

**Reprint
as at 26 November 2018**

**Social Welfare (Transitional Provisions) Amendment Act
2000**

Public Act 2000 No 88
Date of assent 22 November 2000

Social Welfare (Transitional Provisions) Amendment Act 2000: repealed, on 26 November 2018, pursuant to section 456(1) of the Social Security Act 2018 (2018 No 32).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 Welfare (Transitional Provisions) Amendment Act 2000.
- (2) In this Act, the Social Welfare (Transitional Provisions) Act 1990 is called “the principal Act”.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is—

- (a) to allow agreements or Conventions entered into by New Zealand with the governments of other countries providing for reciprocity in respect of matters relating to social security monetary benefits to include mutual assistance provisions for the recovery of the social security debts of either country:
- (b) to allow such agreements or Conventions to include mutual assistance provisions for the exchange of information for the administration and enforcement of social security laws:
- (c) to give effect to any such mutual assistance provisions:
- (d) to provide individuals to whom such mutual assistance provisions relate with appropriate protection of their privacy.

Part 1 Amendments to principal Act

4 New section 2 substituted

- (1) The principal Act is amended by repealing section 2, and substituting the following section:

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—

Minister, in relation to any provisions of this Act, means the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of those provisions

Privacy Commissioner means the Privacy Commissioner appointed under the Privacy Act 1993

social security debt,—

- (a) in relation to New Zealand, means an amount that may be recovered from any person under section 86 of the Social Security Act 1964; and
- (b) in relation to any other country, means an amount that may be recovered from any person—
- (i) under the laws relating to social security in that country; or
- (ii) for taxation or other contribution levied specifically for social security under the laws of that country.
- (2) Unless the context otherwise requires, expressions defined in section 3(1) of the Social Security Act 1964 and in section 2 of the War Pensions Act 1954 have in this Act the meanings so defined.
- (2) The Employment Services and Income Support (Integrated Administration) Act 1998 is consequentially amended by repealing so much of the Schedule as relates to section 2 of the principal Act.

5 Adoption of reciprocity agreement with other countries

Section 19 of the principal Act is amended by inserting, after subsection (2), the following subsections:

- (2A) If an agreement or Convention or alteration to an agreement or Convention contains a provision of the kind referred to in section 19A(2), no Order in Council in respect of that agreement or Convention or alteration may be made under subsection (1) unless the Privacy Commissioner has first presented a report to the Minister and to the Minister of Justice on the following matters:
- (a) whether the provision complies with the privacy principles set out in the Privacy Act 1993, having regard to the matters set out in paragraphs (a) to (f) of section 98 of that Act:

- (b) if the provision is of the kind referred to in section 19A(2)(b), the adequacy of the privacy protection given in the other country to information about any individual that may be supplied by New Zealand under the provision.
- (2B) Subsection (2A) does not apply to a provision that relates solely to the recovery of moneys paid under the agreement or Convention in excess of that to which the recipient was entitled under that agreement or Convention.

6 New sections 19A to 19D inserted

The principal Act is amended by inserting, after section 19, the following sections:

19A Inclusion of mutual assistance provisions in reciprocity agreement

- (1) In this section and in sections 19B to 19D,—

agreement means an agreement or Convention with the government of another country of the kind referred to in section 19, or an alteration to an agreement or Convention of that kind

competent institution means an institution of a party that is responsible for the application of the agreement

party means a government that has entered into an agreement

requested institution means the competent institution of a party to which a request is made by the competent institution of the other party

requesting institution means the competent institution of a party that makes a request to the competent institution of the other party

social security laws, in relation to a party, means the laws of that party relating to social security, including laws relating to taxation or other contribution levied specifically for social security

social security purposes include—

- (a) the administration of the social security laws of a party:
 - (b) the collection of the social security debts of a party:
 - (c) the maintenance of the social security laws of a party, including the prevention, detection, prosecution, and punishment of offences under those laws:
 - (d) the enforcement of any social security laws of a party imposing a pecuniary penalty:
 - (e) the conduct of any proceedings under the social security laws of a party before any court or tribunal.
- (2) An agreement may contain—

- (a) provision for the governments of New Zealand and the other country to provide each other with assistance in the recovery of social security debts; or
 - (b) provision for those governments to supply each other with information for social security purposes; or
 - (c) both provisions described in paragraphs (a) and (b).
- (3) No provision of the kind referred to in subsection (2)(a) may be included in an agreement unless it contains the terms and conditions set out in section 19B or terms and conditions to the like effect.
- (4) No provision of the kind referred to in subsection (2)(b) may be included in an agreement unless it contains the terms and conditions set out in section 19C or terms and conditions to the like effect.
- (5) Nothing in section 19(2A) or this section prevents an agreement containing other provisions for mutual assistance if those provisions are not of the kind referred to in subsection (2).

