

Social Security (Fraud Measures and Debt Recovery) Amendment Bill

Government Bill

As reported from the Social Services
Committee

Commentary

Recommendation

The Social Services Committee has examined the Social Security (Fraud Measures and Debt Recovery) Amendment Bill, and recommends by majority that it be passed with the amendments shown.

Introduction

The Social Security (Fraud Measures and Debt Recovery) Amendment Bill seeks to amend the Social Security Act 1964 in order to strengthen measures to combat relationship fraud, a specific kind of benefit fraud. The Ministry of Social Development's chief executive would be empowered and required to recover debt from partners and spouses of beneficiaries who obtained welfare payments fraudulently, making them jointly accountable for repaying the debt in certain circumstances. Criminal liability would also be extended to the partners of beneficiaries who committed relationship fraud.

Technical and consequential changes are not covered in the commentary.

New offence for spouses and partners

We recommend amending clause 12, new section 127A, to make clearer the criteria for liability on the part of a beneficiary's spouse or partner who, knowingly or otherwise, benefits from an amount obtained by fraud. To be liable the spouse or partner must know, or be "reckless" as to whether, the amount obtained is in excess of what the beneficiary is entitled to, and that it is being fraudulently obtained. The bill as introduced is unclear about whether the spouse or partner would also have to know the exact amount involved, or the precise way in which it was obtained. The amendments would make it clear that the spouse or partner would not be required to know the exact amount obtained by the fraud, nor the precise way the beneficiary obtained it.

Debt recovery

We propose a number of amendments to clause 9(2) regarding the debt recovery provisions of the bill.

We recommend amending new section 86(1BA) so that the ministry's chief executive, in determining the rate and method of debt recovery, is not limited to considering only factors set out in the ministerial direction. We believe that this would ensure that the amendment did not undermine the general public law principle that decision-makers must take all relevant considerations into account. It would also alleviate any concerns about the legislation breaching New Zealand's international human rights obligations, by ensuring that matters pertaining to such rights could be taken into account where necessary.

We recommend amending new section 86(1BC) so that the Minister would not be limited to specifying "exceptional" circumstances in ministerial directions which identify circumstances for the temporary deferral of debt recovery. This would make it less difficult for the ministry to provide relief in cases of hardship that did not qualify as "exceptional". This would allow more flexibility, and more consistent responses to circumstances identified by ministerial direction.

We recommend reversing the order of paragraphs (a) and (b) in new section 86(1BA) (and also in new section 86(1BC)) to require the

ministry to first consider the rate and method of debt recovery, before deciding whether or not to temporarily defer recovery of debt in the kind of circumstances set out in ministerial directions. We consider that this would more accurately reflect the policy intent to collect fraudulently accrued debt, whilst also ensuring that a debtor's circumstances were fully considered. This should allay concern about the impact of debt recovery on individuals and their families.

Commencement date

We recommend amending clause 2 to provide flexibility regarding the commencement date of the bill. Specifically, we recommend that the proposed amendments come into force on 31 August 2015, or an earlier date appointed by the Governor-General by Order in Council if the IT development necessary to support the changes has been completed.

New Zealand Labour Party minority view

While Labour supports the intent of this bill to hold those responsible for committing fraud within our benefit system to account, and stopping them from undermining the entire system for those who need it the most, we do so with grave reservations.

Labour believes that the new offence represents a departure from the general principles of criminal law in that

- a positive act is normally required to ground criminal liability
- knowledge of or failure to report another's offending is normally insufficient to ground criminal liability.

There are already a number of existing criminal offences that cover the criminal liability of spouses or partners of beneficiaries. These offences cover situations where a spouse or partner commits a positive act by

- agreeing with the beneficiary that the beneficiary will commit fraud
- encouraging or assisting the beneficiary to make false statements in order to obtain a benefit, or rate of benefit, by fraud
- making false statements for the purpose of assisting the beneficiary to obtain a benefit
- omitting to inform MSD when questioned on matters

- attempting to conceal that offending or laundering money received.

Labour accepts the argument by the New Zealand Law Society that in the absence of a positive act, which would normally provide ground for criminal liability, the justification for making partners and spouses criminally liable is not apparent. Labour would support amendments to the bill for new provisions that aligned with the advice of the New Zealand Law Society.

We further support the view by the New Zealand Law Society that it is fundamentally unjust for a beneficiary's spouse or partner to be liable for the full excess amount that the beneficiary obtained by fraud regardless of the spouse or partner's benefit and that limiting recovery to the amount by which the beneficiary's spouse or partner benefited would provide a more equitable outcome for relationship fraud.

