

## **Residential Care and Disability Support Services Bill**

(Divided from the Social Security Legislation Rewrite Bill)

Government Bill

As reported from the committee of the whole House

This Bill was formerly part of the Social Security Legislation Rewrite Bill as reported from the Social Services and Community Committee. The committee of the whole House has further amended the Bill and divided it into the following Bills:

- Social Security Bill comprising clauses 1 and 2, Parts 1 to 8, and Schedules 1 to 12
- this Bill comprising Part 9 and Schedules 13 to 15
- Artificial Limb Service Bill comprising Part 10 and Schedule 16.



**Residential Care and Disability Support Services Bill**

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**Key to symbols used in reprinted bill**

**As reported from the committee of the whole House**

text inserted

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*Hon Carmel Sepuloni*

# **Residential Care and Disability Support Services Bill**

Government Bill

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**Schedule 15**  
**Means assessment for home-based disability support services**

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Residential Care and Disability Support Services Act **2018**.

**2 Commencement**

- (1) This Act comes into force on **26 November 2018**. 5
- (2) However, specified provisions, namely **sections 489, 506, and 510 to 512** (notices and regulations), come into force on the day after the date on which this Act receives the Royal assent.
- (3) A power that is conferred by those specified provisions, and that is exercised on or after the day after the date on which this Act receives the Royal assent and before **26 November 2018**, may be exercised only with effect on or after **26 November 2018**. 10
- (4) If **subsections (2) and (3)** are to be, or have been, relied on to exercise a power,—
- (a) all other enactments relevant to the power's exercise, and that have not yet commenced, must be treated as if they had commenced; and 15
- (b) a legal position that would be conferred or imposed by an enactment relevant to the power's exercise, and that has not yet commenced, must be treated as if it has accrued or been imposed.
- (5) This section does not affect the application of the Interpretation Act 1999 to this Act. 20

**Part 1**  
**General provisions**

- 439 Purpose of this Act** 25
- The purpose of this **Act** is to—
- (a) specify the circumstances in which certain older persons are required to pay for their own long-term residential care; and
- (b) specify the circumstances in which a funder must contribute toward the cost of those persons' long-term residential care; and 30

- (c) provide for those persons to apply for a means assessment to determine if, and how much, a funder must contribute toward the cost of their long-term residential care; and
- (d) provide that those persons are not required to pay more than the maximum contribution (which amount is specified by written notice published on an Internet site and notified in the *Gazette*) for their long-term residential care, if that care is provided by a provider who has a contract with a funder to provide long-term residential care to older persons; and 5
- (e) provide for the assessment of the amount a person is required to pay towards the cost of home-based disability support services supplied to that person; and 10
- (f) ensure that financial support (that is, a funder's contribution to the cost of long-term residential care, or towards the cost of home-based disability support services) provided under this **Act** is provided to persons taking into account that, where appropriate, they should use the resources available to them before seeking financial support under this **Act**. 15

Compare: 1964 No 136 s 136AA

#### 440 Overview of this Act

This **Act**—

- (a) sets out the rules relating to liability for the cost of certain long-term residential care: 20
- (b) sets out the rules relating to liability for the cost of home-based disability support services.

Compare: 1964 No 136 s 136AB

#### 441 Interpretation 25

In this **Act** and in **Schedules 13 to 15**, unless the context otherwise requires,—

**accommodation costs** has the same meaning as in regulations—**section 61 of the Social Security Legislation Rewrite Act 2016**

- (a) made under **section 402 of Parts 1 to 8 of the Social Security Legislation Rewrite Act 2016**; and 30
- (b) made for the purposes of **subpart 9 of Part 2 and Part 6 of Schedule 4** (accommodation supplement) of that Act

**applicable asset threshold** means the applicable asset threshold (which is the value of assets that is applied to determine whether a resident assessed as requiring care must use the resident's assets to pay the maximum contribution towards the cost of LTR contracted care provided to the resident) set out in **Part 1 of Schedule 14** 35

- assets** has, for the purpose of an assets assessment conducted under **section 470**, the meaning given in **clause 4 of Schedule 14**
- benefit** has the same meaning as in **Schedule 2 of Parts 1 to 8 of the Social Security Legislation Rewrite Act 2016**
- child** has the same meaning as in **Schedule 2 of Parts 1 to 8 of the Social Security Legislation Rewrite Act 2016** 5
- contracted care provider** has the meaning given in **section 447**
- contracted care services** has the meaning given in **section 447**
- cost of LTR contracted care** means, in relation to the person (**P**) to whom the care is provided, the amount that— 10
- (a) is the cost of the contracted care services provided by a contracted care provider to meet P’s assessed long-term residential care needs; and
- (b) is specified in the service agreement or section 88 notice that applies to the contracted care provider as the price payable for those services, whether or not the services provided to P are wholly or partly funded under that agreement or notice 15
- date of means assessment** has the meaning given in **section 488**
- de facto partner** and **de facto relationship** have the meanings given to them by sections 29 and 29A of the Interpretation Act 1999
- dependent child** has the same meaning as in **Schedule 2 of Parts 1 to 8 of the Social Security Legislation Rewrite Act 2016** 20
- DHB** means a district health board established by or under section 19 of the New Zealand Public Health and Disability Act 2000
- exempt assets** has, for the purpose of an assets assessment conducted under **section 470**, in relation to the person being means assessed, the meaning given in **clause 4 of Schedule 14** 25
- funder** means an entity responsible under the New Zealand Public Health and Disability Act 2000 for paying, in accordance with this **Act**, some or all of the cost of contracted care services provided to a qualifying person or a special case person 30
- hospital** means a hospital care institution as defined in section 58(4) of the Health and Disability Services (Safety) Act 2001
- income** has, for the purpose of a person’s income assessment under **section 473**, the meaning given in **clause 5 of Schedule 14**
- long-term residential care** or **LTR care** has the meaning given in **section 447** 35
- maximum contribution** has the meaning given in **section 451(2)**
- Minister** means the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of this **Act**

**MSD—**

- (a) means the responsible department; but
- (b) for a duty, function, or power that MSD must or may perform or exercise, means—
  - (i) the chief executive of the responsible department; or 5
  - (ii) a Public Service employee, or other person, acting under a delegation (direct or indirect) from that chief executive

**partner**, in the phrase “spouse or partner” and in related contexts, means a civil union partner or de facto partner

**personal allowance** has the meaning given in **section 460(2)** 10

**qualifying person** has the meaning given in **section 447**

**resident assessed as requiring care** means a qualifying person who—

- (a) has been positively needs assessed (as defined in **section 450**); and
- (b) is receiving contracted care services (irrespective of whether a funder has any liability to pay for any of the cost of the qualifying person’s care) 15

**responsible department**, for the provisions of this **Act**, means—

- (a) the department of State that, with the Prime Minister’s authority, is for the time being responsible for the administration of this **Act**; or
- (b) a departmental agency that, under the State Sector Act 1988, is part of that department of State, and has duties, functions, or powers relating to that administration 20

**rest home** means premises used to provide rest home care—

- (a) within the meaning of section 6 of the Health and Disability Services (Safety) Act 2001; and 25
- (b) that is therefore health care services required by that Act to be provided in accordance with section 9 of that Act

**section 88 notice** means a notice—

- (a) given under section 88 of the New Zealand Public Health and Disability Act 2000; and 30
- (b) in respect of the provision of LTR care

**service agreement** means a service agreement—

- (a) entered into under section 25 of the New Zealand Public Health and Disability Act 2000 between a funder and provider; and
- (b) in respect of the provision of long-term residential care to a qualifying person or special case person 35