19B Terms and conditions for recovery of social security debts

- (1) The terms and conditions referred to in section 19A(3) are—
- (a) assistance to recover any social security debt of a party may be provided by the other party only in respect of a debt—
 - (i) that has been found or determined to be owing in the country concerned by a court or tribunal having jurisdiction in the matter, or by a person, body, or organisation in that country acting administratively within the terms of his, her, or its lawful authorisation; and
 - (ii) in respect of which any right of review or appeal of the determination of the debt, under the law under which the debt was determined (other than a right of judicial review or complaint under laws relating to administrative decisions generally, or under human rights laws), has been exhausted or has expired; and
 - (iii) that may be lawfully recovered under the laws of that country; and
 - (iv) that was first found or determined to be owing less than 5 years prior to the date that the request for assistance is made, except as provided in subsection (2):
 - (b) when providing assistance to recover any social security debt of a party, the party giving the assistance is not required to—
 - (i) give priority to the recovery of social security debts of the other party; and
 - (ii) take any measures for recovery not provided for under the laws relating to the recovery of debts of that party:

- (c) a party may not seek to recover a social security debt by imprisonment of the individual by whom it is owed or of any other individual:
 - (d) any recovery of a social security debt of a deceased individual is limited to the value of that individual's estate:
 - (e) any institution, court, or tribunal involved in the recovery of a social security debt may defer recovery of the debt, or may order or arrange for the debt to be paid in instalments, if—
 - (i) the institution, court, or tribunal has the power to do so; and
 - (ii) it is its normal practice to do so:
 - (f) a party may give assistance only in respect of a social security debt that the requesting institution has certified is of a kind described in subparagraphs (i) to (iv) of paragraph (a):
 - (g) the party requesting assistance to recover a social security debt must pay the costs of the other party of recovering the debt, including court costs or other fees payable under the laws of that party.
- (2) Where any institution, court, or tribunal defers the recovery of a social security debt, or orders or arranges for a social security debt to be paid by instalments, the 5-year period referred to in subsection (1)(a)(iv) is extended by the period of deferral or, as the case requires, the period over which the debt is to be paid by instalments.

19C Terms and conditions for exchange of information for social security purposes

- (1) The terms and conditions referred to in section 19A(4) are—
- (a) a request for information relating to an individual may be made only for social security purposes:
 - (b) the requested institution of a party may supply to the requesting institution—
 - (i) such information on the person to whom the request relates as it holds or is lawfully able to obtain; and
 - (ii) such information on that person as it may obtain from the taxation authorities of that party:
 - (c) the requesting institution of a party (the **requesting party**) to whom information is supplied by the requested institution of the other party may supply that information to the taxation authorities of the requesting party for either or both of the following purposes:
 - (i) making an assessment of the tax due by any person under the laws of the requesting party relating to taxation:
 - (ii) detecting tax fraud or tax evasion under the laws of the requesting party:

- (d) every request for and supply of information made by and to the competent institutions of the parties must be made in terms of an agreement between the competent institutions of the parties that—
 - (i) specifies the types of information that the competent institutions may supply to each other; and
 - (ii) limits the supply of information to the types of information specified; and
 - (iii) subject to subparagraph (iv), in relation to New Zealand, contains, with all necessary modifications, the safeguards required to be set out in an information matching agreement within the meaning of section 99 of the Privacy Act 1993; and
 - (iv) in relation to New Zealand, requires the information matching rules set out in clause 4 of the Fourth Schedule of the Privacy Act 1993, with all necessary modifications, to be applied; and
 - (v) in relation to New Zealand, has been agreed to by the Privacy Commissioner under the Privacy Act 1993, the Commissioner having had regard to the information matching guidelines in section 98 of that Act:
 - (e) Subject to paragraphs (b) and (c), any information supplied by a party to the other party must be subject to the same privacy protections as any other personal information obtained under the social security laws of the other party:
 - (f) No party that receives, under the agreement, personal information about any individual from the competent institution of the other party may supply that information to any other country without the prior written consent of that competent institution or the individual concerned:
 - (g) a party must supply the competent institution of the other party with any information required by that institution to answer any questions or to make any report or return required by a person or body authorised to monitor compliance with that party's privacy laws.
- (2) In relation to New Zealand, section 99(4) of the Privacy Act 1993 applies, with any necessary modifications, to an agreement between the competent institutions of the parties under subsection (1)(d).