Labour agrees with submitters who sought further protection of beneficiaries with dependents by calling for the suspension of debt recovery while a debt is in dispute under the review and appeal process, and to ensure that people with debt are not denied an opportunity to understand and challenge the debt established against them.

Labour objects to this Government's obsession with welfare fraud, while it turns a blind eye to the more costly issue of tax fraud. It accelerates the pushing of legislation on beneficiary relationship fraud without equal effort towards those who misuse the tax system; the magnitude of tax fraud is significant and is just as wrong. While relationship fraud last year amounted to around \$20 million, with this making up one third of welfare fraud prosecutions, the Inland Revenue Department estimates tax "discrepancies" amount to over \$1.2 billion a year, while annual tax fraud is \$141 million "at an absolute minimum". The rate of taxation fraud is up to 150 times the rate of welfare fraud.

The double standards approach by this Government with its unrelenting focus on welfare fraud without equal focus on partners of white-collar fraudsters who commit fraud and tax evasion was commented on by Sarah Thompson of Auckland Action Against Poverty that "it highlights the prejudices we have against beneficiaries and that we're judging them as different because of their work status."

Labour supports the concerns expressed by many submitters that this bill exposes more people to MSD's policy change where it no longer

informs people that they are under investigation. MSD has given itself sweeping powers to gain information about people from those they interact with in their community without their knowledge or permission. These powers increase the potential risks for ongoing human rights and privacy violations plus greater risk of corrupt practices by government officials. These policy changes appear to encourage a new approach where every beneficiary is presumed guilty of relationship fraud up front rather than to be presumed innocent until they are proven guilty.

Green Party of Aotearoa New Zealand minority view

The Green Party opposes this bill. The Green Party is working for a social security system that provides everyone with enough income to fully participate in their community and to live safe, healthy lives. We support policies that are sufficient to ensure this, simple to understand and access, universal in their application, and equitable within a wider social context. We oppose the bill as it is not consistent with these values or this vision. This bill will, we believe, further stigmatise the most marginalised people in this country and in some cases further entrench poverty.

It will remove some of the leniency that exists within the system, which will result in less money in the hands of the poorest New Zealanders. It will treat debtors to MSD more harshly than debtors in other parts of our system despite many people being in debt because the basic benefit levels are too low to enable them to provide the very basics of life, and we believe the more radical measures to hold partners criminally as well as financially liable in the event of fraud require more research especially in relation to the safety of women in violent relationships.

This bill makes a range of changes to accountability and culpability for benefit fraud and debt recovery by MSD, including imposing a new obligation on the ministry to take all reasonable, practical steps to recover debt.

Over two-thirds of debt that the ministry recovers is not a result of fraud. Much of it is a result of administratively created overpayment. It is the interface between beneficiaries who are working part time and reporting that work and the systems through the Inland Revenue Department. A significant amount of debt is actually created

by a mismatch of those systems rather than the doing of the beneficiary. Further, what is recorded as debt in the system is often advances given to people to pay for some of the absolute essentials in life, including things like fridges, washing machines, school uniforms, sanitary items, food and so on. The rhetoric around this bill seems to have compelled most people to start their comments with the moral acceptance of the need for beneficiaries to repay any debt. The Green Party questions the legitimacy of this when discrimination is built into the system and so many children are living in poverty as a result. We do not support law change to strengthen the ability of the Government to reclaim money from the poorest families who are just trying to provide the basics for themselves and their children.

We oppose strengthening the requirement to recover debt but also acknowledge the amendments that will now enable the Minister to consider issues beyond exceptional circumstances for temporary deferral in ministerial directions and require MSD to consider the rate and method of recovery, and the ability to consider issues beyond the ministerial directions in setting the rate and method, before considering if conditions as outlined by directions will enable them to temporarily defer the recovery of the debt, are both an improvement on the initial wording of this legislation.

We note the belief that these amendments will protect against breaches of international human rights obligations, specifically economic, social and cultural rights. However the Human Rights Commission submission to the Universal Periodic Review noted: “at present economic, social and cultural rights are not recognised as fundamental, justiciable rights”, and therefore we would argue explicit protection in this bill is required. The refusal to consider the insertion of a clause to guarantee these rights is of considerable concern to us; being told the legislation will enable future Ministers to insert such a clause into the directions is not a comfort.

