A person who is entitled to a benefit to which this section applies may elect to have his or her average income calculated by reference to a period of 52 weeks instead of 26 weeks.”

- (2) Section 80BA(4)(b)(i) of the principal Act is amended by omitting the words “a sickness benefit, or a transitional retirement benefit”, and substituting “or a sickness benefit”.

11 Ending of benefits

Section 80BD(3) of the principal Act is amended by omitting the words “a transitional retirement benefit”.

12 New section 83A inserted

The principal Act is amended by inserting, after section 83, the following section:

“83A Tax on benefits

- “(1) This section applies where any instalment or a payment of an income-tested benefit is a source deduction payment.
“(2) Where this section applies, the chief executive may, instead of making a tax deduction from the source deduction payment, pay to the Commissioner of Inland Revenue, at such time as the Commissioner determines in consultation with the chief executive, an amount for income tax payable on that payment, calculated in accordance with subsection (3).

- “(3) The amount for income tax payable on a source deduction payment is the amount of the tax deduction that would be made, at the rate determined under the appropriate specified provision, if the payment were increased by an amount that, after the tax deduction were made, would result in an amount equal to the source deduction payment.
- “(4) An amount for income tax paid to the Commissioner under subsection (2) must,—
- “(a) for the purposes of this Act, be considered to be a payment of a benefit, within the meaning of that term in section 3(1), made on account of, and received by, the person; and
 - “(b) for the purposes of—
 - “(i) the Income Tax Act 1976, be considered to be assessable income of the person; or
 - “(ii) the Income Tax Act 1994, be considered to be gross income of the person; or
 - “(iii) the Income Tax Act 2004, be considered to be income of the person.
- “(5) If, as a result of the review, suspension, cancellation, or termination of an income-tested benefit, the chief executive determines that an amount for tax on the benefit has been paid in accordance with this section to the Commissioner in excess of the amount that is properly payable under this section, the chief executive may not recover the excess amount as a debt due to the Crown within the meaning of section 85A, but may recover that amount by—
- “(a) making an adjustment to any amount subsequently payable to the Commissioner under subsection (2) in respect of the source deduction payments for that or any other benefit payable to that beneficiary; or
 - “(b) making such other arrangements for its refund as are agreed with the Commissioner.
- “(6) In this section,—
- “**income-tested benefit** has the meaning given to that term by section 2 of the Income Tax Act 1976 or section OB 1 of the Income Tax Act 1994 or section OB 1 of the Income Tax Act 2004 (whichever is applicable) and not the meaning in section 3(1) of this Act

“**source deduction payment** has the meaning given to that term by section 2 of the Income Tax Act 1976 or section OB 1 of the Income Tax Act 1994 or section OB 1 of the Income Tax Act 2004 (whichever is applicable)

“**specified provision**, in relation to a source deduction payment, means (as the case requires)—

“(a) the fourth proviso to section 343(1) of the Income Tax Act 1976; or

“(b) the fourth proviso to section NC 6(1) of the Income Tax Act 1994; or

“(c) section NC 6(1D) of the Income Tax Act 1994; or

“(d) section NC 6(1D) of the Income Tax Act 2004.”

13 Unemployment benefit rates

Section 99(4) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

“(ab) the application of section 117 (which relates to sanctions that may be imposed for failures to comply with work test and work preparation interviews and exercises); or”.

14 Money payable out of Crown Bank Account

Section 124(1) of the principal Act is amended by repealing paragraph (da).

15 Cost of repair and replacement of artificial limbs

Section 126 of the principal Act is amended by omitting the words “Rehabilitation League N.Z. (Incorporated)”, and substituting the words “New Zealand Artificial Limb Board”.

Part 2

Consequential amendments and savings provision

16 Consequential amendments to Income Tax Acts

(1) The definition of **income-tested benefit** in section OB 1 of the Income Tax Act 1994 is amended by omitting the words “and includes a transitional retirement benefit payable under Part 1 of the Social Welfare (Transitional Provisions) Act 1990;”.

- (2) The definition of **New Zealand superannuation** in section OB 1 of the Income Tax Act 1994 is amended by repealing paragraph (c)(ii).
- (3) The definition of **New Zealand superannuation** in section OB 1 of the Income Tax Act 2004 is amended by repealing paragraph (c)(ii).

17 Consequential amendments to regulations

- (1) The Health Entitlement Cards Regulations 1993 (SR 1993/169) are amended by omitting from regulation 8(1)(a) the words “a transitional retirement benefit granted under section 7A of the Social Welfare (Transitional Provisions) Act 1990, or”.
- (2) The Social Security (Period of Income Assessment) Regulations 1996 (SR 1996/128) are amended by omitting from item 1 in the Schedule the words “Transitional retirement benefit”.
- (3) The Taxation (Abated Interim Payments of Part KD Credit) Regulations 2002 (SR 2002/52) are amended by revoking regulation 3(1)(b) and (c), and substituting the following paragraph:
 - “(b) an emergency benefit payable under the Social Security Act 1964 if that benefit is payable at a rate that is equal to or more than the rate of an invalid’s benefit that the person would be entitled to if he or she were qualified to receive that benefit.”

18 Savings in respect of tax on benefits

- (1) For the purpose of determining the validity of any payment for tax on an income-tested benefit, the principal Act must be read as if at all material times it contained section 83A, as inserted by section 12 of this Act.
 - (2) In this section, **income-tested benefit** has the meaning given to it in section 83A(6) of the principal Act, as inserted by section 12 of this Act.
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Legislative history

8 September 2004	Introduction (Bill 193-1)
5 October 2004	First reading and referral to Social Services Committee
15 March 2005	Reported from Social Services Committee (Bill 193-2)
31 March 2005	Second reading
5 April 2005	Committee of the whole House
12 April 2005	Third reading