19D Actions by chief executive under mutual assistance provisions

- (1) Where an Order in Council is made under section 19 in respect of an agreement which contains a provision of the kind referred to in section 19A(2)(a),—
 - (a) any social security debt of the other country may, in accordance with and subject to the provision and to the extent that it has not been recovered in the other country, be recovered by the chief executive under section 86(1D) of the Social Security Act 1964 as if it were a debt due to the Crown; and

- (b) any amount so recovered may, after the deduction of the costs of collection, be paid to the other country without any further appropriation than this paragraph.
- (2) For the purposes of subsection (1)(a), a certificate signed by an authorised officer of the competent institution of the other country that the debt is of a kind described in subparagraphs (i) to (iv) of section 19B(1)(a) is, in the absence of proof to the contrary, sufficient evidence of the existence of the debt.
- (3) Where an Order in Council is made under section 19 in respect of an agreement which contains a provision of the kind referred to in section 19A(2)(b),—
- (a) the chief executive may supply any information in the department's possession about any person to, or receive information about any person from, the competent institution of the other country in accordance with, and subject to, the provision:
- (b) the chief executive may from time to time, in accordance with arrangements made in an agreement with the Commissioner of Inland Revenue, supply any information received from the competent institution of the other country to the Commissioner for either or both of the purposes referred to in section 19C(1)(c):
- (c) if any information received from the competent institution of the other country under the provision has produced a discrepancy and the chief executive proposes to take action against an individual as a result, the chief executive must give that individual written notice—
- (i) specifying particulars of the discrepancy and of the adverse action the chief executive proposes to take; and
- (ii) stating that the individual has 5 working days from the receipt of the notice in which to show cause why that action should not be taken:
- (d) the chief executive may not take any adverse action against an individual to whom a notice has been sent until the expiry of the 5 working days referred to in paragraph (c)(ii):
- (e) sections 100 to 102 and 104 to 106 of the Privacy Act 1993 apply in respect of the provision as if the provision were an authorised information matching programme and the department were the only specified agency involved in that programme.
- (4) Nothing in paragraph (c) or paragraph (d) of subsection (3) prevents the chief executive from taking adverse action against an individual if compliance with the requirements of subsection (3)(c) would prejudice any investigation into the commission of an offence or the possible commission of an offence.
- (5) Subsections (3) and (4) of section 103 of the Privacy Act 1993 apply to any notice to be given to any individual under subsection (3)(c).

- (6) Where the chief executive fails to comply, in relation to any individual, with the provisions of subsection (3)(c), the failure is considered, for the purposes of Part VIII of the Privacy Act 1993, to constitute a failure to comply with the provisions of Part X of that Act.
- (7) In this section, expressions defined in section 97 of the Privacy Act 1993 have the meanings so defined, with any necessary modifications.

Part 2

Amendments to other Acts

7 Amendments to Schedule 3 of Privacy Act 1993

Schedule 3 of the Privacy Act 1993 is amended—

- (a) by omitting from the second column of the item relating to the Tax Administration Act 1994, the expression “and 85A”, and substituting the expression “85A, and 85B”;
- (b) by adding the following item:
Social Welfare (Transitional Provisions) Act section 19D(3)(b).
1990

8 Amendments to Social Security Act 1964

- (1) Section 10A of the Social Security Act 1964 is amended by repealing subsection (1), and substituting the following subsections:

- (1) This section applies to—
 - (a) an applicant or beneficiary affected by a decision made by any person in the exercise of any power, function, or discretion conferred on the person by delegation under this Act, against which the applicant or beneficiary has a right of appeal under section 12J; or
 - (b) an applicant, beneficiary, or other person in respect of whom a person makes any decision in the exercise of a power under section 19D(1)(a) of the Social Welfare (Transitional Provisions) Act 1990 conferred on the decision-making person by delegation under that Act, against which the applicant or beneficiary or other person has a right of appeal under section 12J.
- (1A) A person to whom this section applies may apply in writing for a review of the decision to the appropriate district review committee established under this section.
- (1B) The application must be made—
 - (a) within 3 months after receiving notification of the decision; or