This bill also significantly allows the ministry to recover a debt from the partner of a beneficiary when that debt has arisen from fraud that they knew, or they knew there was a risk that, they were benefitting from fraud. On this point we are ambivalent.

We believe the current system of reclaiming the entire debt from the beneficiary, usually the woman, even when the partner has benefitted from the money directly or indirectly, is unjust. We are also concerned that currently violent partners regularly use the threat of in-

forming on a woman as a tool of abuse. This is easy for them because, currently, the consequences fall entirely on the woman holding the benefit.

We are, however, still very concerned, especially in light of the recent policy announcement of home visits that seem to accompany this law change. The Minister's comments that "relationships could develop quickly and some people might not be aware of their obligation to tell Work and Income" seems to suggest beneficiaries are not allowed to have relationships without informing Work and Income New Zealand, and any relationship might signal fraud. The legislative test is whether your relationship is in the nature of marriage and this requires financial interdependence (meaning actual, or a willingness to support if the need arose), cohabitation and emotional commitment. Unless this is well understood at official and political levels we risk this law change fuelling an approach that stigmatises and breaches the human rights of beneficiaries and their associates.

Further, we note the concerns raised by a significant number of organisations that the current system does not have enough safety mechanisms in place to protect victims of domestic violence if their partner is caught up in this.

From what we are told the fraud investigation system is still quite fraught. Officials said that evidence they are using is often unsubstantiated, and we are hearing from women in violent relationships that they are often persecuted through this system.

The Green Party believes the Government needs to develop a policy or legislative response to the problems above based on the experience of those women/beneficiaries who have been affected, which also involves Women's Refuge, to an approach that is fair and also ensures the safety of all involved.

The Green Party also shares the New Zealand Law Society's concern regarding joint and several liability, which means that both parties will be liable for the whole debt should both parties be accountable for the debt arising from the fraud. The New Zealand Law Society believes this may lead to unfair or disproportionate outcomes. In their view, liability should be shared on the basis of attribution of benefits as per the Criminal Proceeds (Recovery) Act 2009. This has been dismissed in part due to cost and potential increase in reviews and appeals. The Green Party believes it is essential that our laws are fair and proportionate and open to appeal.

This bill also creates an offence for partners knowingly or recklessly benefiting from fraud committed by their partner, punishable by a fine of up to \$5,000 or 12 months' imprisonment.

The Green Party does not believe this is necessary and that attributing criminal liability on the basis of determinations of relationship status may well create perverse results.

Appendix

Committee process

The Social Security (Fraud Measures and Debt Recovery) Amendment Bill was referred to the committee on 27 August 2013. The closing date for submissions was 10 October 2013. We received and considered 13 submissions from interested groups and individuals. We heard seven submissions.

We received advice from the Ministry of Social Development and the Regulations Review Committee.

Committee membership

Melissa Lee (Chairperson)

Hon Phil Heatley

Jan Logie

Le'aufa'amulia Asenati Lole-Taylor

Hon Peseta Sam Lotu-Iiga

Sue Moroney

Alfred Ngaro

Dr Rajen Prasad

Mike Sabin

Hon Chris Tremain

Louisa Wall

Hon Michael Woodhouse was also present for most of the item of business.

**Social Security (Fraud Measures and
Debt Recovery) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Chester Borrows

**Social Security (Fraud Measures
and Debt Recovery)
Amendment Bill**

Government Bill

Contents

	Page
1 Title	4
2 Commencement	4
3 Principal Act	4
Part 1	
Substantive amendments	
<i>Review of decisions</i>	
4 Section 10A amended (Review of decisions)	4
<i>Rights of appeal</i>	
5 Section 12J replaced (Rights of appeal)	6
12J Rights of appeal	6
<i>Application of determinations that, and when, person single or married</i>	
5A Section 63 amended (Conjugal status for benefit purposes)	9
<i>Debts due to the Crown</i>	
6 New section 83AA inserted (Apportionment of benefit between spouses or partners: one is liable for proportion other obtained by fraud if that one knew, or ought to have known, about other's fraud)	10