**single** means not married or in a civil union or a de facto relationship

**special case person** has the meaning given in **section 447**

**spouse**, of a person, means the person's husband or wife.

Compare: 1964 No 136 s 136

#### 442 Interpretation: references to, and using as guide, old law

- (1) A reference in an enactment or a document to all or any of the provisions of sections 69FA and 132D, Part 4, and Schedules 27 and 30 of the Social Security Act 1964 (the **former enactments**) is to be interpreted as a reference to, or to the corresponding provisions of, **this Act and Schedules 14 and 15**, to the extent necessary to reflect sensibly the intent of the enactment or document. 5
- (2) **Subsection (1)** is subject to the consequential amendments in **Schedule 10 of Parts 1 to 8 of the Social Security Legislation Rewrite Act 2016**. 10
- (3) The provisions of **this Act and Schedules 14 and 15**—
  - (a) are the provisions of the former enactments in rewritten form; and
  - (b) are intended to have the same effect as the corresponding provisions of the former enactments.
- (4) **Subsection (3)** is subject to **subsections (5) and (6) and section 443**. 15
- (5) If the meaning of an enactment in **this Act or Schedule 14 or 15** that comes into force on ~~3 July 2017~~ **26 November 2018** (the **new law**) is unclear or gives rise to absurdity, the wording of a law that is repealed by **section 513(1)** and that corresponds to the new law (the **old law**) must be used to ascertain the meaning of the new law. 20
- (6) **Subsections (3) to (5)** do not apply, if a new law is affected by an amendment made after the beginning of ~~3 July 2017~~ **26 November 2018**, to that new law after the amendment commences.

Compare: 2007 No 97 s ZA 3(2), (3), (4), (5)

#### 443 Transitional, savings, and related provisions 25

The transitional, savings, and related provisions in **Schedule 13** have effect according to their terms.

#### 444 Act binds the Crown

This **Act** binds the Crown.

### Part 2 30

#### LTR contracted care

#### 445 This Act determines who pays for LTR contracted care

- (1) This **Act** determines who pays for the cost of LTR contracted care.
- (2) Nothing in this **Act** affects the liability of a person to pay, under an agreement between that person and a provider, for any services provided to that person that are not contracted care services. 35

**446 What is LTR contracted care**

**LTR contracted care** is care that meets all of the following criteria:

- (a) it is long-term residential care:
- (b) it is the care of a qualifying person or a special case person:
- (c) it comprises contracted care services: 5
- (d) it is provided by a contracted care provider.

**447 Key terms used in definition of LTR contracted care**

The following key terms are used in the definition of LTR contracted care (and are also used elsewhere in this **Act**):

**contracted care provider** means a provider of contracted care services that— 10

- (a) has a service agreement with a funder; or
- (b) accepts payment under a section 88 notice

**contracted care services** means the services provided by a contracted care provider to a qualifying person or a special case person that are necessary to meet that person's assessed long-term residential care needs 15

**long-term residential care** or **LTR care** means age-related long-term residential care in a hospital or rest home

**qualifying person** means a person described in **section 448**

**special case person** means one of the following:

- (a) a 50+ single person (*see* **section 457**): 20
- (b) an exempt person (*see* **section 459**):
- (c) an elderly victim of crime (*see* **section 461**).

**Part 3****Qualifying persons**

*Meaning of qualifying person* 25

**448 Who is qualifying person**

A **qualifying person** is a person who—

- (a) is aged 65 years or over; and
- (b) is funding eligible; and
- (c) has been positively needs assessed; and 30
- (d) receives contracted care services; and
- (e) is entitled, under **section 468**, to apply for a means assessment.

Compare: 1964 No 136 s 136

**449 Funding eligible**

A person is **funding eligible** if the person 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. 5

Compare: 1964 No 136 s 136

**450 Positively needs assessed**

A person has been **positively needs assessed** if the person has been assessed under **section 464** as requiring LTR care indefinitely. 10

Compare: 1964 No 136 s 136

*Liability of qualifying person for cost of LTR contracted care: 4 basic rules***451 Rule 1: no qualifying person to pay more than maximum contribution**

(1) No qualifying person is liable to pay more than the maximum contribution towards the cost of the contracted care services provided to that person. 15

(2) The **maximum contribution** is the maximum amount that an individual may be required to pay towards the cost of LTR contracted care provided to the individual and that is set for each region under **section 489**. 15

(3) **Subsection (1)** applies irrespective of the person's assets or income.

**452 Rule 2: qualifying person whose assets are above asset threshold must contribute maximum contribution** 20

A qualifying person whose assets as determined by a means assessment under **section 470** are above the applicable asset threshold must contribute the maximum contribution for as long as that person's assets are above the applicable asset threshold.

Compare: 1964 No 136 s 139(1), (2) 25

**453 Rule 3: qualifying person whose assets are equal to or below asset threshold must pay contribution based on income**

A qualifying person whose assets as determined by a means assessment under **section 470** are equal to or below the applicable asset threshold must pay a contribution, based on income determined by a means assessment under **section 473**, towards the cost of that person's LTR contracted care. 30

Compare: 1964 No 136 s 139(1)–(3)

**454 Rule 4: funder must pay difference between qualifying person's contribution and cost of LTR contracted care**

In relation to each qualifying person, the appropriate funder must pay the difference between— 35

- (a) the qualifying person's contribution (under **section 452 or 453**, whichever is applicable); and
- (b) the cost of the qualifying person's LTR contracted care.

Compare: 1964 No 136 s 140(2)

**455 Liability of person who has not been means assessed** 5

- (1) This section applies to a person (**P**) who is a qualifying person except that—
  - (a) P has not been means assessed; or
  - (b) if P has been means assessed, the result of the means assessment is not yet known.

- (2) P must pay the maximum contribution until P is means assessed. 10

Compare: 1964 No 136 s 140(1)(b), (2)

## Part 4 Special case persons

**456 Who is special case person**

- (1) There are 3 categories of special case person: 15
  - (a) a 50+ single person:
  - (b) an exempt person:
  - (c) an elderly victim of crime.

- (2) The definitions of funding eligible and positively needs assessed in **sections 449 and 450** respectively apply also to special case persons. 20

Compare: 1964 No 136 s 136

### *50+ single person*

**457 Who is 50+ single person**

A **50+ single person** is a person who—

- (a) is aged 50 to 64 years; and 25
- (b) is single; and
- (c) has no dependent children; and
- (d) is funding eligible; and
- (e) has been positively needs assessed; and
- (f) receives contracted care services. 30

Compare: 1964 No 136 s 136

**458 50+ single person liable to make income contribution only**

- (1) A 50+ single person (**A**) is liable to make only an **income contribution** (that is, a contribution based on income as determined by a means assessment under



**section 473)** towards the cost of A's LTR contracted care, that is, A must be treated as if A had been—

- (a) means tested as to assets; and
  - (b) determined to have assets equal to or below the applicable asset threshold. 5
- (2) In relation to each 50+ single person, the appropriate funder must pay the difference between that person's contribution and the cost of that person's LTR contracted care.

Compare: 1964 No 136 s 143

### *Exempt persons* 10

#### **459 Who is exempt person**

An **exempt person** is a person who—

- (a) is funding eligible; and
- (b) has been positively needs assessed; and
- (c) receives contracted care services; and 15
- (d) belongs to a class of exempt persons, as those classes are defined in regulations made under **section 510**.