- (b) if the committee considers there is good reason for the delay, within such further period as the committee may allow on application made either before or after the expiration of that period of 3 months.
- (2) Section 12J of the Social Security Act 1964 is amended by inserting, after subsection (1), the following subsection:
- (1A) An applicant or beneficiary or other person may appeal to the Appeal Authority against a decision—
- (a) that was made in relation to that person by the chief executive under the power conferred by section 19D(1)(a) of the Social Welfare (Transitional Provisions) Act 1990; and
- (b) that has been confirmed or varied by a benefits review committee under section 10A or that was made by the chief executive other than pursuant to a delegation.
- (3) The following enactments are repealed:
- (a) section 3 of the Social Security Amendment Act (No 4) 1997;
- (b) so much of the Schedule of the Employment Services and Income Support (Integrated Administration) Act 1998 as relates to section 10A(1) of the Social Security Act 1964.

9 New sections 85B and 85C inserted in Tax Administration Act 1994

The Tax Administration Act 1994 is amended by inserting, after section 85A, the following sections:

85B Disclosure of information for purposes of mutual assistance provision contained in social security agreement

- (1) The purpose of this section is to facilitate the exchange of information between the Inland Revenue Department and the department for the time being responsible for the administration of the Social Security Act 1964 for the purpose of giving assistance to the government of a country with which New Zealand has a social security agreement.
- (2) For the purpose of this section, any authorised officer of the department for the time being responsible for the administration of the Social Security Act 1964 may from time to time supply to the Commissioner any personal information supplied to that department by the government of that country.
- (3) Where, in relation to any person, personal information is supplied in accordance with subsection (2) to the Commissioner, the Commissioner may compare that information with any information held by the Commissioner which relates to the person.
- (4) For the purpose of this section, where the Commissioner has information relating to the person, the Commissioner may supply to an authorised officer—

- (a) any of the following information held by the Commissioner if that information is of a type specified in the agreement made under section 19C(1)(d) of the Social Welfare (Transitional Provisions) Act 1990:
- (i) the street address of the person; and
 - (ii) the name and street address of the last known employer of the person; and
 - (iii) where the result of a comparison carried out under subsection (3) indicates that the person is receiving, or has, during the previous income year, received, any gross income from any source, the details of that gross income; and
 - (iv) where the Commissioner knows the names and dates of birth of any dependent children of the person, those names and dates; and
- (b) any other information held by the Commissioner that is of a type specified in the agreement made under section 19C(1)(d) of the Social Welfare (Transitional Provisions) Act 1990.
- (5) Where the Commissioner has supplied information under subsection (4) to an authorised officer of the department for the time being responsible for the administration of the Social Security Act 1964, the department may supply that information to the competent institution of the government of the other country in accordance with the mutual assistance provision of the social security agreement.
- (6) The provisions of this section apply despite any other provision of this Act.
- (7) In this section, unless the context otherwise requires,—
- authorised officer** means any officer, employee, or agent of the department for the time being responsible for the administration of the Social Security Act 1964 who is authorised by the chief executive of that department to supply information or receive information from the Commissioner under this section
- personal information** means information that identifies an individual, which may include the individual's tax file number
- social security agreement** means an agreement or Convention or alteration to an agreement or Convention—
- (a) in respect of which an Order in Council has been made under section 19 of the Social Welfare (Transitional Provisions) Act 1990; and
 - (b) that contains a mutual assistance provision of a kind referred to in section 19A(2)(b) of that Act.

85C Use and supply of information supplied for purposes of section 85B

Where information is supplied to the Commissioner under section 85B(2), the Commissioner—

- (a) may use that information for any of the following purposes:

- (i) the purposes set out in subsections (3) and (4) of that section:
 - (ii) making an assessment of the amount of tax due by any person:
 - (iii) detecting tax fraud or tax evasion:
- (b) may not supply that information to any other country without the prior written consent of the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964 and subject to such conditions as that chief executive sets.

Eprint notes

1 *General*

This is an eprint of the Social Welfare (Transitional Provisions) Amendment Act 2000 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 456(1)