**Social Security (Fraud Measures and
Debt Recovery) Amendment Bill**

	83AA Apportionment of benefit between spouses or partners: one is liable for proportion other obtained by fraud if that one knew, or ought to have known, about other's fraud	10
7	Section 85A amended (Payments that are debts due to the Crown)	11
8	New section 85B inserted (Payments that are debts due to the Crown: examples)	11
	85B Payments that are debts due to the Crown: examples	11
	<i>Recovery of amounts in excess of entitlements and related penalties</i>	
9	Section 86 amended (Recovery of payments made in excess of authorised rates)	13
	<i>Fraud measures: recovery of unapportioned excess amount obtained by fraud</i>	
10	New section 86AA inserted (Recovery from spouse or partner of unapportioned excess amount beneficiary obtained by fraud)	17
	86AA Recovery from spouse or partner of unapportioned excess amount beneficiary obtained by fraud	17
	<i>Recovery of amounts in excess of entitlements and related penalties</i>	
11	Section 124 amended (Money payable out of Crown Bank Account)	18
	<i>Fraud measures: offences</i>	
12	New section 127A inserted (Offences: spouse or partner benefiting from excess amount knowing, or being reckless about whether, it is obtained by beneficiary's fraud)	19
	127A Offences: spouse or partner benefiting from excess amount knowing, or being reckless about whether, it is obtained by beneficiary's fraud	19
	Part 2	
	Consequential amendments, and application, savings, and transitional provisions	
	<i>Consequential amendments</i>	
12A	Section 3C replaced (Transitional and savings provisions relating to amendments to this Act)	21

**Social Security (Fraud Measures and
Debt Recovery) Amendment Bill**

3C	Transitional and savings provisions relating to amendments to this Act	21
13	Section 12K amended (Procedure on appeal)	21
14	Section 60H amended (Voluntary unemployment or loss of employment through misconduct, etc)	21
15	Section 68A amended (Special provisions applying to insurance payments)	22
16	Section 71 amended (Special provisions where compensation or damages recoverable by applicant)	22
17	Section 80BB amended (Delayed redundancy and retirement payments)	22
18	Section 80BC amended (Seasonal workers made redundant after benefit commences)	22
19	Section 82 amended (Payment of benefits)	23
20	Section 83A amended (Tax on benefits)	23
21	Section 86A amended (Deduction notices for debt)	23
22	Section 86C amended (Discharge of debt)	23
23	Section 86E amended (Deductions held in trust)	23
24	Section 86I amended (Penalty for late deductions)	24
25	Section 123B amended (Effect of participation in certain activities on non-entitlement period)	24
26	Section 124 amended (Money payable out of Crown Bank Account)	24
27	Section 127 amended (Offences)	24
28	Section 132G amended (Regulations providing for remittance or suspension of debt)	24
28A	Section 151 amended (Conjugal status for purpose of means assessment)	25
28B	Schedule 32 amended	25
29	Social Security (Childcare Assistance) Regulations 2004 amended	27
30	Social Security (Debt Recovery Suspension) Regulations 2007 amended	27
31	Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990 amended	27

The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Social Security (Fraud Measures and Debt Recovery) Amendment Act **2012**.

2 Commencement

5

This Act comes into force on **4 November 2013**31 August 2015 or an earlier date appointed by the Governor-General by Order in Council.

3 Principal Act

This Act amends the Social Security Act 1964 (the **principal Act**). 10

Part 1 Substantive amendments

Review of decisions

4 Section 10A amended (Review of decisions)

15

(1) In the heading to section 10A, after “**decisions**”, insert “**of chief executive made under delegation by other decision makers**”.

(2) Replace section 10A(1) with:

“(1) This section applies to a person and a decision both of which 20
are specified in any 1 of the rows of the following table, but only if the decision is made by a decision maker in the exercise of any power, function, or discretion conferred on the decision maker by delegation:

Row	Person	Decision
1	An applicant or beneficiary affected by the decision (with ‘beneficiary’ and ‘affected’ having, in this row, the same meanings as in section 12J(1) read in the light of section 12J(2) and (3))	A decision of the chief executive made under any enactment referred to in any of the paragraphs of section 12J(1) <u>(but not being a decision referred to in section 12J(1AA) or (1AB))</u>