#### **460 Exempt person liable to contribute benefit only**

- (1) An exempt person is liable to contribute to the cost of that person's LTR contracted care the amount of any benefit that P receives, less the personal allowance, and a funder must pay the balance of the cost. 20
- (2) **Personal allowance**, in this **Act and Schedule 14**, means an amount of benefit, specified in regulations made under **section 510**, that a person is not required to contribute to the cost of LTR contracted care provided to the person. 25

Compare: 1964 No 136 ss 136, 142(1), (1A)

### *Elderly victims of crime*

#### **461 Who is elderly victim of crime**

An elderly victim of crime is a person who—

- (a) is funding eligible; and 30
- (b) has been positively needs assessed; and
- (c) receives contracted care services; and
- (d) has been assessed, in accordance with regulations made under **section 510**, as being an elderly victim of crime for the purposes of this **Act**. 35

Compare: 1964 No 136 s 136

**462 Elderly victim of crime not liable to contribute to cost of LTR contracted care**

A person who is an elderly victim of crime is not liable to contribute any amount to the cost of that person's LTR contracted care and a funder must pay the whole of that cost.

5

Compare: 1964 No 136 s 142(2)

## **Part 5 Needs assessment**

**463 Who initiates needs assessment**

- (1) A person may at any time apply for a needs assessment if the person is— 10
- (a) aged 65 years or over; and
  - (b) funding eligible.
- (2) A person who is a special case person may at any time apply for a needs assessment.
- (3) A DHB may at any time on its own initiative conduct a needs assessment of a person who could apply under **subsection (1) or (2)**. 15

Compare: 1964 No 136 s 137(1), (2)

**464 Content of needs assessment**

A needs assessment must determine whether the person assessed requires LTR care indefinitely.

20

Compare: 1964 No 136 s 137(3)

**465 Procedure for needs assessment**

- (1) A DHB that receives an application under **section 463(1)** must arrange for the needs assessment to be conducted as soon as practicable.
- (2) The date of a person's needs assessment is the date shown as such on the assessment. 25
- (3) 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— 30
- (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.

Compare: 1964 No 136 s 137(4)–(7)

**466 Notification of result of needs assessment**

- (1) A DHB must provide a copy of the result of a needs assessment as soon as practicable to—
- (a) the person assessed; and
  - (b) the provider (if any) who is currently providing LTR care to that person. 5
- (2) The DHB must at the same time inform the person assessed (**P**) of the following:
- (a) the amount of the maximum contribution; and
  - (b) the respective liabilities under this **Act** of the person assessed and the funder to contribute to the cost of LTR contracted care; and 10
  - (c) how to apply for a means assessment.

Compare: 1964 No 136 s 138(2)

## **Part 6**

### **Means assessment**

**467 Types of means assessment** 15

This **Act** provides for 2 stages of a means assessment, as follows:

- (a) an assets assessment:
- (b) if required, an income assessment.

Compare: 1964 No 136 ss 146(1), 147(1)

**468 Who may apply for means assessment** 20

- (1) A person who has been positively needs assessed may apply to MSD for a means assessment.
- (2) An application for a means assessment must be made on a form provided for the purpose by MSD and the applicant must supply any supporting evidence or information that is reasonably required by MSD to complete the assessment. 25

Compare: 1964 No 136 s 138(1)(c), 144(1), (2)

**469 MSD must arrange for means assessment**

MSD must arrange for a means assessment to be conducted as soon as practicable after receiving an application.

Compare: 1964 No 136 s 144(3) 30

#### *First stage: assets assessment*

**470 Assets assessment**

- (1) The first stage of a means assessment is an assets assessment.
- (2) An assets assessment must be conducted in accordance with **Part 2 of Schedule 14**. 35

- (3) This section does not apply to a special case person (who, under **section 458(1), 460(1), or 462**, is not liable to contribute from that person's assets).

Compare: 1964 No 136 s 146(1)

#### **471 Content of assets assessment**

An assets assessment must assess the value of the non-exempt assets of a person as at the date of means assessment and must determine whether those assets are above, equal to, or below the applicable asset threshold. 5

Compare: 1964 No 136 s 146(2)

#### *Second stage: income assessment*

#### **472 When income assessment required** 10

An income assessment is required if an assets assessment has determined that a person's assets are equal to or below the applicable asset threshold.

Compare: 1964 No 136 s 147(2)

#### **473 Income assessment**

An income assessment must be conducted in accordance with **Part 3 of Schedule 14**. 15

Compare: 1964 No 136 s 147(1)

#### **474 Content of income assessment**

- (1) An income assessment of a person (P) must—
- (a) assess as at the date of means assessment P's annual income; and 20
  - (b) determine a weekly contribution, up to the maximum contribution, that P must pay from income towards the cost of contracted care services provided to P; and
  - (c) determine if and when in the 90-day period P's assets fell below the applicable asset threshold. 25
- (2) In **subsection (1), 90-day period** means the period of 90 days before the date of means assessment.
- (3) This section is subject to **sections 460(1) and 462**.

Compare: 1964 No 136 s 147(3), (4)

#### *Factors affecting means assessment: deprivation of income or property* 30

#### **475 Deprivation of income or property: means assessment as if deprivation had not occurred**

- (1) This section applies where MSD is satisfied that a person who has applied for a means assessment (P), or P's spouse or partner, has directly or indirectly deprived himself or herself of any income or property. 35

- (2) In conducting P's means assessment, MSD may include the income or property as if the deprivation had not occurred.
- (3) In this section, **property** does not include an exempt asset.  
Compare: 1964 No 136 s 147A(1)
- 476 Deprivation of income or property: inclusion in review of means assessment** 5
- (1) This section applies where MSD is satisfied that a person who has been means assessed (**P**), or P's spouse or partner, has directly or indirectly deprived himself or herself of any income or property.
- (2) In conducting a review of P's means assessment, MSD may include the income or property as at the date of the means assessment as if the deprivation had not occurred. 10
- (3) In this section, **property** does not include an exempt asset.  
Compare: 1964 No 136 s 147A(2)
- Notice of means assessment* 15
- 477 Means assessment must be recorded in writing**
- MSD must ensure that every means assessment is recorded in writing, whether the means assessment is a first assessment or a subsequent assessment on review, and whether or not the assessment relates only to assets or to assets and income. 20
- Compare: 1964 No 136 s 148(1)
- 478 Notice of means assessment**
- (1) MSD must ensure that a copy of the record of the means assessment is provided to the person to whom it relates.
- (2) MSD must ensure that the provider, the funder, and the Ministry of Health are advised of the following in respect of every person (**P**) who is means assessed or whose means assessment is reviewed: 25
- (a) whether P's assets are above the applicable asset threshold; or
- (b) if P's assets are equal to or below the applicable asset threshold, the assessment of P's weekly contribution from income. 30
- Compare: 1964 No 136 s 148(1), (2)
- Change in circumstances*
- 479 Obligation to notify MSD of change in circumstances**
- (1) A person (**A**) listed in **subsection (2)** must advise MSD of any change in the financial or other circumstances of a person who has been means assessed (**B**), or of B's spouse or partner, if A— 35

- (a) knows or ought to know of the change in circumstances; and
  - (b) knows or ought to know that the change might mean that the means assessment is no longer accurate.
- (2) For the purposes of **subsection (1)**, A is any of the following:
- (a) B, the person who has been means assessed: 5
  - (b) B's spouse or partner:
  - (c) the provider who provides contracted care services to B:
  - (d) 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 B or B's spouse or partner. 10
- (3) **Subsection (1)** does not apply if—
- (a) B has been found to have assets equal to or below the applicable asset threshold and the change relates to the value of B's assets, or to the value of the assets of B's spouse or partner; or 15
  - (b) a funder has no liability under this **Act** in respect of the contracted care services provided to B.