Row	Person	Decision
2	An applicant or beneficiary or other person	A decision of the chief executive made— (a) in relation to the applicant or beneficiary or other person; and (b) using a power under section 19D(1)(a) of the Social Welfare (Transitional Provisions <u>Reciprocity Agreements, and New Zealand Artificial Limb Service</u>) Act 1990 (referred to in section 12J(4))
3	A beneficiary's spouse or partner	A decision of the chief executive made— (a) in relation to the beneficiary's spouse or partner; and (b) under section 86(3) (referred to in section 12J(5) , and including the component decisions specified in section 12J(6))
4	The personal representative of a deceased beneficiary	A decision of the chief executive made— (a) in relation to the estate of the deceased beneficiary; and (b) under section 86(4) (referred to in section 12J(7))
5	The personal representative of a beneficiary's deceased spouse or partner	A decision of the chief executive made— (a) in relation to the estate of the beneficiary's deceased spouse or partner; and (b) under section 86(5) (referred to in section 12J(8) , and including the decision specified in section 12J(9))
6	A beneficiary's spouse or partner	A decision of the chief executive made— (a) in relation to the beneficiary's spouse or partner; and (b) under section 86AA (referred to in section 12J(10) , and including the decision specified in section 12J(11))

- (3) Repeal section 10A(1C).

Rights of appeal

5 Section 12J replaced (Rights of appeal)

Replace section 12J with:

“12J Rights of appeal

5

“Decisions or determinations under specified social assistance enactments

- “(1) Any applicant or beneficiary affected may appeal to the Appeal Authority against any decision or determination of the chief executive under—

10

“(a) any of the provisions of ~~Part 4~~ Parts 1A to 1P, Part 2, Part 4, or Part 5; or

“(b) a welfare programme approved by the Minister under section 124(1)(d); or

“(c) Part 6 of the War Pensions Act 1954; or

15

“(d) Part 1 of the New Zealand Superannuation and Retirement Income Act 2001; or

“(e) the Family Benefits (Home Ownership) Act 1964; or

“(f) any regulations in force under section 132A or 155 of this Act.

20

“(1AA) No appeal lies under **subsection (1)(a)** against a decision under section 88I(2) or (7) against which an appeal lies under section 10B(1)(h) or (i) to the medical board.

“(1AB) No appeal lies under **subsection (1)(a)** against a decision under section 116C(2)(a) against which an appeal lies under section 10B(1)(k) to the medical board.

25

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

- “(3) For the purposes of **subsection (1)**, an applicant or beneficiary is not affected by a decision or determination that relates only to all or any of the temporary deferral, rate, or method or methods, of debt recovery from another person.

30

“(3A) A decision referred to in **subsection (1)**, and that is a decision by the chief executive that **section 83AA** applies to a beneficiary in respect of a benefit apportioned under section 83(1) or (2), includes, without limitation, any component

35

decisions that 1 or both of the following apply to some or all of the proportion of the benefit paid to the beneficiary's spouse or partner:

“(a) it is an amount in excess of the amount to which the spouse or partner is by law entitled or to which the spouse or partner has no entitlement; and 5

“(b) it is an amount obtained by fraud by the spouse or partner.

“Decisions under mutual assistance provisions in reciprocity agreements 10

“(4) An applicant or beneficiary or other person may appeal to the Appeal Authority against a decision 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~~ Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990. 15

“Decisions under section 86(3) to recover excess amount from spouse or partner

“(5) A beneficiary's spouse or partner may appeal to the Appeal Authority against a decision that was made by the chief executive under section 86(3) to recover from that spouse or partner (under sections 85A and **86(1)**) an amount in excess of the amount to which the beneficiary was by law entitled. 20

“(6) A decision referred to in **subsection (5)**, and made by the chief executive under section 86(3), includes, without limitation, the following component decisions: 25

“(a) the decision that, in the chief executive's opinion, the beneficiary's spouse or partner has made a false statement to or otherwise misled any officer engaged in the administration of this Act, in relation to any matter: 30

“(b) the decision that, as a result of the beneficiary's spouse or partner making a false statement to or otherwise misleading any officer engaged in the administration of this Act, the benefit or an instalment of benefit was paid in excess of the amount to which the beneficiary was by law entitled. 35

*“Decisions under section 86(4) to recover excess amount
from deceased beneficiary’s estate*

- “(7) The personal representative of a deceased beneficiary may appeal to the Appeal Authority against a decision that was made by the chief executive under section 86(4) to recover from the beneficiary’s estate (under sections 85A and **86(1)**) an amount in excess of the amount to which the beneficiary was by law entitled. 5

*“Decisions under section 86(5) to recover excess amount
from deceased spouse’s or partner’s estate*

- “(8) The personal representative of a beneficiary’s deceased spouse or partner may appeal to the Appeal Authority against a decision that was made by the chief executive under section 86(5) to recover from that spouse’s or partner’s estate (under sections 85A and **86(1)**) an amount in excess of the amount to which the beneficiary was by law entitled. 10 15

- “(9) **Subsection (8)** gives the personal representative of a beneficiary’s deceased spouse or partner, without limitation, a right to appeal against the decision that the beneficiary was paid an amount in excess of the amount to which he or she was by law entitled. 20

*“Decisions under section 86AA to recover excess amount
from spouse or partner*

- “(10) A beneficiary’s spouse or partner may appeal to the Appeal Authority against a decision that was made by the chief executive under **section 86AA** to recover from that spouse or partner (under sections 85A and **86(1)**) an unapportioned amount in excess of the amount to which the beneficiary was by law entitled or to which the beneficiary has no entitlement. 25

- “(11) **Subsection (10)** gives the beneficiary’s spouse or partner, without limitation, a right to appeal against the decision that the beneficiary obtained by fraud an amount in excess of the amount to which the beneficiary was by law entitled or to which the beneficiary has no entitlement. 30

*“Debt recovery decisions include related decisions on
deferral, rate, and methods*

- “(12) A reference in this section to a decision to recover an amount from a person or estate includes, without limitation, all re- 35

lated decisions on all or any of the temporary deferral, rate, or method or methods, of debt recovery from the person or estate.

“General restriction on appeals under this section

“(13) A decision cannot be appealed against under any other provision of this section unless the decision— 5

“(a) has been confirmed or varied by a benefits review committee under section 10A; or

“(b) was made by the chief executive other than pursuant to a delegation. 10

“Authority is not authorised to hear and determine certain appeals on medical or capacity grounds

“(14) The Appeal Authority does not have the authority to hear and determine any appeal on medical grounds, grounds relating to incapacity, or grounds relating to capacity for work, against any decision or determination of the chief executive in respect of— 15

“(a) ~~an invalid’s benefit~~ a supported living payment on the ground of sickness, injury, disability, or total blindness; or 20

“(b) a child disability allowance under section 39A; or

“(c) a veteran’s pension under section 70 of the War Pensions Act 1954; or

“(d) ~~a sickness benefit~~ jobseeker support on the ground of sickness, injury, or disability.” 25

Application of determinations that, and when, person single or married

5A Section 63 amended (Conjugal status for benefit purposes)

In section 63, after “Part 4”, insert “(and with every determination under this section also applying for every debt-recovery or offence provision in or under this Act), but subject to section 151.”. 30

Debts due to the Crown

- 6 New section 83AA inserted (Apportionment of benefit between spouses or partners: one is liable for proportion other obtained by fraud if that one knew, or ought to have known, about other’s fraud)** 5
- After section 83, insert:
- “83AA Apportionment of benefit between spouses or partners: one is liable for proportion other obtained by fraud if that one knew, or ought to have known, about other’s fraud**
- “(1) This section applies to the following situation: 10
- “(a) a benefit is apportioned under section 83(1) or (2) between spouses or partners so that—
- “(i) one proportion of the benefit (**proportion A**) is paid to one spouse or partner (**A**); and
- “(ii) another proportion of the benefit (**proportion B**) is paid to the other spouse or partner (**B**); and 15
- “(iii) the person entitled to the benefit, for the purposes of section 83(1) and (2), is either A or B; and
- “(b) some or all of proportion A is—
- “(i) an amount in excess of the amount to which A is by law entitled or to which A has no entitlement; and 20
- “(ii) an amount obtained by fraud by A; and
- “(iii) a debt referred to in section 85A due to the Crown, and subject to recovery under **section 86(1)**, from A; and 25
- “(c) some or all of proportion B either is, or is not,—
- “(i) an amount in excess of the amount to which B is by law entitled or to which B has no entitlement; and 30
- “(ii) an amount obtained by fraud by B; and
- “(iii) a debt referred to in section 85A due to the Crown, and subject to recovery under **section 86(1)**, from B; and
- “(d) B either knew, or ought to have known (even if B did not know), of the fraud by A. 35
- “(2) In the situation to which this section applies, B is jointly and severally liable for A’s debt referred to in **subsection (1)(b)**,