Compare: 1964 No 136 s 149(1)–(2)

*Notice of right of review*

- 480 Funder must ensure person assessed advised of right of review** 20
- A funder must take all practicable steps to ensure that a person who has undergone a means assessment (**P**)—
- (a) is advised of the right to apply for a review of P'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 (as defined in **section 460(2)**)) that might mean that, if P's means assessment were reviewed, the result would be different from the result of P's latest means assessment. 25

Compare: 1964 No 136 s 149(3)

*Relationship status* 30

- 481 Relationship status for purpose of means assessment: determination that person is single**
- (1) For the purpose of a means assessment under this **Act**, MSD may make a determination to regard as single a person (**P**) who is married or in a civil union, but is— 35
- (a) living apart from P's spouse or partner; and
  - (b) not in a de facto relationship.

- (2) However, MSD cannot under **subsection (1)** determine that P is single by reason only that P or P's spouse or partner—
- (a) has been assessed as requiring LTR care indefinitely; or
  - (b) has become unable to affirm P's marriage or civil union.
- (3) A determination under **subsection (1)** may include a date, determined by MSD, on which the spouses or partners must be taken for the purposes of the determination to have commenced to live apart. 5
- (4) Every determination under this section also applies for the purposes of every debt-recovery or offence provision in, under, or for the purposes of, this **Act**. 10
- Compare: 1964 No 136 ss 63, 151

**482 Relationship status for purpose of means assessment: determination that person is in de facto relationship**

- (1) For the purpose of a means assessment under this **Act**, MSD may make a determination to regard as a party to a de facto relationship any 2 people who, not being legally married or in a civil union, have entered into a de facto relationship. 15
- (2) A determination under **subsection (1)**, for the purposes of the assessment, may include either or both of the following dates:
- (a) a date, determined by MSD, on which the 2 people must be taken as having entered into the de facto relationship: 20
  - (b) a date, determined by MSD, on which the de facto relationship of the 2 people must be taken to have ended.
- (3) Every determination under this section also applies for the purposes of every debt-recovery or offence provision in, under, or for the purposes of, this **Act**. 25
- Compare: 1964 No 136 ss 63, 151

*Review of means assessment*

**483 Review by MSD**

MSD must review a means assessment of a person (**P**) if—

- (a) P applies for a review on a form provided for the purpose by MSD; or
- (b) MSD has reason to believe that there was a mistake in P's earlier assessment, whether as a result of wrong information being supplied or otherwise; or 30
- (c) the circumstances of P's spouse or partner (**S**) have changed because—
  - (i) S has become a qualifying person or a special case person; or
  - (ii) S has died; or 35

- (iii) MSD has determined under **section 481** that S's relationship status has changed for the purposes of this **Act**.

Compare: 1964 No 36 s 150(1)

**484 Review if assets subsequently fall below applicable asset threshold**

- (1) This section applies if a person (**P**) has been means assessed and been found to have assets above the applicable asset threshold. 5
- (2) MSD may review P's means assessment at any time if MSD considers that P's assets have fallen, or are about to fall, to a level below or equal to the applicable asset threshold.

Compare: 1964 No 136 s 150(2)

10

**485 Review if assets below applicable asset threshold**

- (1) This section applies if a person (**P**) has been means assessed and been found to have assets equal to or below the applicable asset threshold.
- (2) MSD—
- (a) may annually review P's means assessment; and 15
- (b) may at any time review P's means assessment if MSD considers that P's annual income has changed or is about to change.

Compare: 1964 No 136 s 150(2A)

**486 Review under section 484 or 485 not obligatory**

Nothing in **section 484 or 485** obliges MSD 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 (as defined in **section 460(2)**)) unless the person to whom the means assessment relates applies for a review under **section 483**. 20

Compare: 1964 No 136 s 150(3)

25

**487 Scope and date of review under section 483, 484, or 485**

- (1) A review must review the person's means assessment as to assets and, if necessary, the person's means assessment as to income unless **subsection (2)** applies.
- (2) A review must review the person's means assessment as to income only (and not the person's means assessment as to assets) if the review is conducted under— 30
- (a) **section 483(a)** and the person has been means assessed and determined to have assets equal to or below the applicable asset threshold; or
- (b) **section 485**. 35
- (3) A review is conducted as at the date of means assessment.



- (4) **Section 474(1)(c)** applies if a review determines that, as at the date of means assessment, the assets of the person were equal to or below the applicable asset threshold.

Compare: 1964 No 136 s 150(4)–(5)

*Date of means assessment* 5

#### 488 Date of means assessment

In this **Act and Schedule 14**, **date of means assessment** means,—

- (a) in the case of a first means assessment conducted under this **Act**, the date on which the application for the means assessment is received: 10
- (b) in the case of a review of a means assessment for which the person has applied under **section 483(a)**, the date on which the application for the review is received: 10
- (c) in the case of a review under **section 483(b)**, the date of means assessment that applied to the earlier, apparently mistaken, means assessment:
- (d) in the case of a review under **section 483(c)**, the date, determined by MSD, on which the person's circumstances changed: 15
- (e) in the case of a review under **section 484**, the date on which MSD initiated the review:
- (f) in the case of a review under **section 485**—
- (i) conducted by MSD in the event of a general adjustment of rates of benefits or allowances, the date of that general adjustment; or 20
- (ii) conducted as a result of advice received by MSD under **section 479(1)**, the date on which that advice was received; or
- (iii) conducted by MSD in any other case, the date on which MSD initiated the review. 25

Compare: 1964 No 136 s 145

### Part 7

#### Funding and funder's liability

##### *Maximum contribution*

- 489 **Determination of maximum contribution** 30
- (1) The Director-General of Health must, by written notice, determine the maximum contribution that applies in each region.
- (2) By way of explanation, the maximum contribution that applies in a region is the amount agreed at a national level between funder representatives and provider representatives as being the amount that funders in that region are to pay to providers in that region for providing rest-home-level care services. 35

- (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.
- (4) A notice given under this section—
- (a) must, as soon as practicable after it is given, be—
- (i) published on an Internet site administered by or on behalf of the Ministry of Health; and 5
- (ii) notified in the *Gazette*; and
- (b) must, each time it is amended without also being replaced, also as soon as practicable after it is amended, be published—
- (i) on an Internet site administered by or on behalf of the Ministry of Health; and 10
- (ii) current as at a stated date; and
- (iii) incorporating amendments up to that date; and
- (c) is not a legislative instrument, but is a disallowable instrument, for the purposes of the Legislation Act 2012, and must be presented to the House of Representatives under section 41 of that Act. 15
- (5) A notification in the *Gazette* for the purpose of **subsection (4)(a)(ii)** does not have to include the text of the notice.
- Compare: 1964 No 136 s 152

*Funder's liability* 20

**490 Funder's liability for cost of LTR contracted care of exempt person**

In respect of the cost of an exempt person's LTR contracted care, the funder must pay the amount determined under the following formula:

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

where— 25

p is the amount the funder must pay

c is the cost of the LTR contracted care provided to the exempt person

b is the amount of any benefit received by the exempt person

a is the personal allowance (as defined in **section 460(2)**).

Compare: 1964 No 136 s 142(1) 30

**491 Funder's liability for cost of LTR contracted care of elderly victim of crime**

In respect of the cost of an elderly victim of crime's LTR contracted care, the funder must pay the full cost.