- and that amount is a debt referred to in section 85A due to the Crown, and subject to recovery under **section 86(1)**, from B.
- “(3) This section does not limit or affect any civil or criminal liability under any other law—
- “(a) of A for, or in respect of, the debt referred to in **sub-section (1)(b)**; or 5
- “(b) of B for, or in respect of, the debt referred to in **subsection (1)(c)**.
- “(4) An amount is obtained by fraud by a person (whether A or B) for the purposes of this section if the person— 10
- “(a) obtained that amount by fraud (~~within the meaning of section 86(2) and (2C)~~); or (and, for the purposes of this paragraph, fraud means that the person—
- “(i) made any statement knowing it to be false in any material particular; or 15
- “(ii) knowingly said or did anything or omitted to do or say anything for the purpose of misleading any officer concerned in the administration of this Act); or
- “(b) is convicted of a specified offence (as defined in **section 127A(3)**) in respect of obtaining that amount. 20
- “(5) **Subsection (4)** does not limit—
- “(a) the generality of the references in **subsection (1)** to fraud; or
- “(b) the operation of section 49 (conviction as evidence in criminal proceedings) of the Evidence Act 2006.” 25
- 7 Section 85A amended (Payments that are debts due to the Crown)**
- In the heading to section 85A, after “Crown”, insert “: general”. 30
- 8 New section 85B inserted (Payments that are debts due to the Crown: examples)**
- After section 85A, insert:
- “**85B Payments that are debts due to the Crown: examples**
- “(1) Debts referred to in section 85A(a) (penalty) and (e) (debt due to the Crown) include a penalty under section 86(2) (recovery 35

- of penalty from beneficiary who obtains by fraud amount in excess of entitlement).
- “(2) Debts referred to in section 85A(b) (conditional or provisional benefit that person is liable to repay) include the following:
- “(a) an amount directed to be repayable under section 60H(6)(b) (voluntary unemployment or loss of employment through misconduct, etc): 5
- “(b) an amount the person granted a benefit is liable to repay under section 61CC(2)(a) (granting of emergency benefits during epidemic in New Zealand), and to which section 85A(b) applies in accordance with section 61CC(2)(b): 10
- “(c) an amount recoverable under **section 80BB(5)** (delayed redundancy and retirement payments):
- “(d) an amount recoverable under **section 80BC(3)** (seasonal workers made redundant after benefit commences): 15
- “(e) an amount the person participating in approved activities is liable to repay under section 123B (effect of participation in certain activities on non-entitlement period). 20
- “(3) Debts referred to in section 85A(b) (conditional or provisional benefit that person is liable to repay) and (e) (debt due to the Crown) include the following:
- “(a) an amount recoverable under section 68A(5) (special provisions applying to insurance payments): 25
- “(b) an amount recoverable under section 71(1)(b) (special provisions where compensation or damages recoverable by applicant).
- “(4) Debts referred to in section 85A(e) (debt due to the Crown) include the following: 30
- “(a) an excess amount recoverable under section 86(3) (recovery from spouse or partner who makes false statement to or otherwise misleads department of excess amount beneficiary obtained): 35
- “(b) an excess amount recoverable under section 86(4) (recovery from estate of deceased beneficiary of excess amount beneficiary obtained):

- “(c) an excess amount recoverable under section 86(5) (recovery from estate of beneficiary’s deceased spouse or partner of excess amount beneficiary obtained):
- “(d) an excess amount recoverable under **section 86AA(3)** (recovery from spouse or partner of unapportioned excess amount beneficiary obtained by fraud). 5
- “(5) Debts referred to in section 85A(f) (overpayments under this Act) include the following:
 - “(a) an amount recoverable under section 86 or **86AA** read (in the case of either section) together with section 124(2) and (2A): 10
 - “(b) amounts recoverable under **section 86E(2)** (deductions held in trust):
 - “(c) an amount recoverable under section 86I(3) (penalty for late deductions): 15
 - “(d) an amount that regulations made under section 132AC(1)(i) provide is a debt due to the Crown under section 85A(f).
- “(6) This section does not limit the generality of section 85A.”

Recovery of amounts in excess of entitlements and related penalties 20

9 Section 86 amended (Recovery of payments made in excess of authorised rates)

- (1) Replace section 86(1) and (1A) with:
 - “*Chief executive’s duty to recover debt in section 85A* 25
 - “(1) The chief executive is under a duty imposed by this subsection to take all reasonably practicable steps to recover a debt referred to in section 85A.
 - “(1A) **Subsection (1)** is subject to the following:
 - “(a) subsections (9A) and (9B) (debts caused wholly or partly by errors to which debtors did not intentionally contribute): 30
 - “(b) any regulations (providing for remittance or suspension of debt) made under section 132G:
 - “(c) the debt falling within any 1 or more classes, descriptions, or kinds of debts specified in a written determin- 35