Compare: 1964 No 136 s 142(2) 35

*When funder's liability arises*

- 492 When funder's liability arises for cost of LTR contracted care of qualifying person**
- (1) If the assets of a qualifying person (**P**) have been means assessed and determined to be above the asset threshold, the funder's liability for the difference between P's maximum contribution (under **section 452**) and the cost of P's LTR contracted care begins—
- (a) on the relevant date of needs assessment, if P is already receiving contracted care services; or
- (b) on the date from which P receives contracted care services, in any other case.
- (2) If the assets of a qualifying person (**P**) have been means assessed and determined to be equal to or below the asset threshold, the funder's liability for the cost of P's LTR contracted care (less any income contribution that P must pay under **section 453**) begins on the day during the 90-day period when P's assets were first equal to or below the asset threshold.
- (3) In this section, **90-day period** means the period of 90 days before the relevant date of means assessment.
- Compare: 1964 No 136 s 140(3), 141(3)
- 493 When funder's liability arises for cost of LTR contracted care of exempt person or elderly victim of crime**
- A funder's liability for the cost of the LTR contracted care of an exempt person or elderly victim of crime arises—
- (a) on the date on which the person is confirmed under regulations made under **section 510** 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.
- Compare: 1964 No 136 s 142(3)
- 494 When funder's liability arises for cost of LTR contracted care of 50+ single person**
- A funder's liability for the cost of the LTR contracted care of a 50+ single person arises on the later of the following dates:
- (a) the relevant date of needs assessment, if the person is already receiving contracted care services;
- (b) the date from which the person receives contracted care services.
- Compare: 1964 No 136 s 140(3)

## Part 8

### Home-based disability support services

#### 495 Application of this Part

- (1) This **Part** applies to a person who—
- (a) has been assessed by or on behalf of a DHB as requiring home-based disability support services; and 5
  - (b) is not a child; and
  - (c) is not entitled to be the holder of—
    - (i) a community services card issued under the Health Entitlement Cards Regulations 1993; or 10
    - (ii) a corresponding card issued under corresponding regulations made or deemed to have been under either or both of section 92(3) of the New Zealand Public Health and Disability Act 2000 and **section 416** of the **Parts 1 to 8 of the Social Security Legislation Rewrite Act 2016**. 15
- (2) For the purposes of this **Part** and **Schedules 13 and 15**, **home-based disability support services** means disability services that are supplied to a person, and that are services—
- (a) in relation to the person's domestic affairs (other than medical services, personal care services, attendant care services, and relief care services) that support and allow the person to remain in the person's home; and 20
  - (b) of a kind that are funded under the New Zealand Public Health and Disability Act 2000.
- (3) For the purposes of this **Part** and **Schedules 13 and 15**,—
- child** means a single person under the age of 18 years, other than a person who is— 25
- (a) aged 16 or 17 years; and
  - (b) financially independent
- health practitioner**—
- (a) has the same meaning as in section 5(1) of the Health Practitioners Competence Assurance Act 2003; and 30
  - (b) includes a person who is receiving training or gaining experience under the supervision of a health practitioner
- medical services** means services supplied to a person by a health practitioner relating to the treatment or relief of the person's disability condition or the rehabilitation of the person from that condition. 35

Compare: 1964 No 136 s 69FA(1), (2)

- 496 MSD may assess person’s financial means and required payments**
- (1) MSD may, from time to time, on application by or on behalf of a person to whom this **Part** applies, assess in accordance with **Schedule 15** the weekly amount that person is required to pay toward the cost of the home-based disability support services provided to that person. 5
- (2) The person is required to pay that amount in accordance with the assessment.
- (3) MSD’s information-gathering powers under **clauses 1 to 7 of Schedule 6 of Parts 1 to 8 of the Social Security Legislation Rewrite Act 2016** can (in line with **clause 3(e)** of that schedule) be used for determining, under this **Part**,— 10
- (a) the amount that a person is required to pay towards the cost of the home-based disability support services supplied to that person; and
- (b) whether a person who has been so assessed is entitled to that assessment.
- Compare: 1964 No 136 ss 11(2)(da), 69FA(3)
- 497 Cash assets and income** 15
- (1) For the purposes of this **Part** and **Schedules 13 and 15**,—
- cash assets**—
- (a) means—
- (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: 20
- (ii) money invested in securities, bonds, or debentures, or advanced on mortgage:
- (iii) money withdrawn from a KiwiSaver scheme registered under subpart 2 of Part 4 of the Financial Markets Conduct Act 2013: 25
- (iv) money invested in shares in a partnership or limited liability company or other incorporated or unincorporated body; but
- (b) does not include any contributions to, or any member’s interest in, any KiwiSaver scheme that is registered under subpart 2 of Part 4 of the Financial Markets Conduct Act 2013; and 30
- (c) does not include any assets or any amount of cash assets excluded by regulations made under **section 510(1)(k) or (l)**
- income** means any thing that—
- (a) is income as defined in **Schedule 2 of Parts 1 to 8 of the Social Security Legislation Rewrite Act 2016**, or is the gross amount of a payment received in consideration of providing board and lodgings to any person in excess of 2 people, or is a benefit or allowance received under or pursuant to— 35

- (i) **Parts 1 to 8 of the Social Security Legislation Rewrite Act 2016**; or
  - (ii) the New Zealand Superannuation and Retirement Income Act 2001; or
  - (iii) the Veterans' Support Act 2014 (other than a disablement pension under Part 3 of that Act); and 5
  - (b) is not an amount specified in regulations made under **section 510(1)(l)**.
  - (2) For the purposes of this **Part** and **Schedules 13 and 15**,—
    - (a) the following are taken to be income of \$1 per week:
      - (i) every \$100 of cash assets over \$5,400 held by a person who is married or in a civil union or in a de facto relationship in a relationship: 10
      - (ii) every \$100 of cash assets over \$5,400 held by a single person who has 1 or more dependent children:
      - (iii) every \$100 of cash assets over \$2,700 held by any other person; and 15
    - (b) the income of a person who is married or in a civil union or in a de facto relationship in a relationship includes the income of the person's spouse or partner. 20
- Compare: 1964 No 136 s 69FA(1), (4)

#### **498 Unrealised assets available for personal use**

- (1) This section applies to assets that—
  - (a) are available for the personal use of a person to whom this **Part** applies; and
  - (b) MSD is satisfied have not been realised by that person, or by that person's spouse or partner. 25
- (2) MSD may for the purposes of this **Part** treat the assets as cash assets.
 

Compare: 1964 No 136 s 69FA(5)

#### **499 Deprivation of income or assets**

- (1) This section applies if— 30
  - (a) a person has applied for, or has received, an assessment under this **Part**; and
  - (b) MSD is satisfied that the person or the person's spouse or partner has directly or indirectly deprived the person of any income or assets.
- (2) MSD may assess, or revise the assessment of, the person's ability to pay for that person's home-based disability support services as if that deprivation had not occurred. 35
 

Compare: 1964 No 136 s 69FA(8)

- 500 Assessment must state date and payments and be given to person**  
 Each assessment made by MSD under this **Part**—
- (a) must state the date of the assessment and the amount that the person has been assessed as being required to pay; and
  - (b) must be given by MSD to that person. 5
- Compare: 1964 No 136 s 69FA(6)
- 501 MSD may supply assessment to applicable DHB**  
 MSD may supply the details of an assessment under this **Part** to the applicable DHB. 10
- Compare: 1964 No 136 s 69FA(6)
- 502 MSD must review, and may revise, assessment**
- (1) MSD—
    - (a) must from time to time review an assessment under this **Part**; and
    - (b) may revise that assessment if—
      - (i) MSD is satisfied the assessment is in error; or 15
      - (ii) the person to whom the assessment relates or that person’s spouse or partner fails to provide any relevant information requested or to answer any relevant question; or
      - (iii) after reviewing the assessment, MSD is satisfied that, owing to a change in circumstances of that person or that person’s spouse or partner, the assessment is no longer an accurate reflection of that person’s ability to pay for that person’s home-based disability support services. 20
  - (2) A revised assessment under **subsection (1)(b)(iii)** takes effect from a date MSD determines (being a date that is, or is after, the date on which the change of circumstances concerned may reasonably be held to have occurred). 25
- Compare: 1964 No 136 s 69FA(7)
- 503 Person must advise MSD of change in person’s circumstances**  
 A person who has received an assessment under this **Part** must advise MSD without delay of any change in circumstances that affects that person’s ability to pay for that person’s home-based disability support services. 30
- Compare: 1964 No 136 s 69FA(9)

## Part 9 Miscellaneous

- 504 Information gathering under Schedule 6 of Parts 1 to 8 of Social Security Legislation Rewrite Act 2016**
- (1) MSD may, by notice given under **clauses 2 to 7 of Schedule 6 of Parts 1 to 8 of the Social Security Legislation Rewrite Act 2016**, obtain information for all or any of the following purposes:
- (a) determining whether a person who has made a claim for, is receiving, or has received, a benefit or payment under this **Act** is or was entitled to receive that benefit or payment: 10
  - (b) conducting or reviewing a means assessment under this **Act**, or determining whether a means assessment of that kind is correct:
  - (c) determining, under **Part 8 of this Act**, the amount that a person is required to pay towards the cost of the home-based disability support services supplied to that person, and whether a person who has been so assessed is entitled to that assessment: 15
  - (d) ascertaining the financial circumstances or whereabouts of a person who is indebted to the Crown under this **Act**:
  - (e) discharging MSD's functions under, or under any regulations in force under, this **Act**. 20
- (2) This section is by way of explanation only.
- 505 Rights of review and appeal in Part 7 of Parts 1 to 8 of Social Security Legislation Rewrite Act 2016**
- (1) This section applies to decisions or determinations of MSD made under any of the provisions of— 25
- (a) this **Act**; or
  - (b) regulations made under **section 510**.
- (2) **Part 7 of Parts 1 to 8 of the Social Security Legislation Rewrite Act 2016** gives rights of review and appeal in respect of the decisions or determinations (*see*, for example, **row 1 of the table in section 370(1)**, and **section 376(1)(d)**, of that Act). 30
- (3) This section is by way of explanation only.
- 506 Residential care loan scheme**
- (1) A qualifying person (**P**) who has been means assessed as to assets under **section 470** may apply for a loan under the residential care loan scheme operated by the Ministry of Health if— 35
- (a) **P**'s assets are above the applicable asset threshold; and



- (b) P meets the criteria for eligibility for the residential care loan scheme specified in a written notice given by the Director-General of Health.
- (2) A notice given under this section—
- (a) must, as soon as practicable after it is given, be—
- (i) published on an Internet site administered by or on behalf of the Ministry of Health; and 5
- (ii) notified in the *Gazette*; and
- (b) must, each time it is amended without also being replaced, also as soon as practicable after it is amended, be published—
- (i) on an Internet site administered by or on behalf of the Ministry of Health; and 10
- (ii) current as at a stated date; and
- (iii) incorporating amendments up to that date; and
- (c) is not a legislative instrument, but is a disallowable instrument, for the purposes of the Legislation Act 2012, and must be presented to the House of Representatives under section 41 of that Act. 15
- (3) A notification in the *Gazette* for the purpose of **subsection (2)(a)(ii)** does not have to include the text of the notice.

Compare: 1964 No 136 s 153

**507 Clothing allowance** 20

Regulations may be made under **section 510** that provide for payment of a clothing allowance to either or both of the following classes of person:

- (a) qualifying persons who have been means assessed and found to have assets equal to or less than the applicable asset threshold:
- (b) qualifying persons who have entered into a loan agreement with the Crown under the residential care loan scheme. 25

Compare: 1964 No 136 s 154

**508 Offences: false statements, misleading, or attempting to mislead, to receive or continue to receive advantages**

- (1) A person (**P**) commits an offence if— 30
- (a) P makes a statement knowing that it is false in a material particular; and
- (b) P's statement—
- (i) is made for the purpose of receiving or continuing to receive (whether for P or another person) an advantage; or
- (ii) results in P or another person receiving or continuing to receive an advantage. 35
- (2) A person (**P**) commits an offence if—

- (a) P wilfully does or says anything, or omits to do or say anything, for the purpose of misleading or attempting to mislead a person; and
- (b) P's act, statement, or omission—
- (i) is done or made for the purpose of receiving or continuing to receive an advantage (whether for P or another person); or 5
- (ii) results in P or another person receiving or continuing to receive an advantage.
- (3) In this section, **advantage** means—
- (a) any benefit under this **Act**; or
- (b) any payment from a Crown Bank Account in accordance with this **Act**; 10  
or
- (c) a more favourable means assessment under **Parts 8 and 9 of this Act** than P would otherwise have been entitled to; or
- (d) a more favourable means assessment under **Parts 1 to 7 of this Act** than P would otherwise have been entitled to. 15
- (4) A person who commits an offence under this section is liable on conviction to a penalty that is either or both of the following:
- (a) imprisonment for a term not exceeding 12 months;
- (b) a fine not exceeding \$5,000.
- (5) This section does not limit **sections 271 and 272 of Parts 1 to 8 of the Social Security Legislation Rewrite Act 2016**. 20

Compare: 1964 No 136 s 127

### **509 Time for filing charging document**

- (1) The limitation period in respect of an offence against this **Act** ends on the date that is 12 months after the date on which the facts alleged in the charging document are brought to the knowledge of any officer concerned in the administration of this **Act**. 25
- (2) **Subsection (1)** overrides section 25 of the Criminal Procedure Act 2011.

Compare: 1964 No 136 s 128

### **510 Regulations**

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 30
- (a) identifying a class or classes of exempt persons;
- (b) prescribing how a person is to be assessed as being, or no longer being, an elderly victim of crime: 35
- (c) providing, in accordance with **section 507**, for payment of a clothing allowance, and setting the amount of any clothing allowance payable:

- (d) prescribing, for the purpose of **section 475**, rules relating to deprivation of property, income, or both, and the circumstances in which those rules apply:
- (e) prescribing the gifting period and the allowable gifts, or the value of any allowable gifts, for the purpose of **paragraph (b)** of the definition of assets in **Part 2 of Schedule 14**: 5
- (f) amending the maximum value of pre-paid funerals for the purpose of **paragraph (d)** of the definition of exempt assets in **Part 2 of Schedule 14**:
- (g) prescribing assets, or an amount of assets, that are exempt assets for the purpose of **paragraph (g)** of the definition of exempt assets in **Part 2 of Schedule 14**: 10
- (h) increasing the applicable asset thresholds, and the income-from-assets exemption, in accordance with **section 511**:
- (i) prescribing an amount or a 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 (i)** of the definition of income in **Part 3 of Schedule 14**: 15
- (j) prescribing the amount of personal allowance (as defined in **section 460(2)**): 20
- (k) defining terms to be excluded as cash assets for the purpose of **Part 8** (*see* the definition of cash assets in **section 497(1)**):
- (l) specifying that certain amounts of cash assets or income are not to be included within the financial means assessment of a person under **Part 8** (*see* the definitions of cash assets and income in **section 497**): 25
- (m) providing for any other matters contemplated by this **Act**, necessary for its administration, or necessary for giving it full effect.
- (1A) The purpose of exemption regulations made under **subsection (1)(a)** is to specify a class or classes of persons who, because of their circumstances (for example, a requirement to undergo compulsory treatment), should be liable to contribute to the cost of their LTR care only the amount of any benefit that they receive, less the personal allowance (*see* **sections 459 and 460 and subsection (1)(j)**). 30
- (1B) Exemption regulations made under **subsection (1)(a)** may be made only on the recommendation of the Minister. 35
- (1C) The Minister must, before making a recommendation that particular exemption regulations be made under **subsection (1)(a)**,—
- (a) have regard to the purpose of this **Act** (as set out in **section 439**), to the purpose of **section 460** (exempt person liable to contribute benefit only), and to the purpose of the regulations; and 40

- (b) be satisfied that each exemption provided for in them is not broader than is reasonably necessary to address the matters that gave rise to the regulations.
- (2) Regulations made under **subsection (1)(i), (l), or (m)** have effect in respect of any amounts or types of cash assets, income, or amounts of certain types of income, or defined terms to be excluded as cash assets, specified in the regulations on and after a date that is—
- (a) specified in the regulations; and
- (b) earlier than, the same as, or later than, the date on which the regulations are made.
- Compare: 1964 No 136 ss 132D, 155(1)
- 511 Annual adjustments for increase in New Zealand Consumers Price Index**
- (1) The applicable asset thresholds set out in **Part 1 of Schedule 14** must be increased on ~~1 July 2018~~ 1 July 2019, and on every following 1 July by an amount that reflects the upwards movement (if any) in the index number of the Consumers Price Index (All Groups) published by Statistics New Zealand for the year ending on the previous 31 March.
- (2) The income-from-assets exemption (as defined in **Part 3 of Schedule 14**) must be increased on ~~1 July 2018~~ 1 July 2019, and on every following 1 July, by an amount that reflects the upwards movement (if any) in the index number of the Consumers Price Index (All Groups) published by Statistics New Zealand for the year ending on the previous 31 March.
- (2A) The adjustments (by any percentage movement in the index number of the Consumers Price Index (All Groups)) required under **subsection (2)** as at 1 July in any year from ~~2018~~ 2019 to 2021 (inclusive) for the income-from-assets exemption must, despite **subsection (2)**, be calculated,—
- (a) if, and insofar as, they relate to movements during quarters that end before 29 April 2010, using index numbers for those quarters of the Consumers Price Index (All Groups) published by Statistics New Zealand; and
- (b) if, and insofar as, they relate to movements during quarters that end after 28 April 2010, using index numbers for those quarters of the Consumers Price Index (All Groups Excluding Cigarettes and Other Tobacco Products) published by Statistics New Zealand.
- (3) If the adjusted amount of an applicable asset threshold or, as the case requires, of the 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 applicable asset threshold or the income-from-assets exemption as it was before it was rounded up.

- (4) This section does not limit **section 431 of Parts 1 to 8 of the Social Security Legislation Rewrite Act 2016** (about orders making discretionary increases to specified amounts in **Schedule 14** of this **Act**).  
Compare: 1964 No 136 s 155(2)–(3)
- 512 Annual published notice of amount of income-from-assets exemption** 5
- (1) The Director-General of Health must, as soon as practicable after 1 July in each year, give written notice of the current amount of the income-from-assets exemption.
- (2) A notice given under this section—
- (a) must, as soon as practicable after it is given, be— 10
- (i) published on an Internet site administered by or on behalf of the Ministry of Health; and
- (ii) notified in the *Gazette*; and
- (b) is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012, and does not have to be presented 15  
to the House of Representatives under section 41 of that Act.
- (3) A notification in the *Gazette* for the purpose of **subsection (2)(a)(ii)** does not have to include the text of the notice.  
Compare: 1964 No 136 s 155(4)
- 513 Repeals and revocations** 20
- (1) Sections 69FA and 132D, Part 4, and Schedules 27 and 30 of the Social Security Act 1964 are repealed.
- (2) All regulations made by Order in Council, or other Orders in Council made under those provisions of that Act, and in force on the commencement of this section, are revoked by this subsection. 25
- (3) **Subsection (2)** does not revoke orders saved by **Schedule 13**.

**Schedule 13**  
**Transitional, savings, and related provisions for residential care and  
 disability support services**

s 443

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<b>1</b>	<b>Determinations under section 63 of 1964 Act for long-term residential care, etc</b>	<b>5</b>
(1)	This clause applies to determinations—	
	(a) made under section 63 of the Social Security Act 1964; and	
	(b) made, or so far as they were made, for the purposes of section 69FA or 132D, Part 4, or Schedule 27 or 30, of that Act ( <i>see clause 3 of Schedule 1 of the Social Security Legislation Rewrite Act 2016</i> ); and	10
	(c) in force on the repeal of section 63 of the Social Security Act 1964.	
(2)	The determinations specified in <b>subclause (1)</b> continue in force with all necessary modifications, and may be amended, revoked, or replaced, as if made under <b>section 481(1) or 482(1)</b> .	15
(3)	However, the determinations specified in <b>subclause (1)</b> that are made under section 63(b) of the Social Security Act 1964 continue under <b>subclause (2)</b> as if they were determinations made under <b>section 482(1)</b> .	
<b>2</b>	<b>Needs assessments and means assessments under Part 4 of 1964 Act</b>	<b>20</b>
(1)	An application made under section 137(2) of the Social Security Act 1964 for a needs assessment and not withdrawn must, if the assessment has not begun on that section's repeal, be treated as if it were an application under <b>section 463</b> .	

- (2) An application made under section 144(1) of the Social Security Act 1964 for a means assessment and not withdrawn must, if the assessment has not begun on that section's repeal, be treated as if it were an application under **section 468**.
- (3) Needs assessments and means assessments begun under Part 4 of the Social Security Act 1964, and not withdrawn or completed on the repeal of that Part, must be completed by MSD under the corresponding provisions of **Part 9 of the Social Security Legislation Rewrite Act 2016**. 5
- (4) Notices (of means assessments) provided under section 148 of the Social Security Act 1964, if those notices are in force on the repeal of that section, continue in force as if provided under **sections 477 and 478**. 10
- 3 Reviews of means assessments under section 150 of 1964 Act**
- Reviews by the chief executive begun under section 150 of the Social Security Act 1964, and not withdrawn or completed on the repeal of that section, must be completed by MSD under the corresponding provisions of **sections 483 to 487**. 15
- 4 Gazette notices under section 152 of 1964 Act**
- Gazette* notices given under section 152 of the Social Security Act 1964, if those notices are in force on the repeal of that section, continue in force as if they were written notices given and published under **section 489**.
- 5 Gazette notices under section 153 of 1964 Act** 20
- Gazette* notices given under section 153 of the Social Security Act 1964, if those notices are in force on the repeal of that section, continue in force as if they were written notices given and published under **section 506**.
- 6 Gazette notices under section 155(4) of 1964 Act**
- Gazette* notices given under section 155(4) of the Social Security Act 1964, if those notices are in force on the repeal of that section, continue in force as if they were written notices given and published under **section 512**. 25
- 7 Elections under Schedule 27 of 1964 Act**
- A resident's (**R's**) election under clause 2 of Schedule 27 of the Social Security Act 1964 (as in force before its repeal) to have Column A of the table in clause 1 of that schedule (as in force before its repeal) apply to R is, after that repeal, treated as if it were an election (under **clause 2 of Schedule 14**) to have Threshold A in **clause 1 of Schedule 14** apply to R. 30
- 8 Assessments under section 69FA of 1964 Act of financial means, and required payments, for home-based disability support services** 35
- (1) An application made under section 69FA of the Social Security Act 1964 and not withdrawn must, if the assessment under Schedule 30 of that Act has not

begun on the repeal of that section and that schedule, be treated as if it were an application under **section 496**.

- (2) Assessments under section 69FA and Schedule 30 of the Social Security Act 1964, and not withdrawn or completed on the repeal of that section and that schedule, must be completed by MSD under **subpart 8 of Part 9 of the Social Security Legislation Rewrite Act 2016**. 5

**9 Reviews under section 69FA(7) of 1964 Act**

Reviews by the chief executive begun under section 69FA(7) of the Social Security Act 1964, and not withdrawn or completed on the repeal of that section, must be completed by MSD under **section 502**. 10

**10 Regulations made under section 132D or 155(1) of 1964 Act**

Regulations made under section 132D or 155(1) of the Social Security Act 1964, and in force on the repeal of that section, continue in force, and may be amended, revoked, or replaced, as if made under **section 510**.



**Schedule 14**  
**Means assessment for long-term residential care**

**ss 470, 473, 510(1)(e)-(i), 511**

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<b>Part 1</b>		
<b>Applicable asset thresholds</b>		5
<b>1 Applicable asset thresholds</b>		
(1)	This clause specifies the applicable asset thresholds that apply annually for—	
	(a) the year <del>1 July 2017</del> to <del>30 June 2018</del> <b>July 2018</b> to <b>30 June 2019</b> ; and	
	(b) all later years beginning on 1 July.	10
(2)	Threshold A is \$ <del>219,889</del> <u>227,125</u> and applies to every qualifying person or special case person ( <b>P</b> )—	
	(a) who has no spouse or partner; or	
	(b) whose spouse or partner is also a qualifying person or special case person; or	15
	(c) whose spouse or partner is not a qualifying person or special case person but who has elected, under <b>clause 2</b> , to have Threshold A apply to P rather than Threshold B.	
(3)	Threshold B is \$ <del>120,416</del> <u>124,379</u> and applies to every qualifying person or special case person ( <b>P</b> )—	20

- (a) whose spouse or partner is not a qualifying person or special case person; and
- (b) who has not elected, under **clause 2**, to have Threshold A apply to R.

## 2 Certain residents may elect which threshold to apply

A qualifying person or special case person (**P**) whose spouse or partner is not a qualifying person or special case person may elect to have Threshold A in **clause 1** apply to P instead of having Threshold B in **clause 1** apply. 5

## 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**). 10

## Part 2

### Means assessment as to assets 15

## 4 Definitions

For the purpose of an assets assessment conducted under **section 470**,—  
**assets**, in relation to the person being means assessed, means the assets of the person and the person's spouse or partner (if any) that are capable of being realised by the person or the person's spouse or partner, 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;
- (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 510** 25

**exempt assets**, in relation to the person being means assessed, means— 30

- (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 1 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**: 35

- (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 the person's 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 any other amount that may be prescribed by regulations made under **section 510**) for each: 5
- (e) a lump sum paid to the person under Schedule 1 of the Accident 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: 10
- (f) any contributions to, or any member's interest in, any KiwiSaver scheme that is registered under subpart 2 of Part 4 of the Financial Markets Conduct Act 2013, except the following: 15
- (i) money withdrawn from a scheme of that kind:
- (ii) money that the member is entitled to withdraw from the scheme under clause 4(3) of the KiwiSaver scheme rules under the Kiwi-Saver Act 2006:
- (iii) money that the member has applied to withdraw and that would be a permitted withdrawal under those rules: 20
- (g) any assets, or amount of assets, of the person or the person's spouse or partner declared by regulations made under **section 510** to be exempt assets.

### Part 3 25

#### Means assessment relating to income

##### 5 Definitions

For the purpose of a person's income assessment under **section 473**,—

**income** means the following, and in every case is the income after deduction of income tax: 30

- (a) the income of the person or the person's spouse or partner that is within the meaning of the term income as defined in **Schedules 2 and 3 of the Social Security Legislation Rewrite Act 2016**:
- (b) any benefit received by the person:
- (c) 50% of any amount received by the person or by the person's spouse or partner by way of a pension that— 35
- (i) is from any superannuation scheme, whether or not that scheme is constituted in New Zealand; and

- (ii) is not New Zealand superannuation; and
- (iii) is not an overseas pension (as defined in **section 172 of the Social Security Legislation Rewrite Act 2016**):
- (d) 50% of any amount received by the person or by the person's spouse or partner under an annuity paid in respect of a policy of life insurance (whether or not issued in New Zealand): 5
- but does not include the following:
- (e) the income of the person's spouse or partner that is earned by the personal effort of the spouse or partner:
- (f) any clothing allowance payable to the person under regulations made under **section 510**: 10
- (g) the income-from-assets exemption of the person:
- (h) any amount paid by a funder in respect of the cost of contracted care services provided to the person or the person's spouse or partner:
- (i) any amount or type of income, or amount of a certain type of income, specified in regulations made under **section 510** 15
- income-from-assets exemption** means the amount of income derived from assets each year not exceeding the following (or any other amount or amounts as may be prescribed by regulations made under **section 510**):
- (a) \$964992, if the person is single; or 20
- (b) \$1,9281,983, if the person's spouse or partner is a resident assessed as requiring care; or
- (c) \$2,8922,975 if the person's spouse or partner is not a resident assessed as requiring care.
- 6 Annual income** 25
- For the purposes of a means assessment as to income, a person's annual income is the person's 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. 30
- 8 Weekly contribution**
- The weekly contribution payable by a person whose income is assessed is the person's weekly income less the personal allowance (as defined in **section 460(2)**).

## Schedule 15

### Means assessment for home-based disability support services

**ss 496, 497**

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6	Conversion to weekly amount	42
<b>1</b>	<b>Specified outgoings defined</b>	
	In this schedule, <b>specified outgoings</b> , in relation to a person, means the annual total of—	5
	(a) the maximum rate for the time being of a supported living payment that would be payable to the person if the person was qualified to receive a benefit of that kind:	
	(b) an amount of \$10 per week (for the purpose of paying costs incidental to the provision of home help):	10
	(c) the following employment-related expenses of the person and the person's spouse or partner, calculated on an annual basis:	
	(i) fees or subscriptions payable on an annual or regular basis to any union:	15
	(ii) contributions to any superannuation scheme:	
	(iii) contributions to any employee welfare fund:	
	(iv) any other essential costs of that employment (not including travel to and from work) to the extent that they are not reimbursed by the employer:	20
	(d) the person's accommodation costs (as defined in <del>regulations made under section 402(1)(a), and</del> <b>section 61 of the Social Security Legislation Rewrite Act 2016</b> for the purposes of <b>subpart 9 of Part 2 and Part 6 of Schedule 4 of the Social Security Legislation Rewrite Act 2016</b> <del>that Act</del> (accommodation supplement)):	25
	(e) the person's telephone rental (being the standard line charge and base user charge including hire of a basic telephone applicable to a person living in the place where the person lives), calculated on an annual basis:	

- (f) the cost of the person's ongoing and regular medical and pharmaceutical expenses, calculated on an annual basis:
- (g) the cost of the person's regular essential expenses (being expenses other than the cost of food, clothing, travel, running a motor vehicle, life insurance, house and contents insurance, hire purchase, entertainment, and personal savings), calculated on an annual basis. 5
- 2 Calculation**
- MSD must calculate the amount of the person's annual income and specified outgoings, and must deduct the amount of the specified outgoings from the annual income. 10
- 3 If result is \$0 or less than \$0**
- If the result of the calculation specified in **clause 2** is \$0 or less than \$0, MSD must assess the amount the person is required to contribute towards the cost of the home-based disability support services supplied to that person as \$0.
- 4 If result is greater than \$0 but less than total cost of services supplied** 15
- If the result of the calculation specified in **clause 2** is greater than \$0 but less than the total cost of the home-based disability support services supplied to the person, MSD must assess that result as the amount the person is required to contribute towards the cost of those services.
- 5 If result is equal to or greater than total cost of services supplied** 20
- If the result of the calculation specified in **clause 2** is equal to or greater than the total cost of the home-based disability support services supplied to the person, MSD must assess the amount the person is required to contribute towards the cost of those services as the total cost of those services.
- 6 Conversion to weekly amount** 25
- MSD must convert an assessment made under **clauses 3 to 5** to a weekly amount.

### Legislative history

24 July 2018

Divided from Social Security Legislation Rewrite Bill (Bill 122–2) as Bill 122–3B