- ation made by the chief executive for the purposes of this paragraph as debts that it is uneconomic to recover:
- “(d) the debt falling within any 1 or more classes, descriptions, or kinds of debts specified in a written authorisation given jointly by the Minister and by the Minister of Finance for public finance purposes generally as debts that are to be written off.” 5
- (2) After section 86(1B), insert:
- “(1BA) In performing the duty imposed by **subsection (1)**, the chief executive— 10
- ~~“(a) may, if satisfied of the existence in the particular case of exceptional circumstances of a kind identified by directions under **subsection (1BG)**, defer temporarily recovery of the debt; but~~
- ~~“(b) must otherwise determine from time to time the rate of recovery and method or methods of recovery to be used and; in doing so, is not required to have regard to relevant considerations unless they are identified in directions under **subsection (1BG)**;~~ 15
- “(a) must determine from time to time the rate of recovery and method or methods of recovery to be used and, in doing so, must have regard to all relevant considerations, including, without limitation, any identified in directions under **subsection (1BC)**; and 20
- “(b) may from time to time, if satisfied of the existence in the particular case of circumstances of a kind identified by directions under **subsection (1BC)**, defer temporarily recovery of the debt. 25
- “(1BB) The method or methods of recovery that the chief executive may determine is or are to be used are as follows: 30
- “(a) bring proceedings in the name of the chief executive:
- “(b) deduct all or part of that debt from any amount payable to that person by the department as a benefit or a student allowance:
- “(c) for a debt referred to in section 85A(d) (recoverable special assistance money under an approved welfare programme), deduct all or part of that debt from any payment of a grant of special assistance under a welfare programme approved under section 124(1)(d). 35

- “(1BC) The Minister must give to the chief executive, and ensure that there are in force (as from time to time amended or replaced) at all times on and after **4 November 2013**~~the commencement of the Social Security (Fraud Measures and Debt Recovery) Amendment Act 2012~~, directions for the purposes of **subsection (1BA)(a) and (b)**, which, without limitation, may—
- “(a) ~~identify for **subsection (1BA)(a)** different kinds of exceptional circumstances for different kinds of debts referred to in section 85A:~~
- “(b) ~~identify for **subsection (1BA)(b)** considerations that differ, or that contemplate different rates of recovery, or methods of recovery, or both, for determinations in respect of different kinds of debts referred to in section 85A:~~
- “(a) identify for **subsection (1BA)(a)** considerations that differ, or that contemplate different rates of recovery, or methods of recovery, or both, for determinations in respect of different kinds of debts referred to in section 85A:
- “(b) identify for **subsection (1BA)(b)** different kinds of circumstances for different kinds of debts referred to in section 85A.
- “(1BD) Directions under **subsection (1BC)**—
- “(a) must as soon as practicable after they are given be published by the Minister in the *Gazette*, and are not ~~regulations for the purposes of the Acts and Regulations Publication Act 1989~~legislative instruments for the purposes of the Legislation Act 2012; but
- “(b) ~~are regulations for the purposes of the Regulations (Disallowance) Act 1989~~disallowable instruments for the purposes of the Legislation Act 2012, and must be ~~laid before~~ presented to the House of Representatives under section ~~441~~ of that Act.”
- (3) Before section 86(2), insert:
- “Recovery of penalty from beneficiary who obtains by fraud amount in excess of entitlement”.*
- (4) Before section 86(3), insert:

- “Recovery from spouse or partner who makes false statement to or otherwise misleads department of excess amount beneficiary obtained”.*
- (5) In section 86(3), replace “, in relation to his or her income or other personal circumstances,” with “, in relation to any matter,”. 5
- (6) After section 86(3), insert:
- “(3A) Subsection (3) enables recovery from the spouse or partner on the basis that he or she is jointly and severally liable, and therefore does not limit or affect— 10
- “(a) recovery under section 85A(e) or (f) and **subsection (1)** of this section from the beneficiary of the excess amount recoverable under subsection (3) from the beneficiary’s spouse or partner; or
- “(b) any other civil or criminal liability of the beneficiary, 15
under any other laws, in respect of that excess amount.”
- (7) Before section 86(4), insert:
- “Recovery from estate of deceased beneficiary of excess amount beneficiary obtained”.*
- (8) In section 86(4), replace “owing” with “due”. 20
- (9) Before section 86(5), insert:
- “Recovery from estate of beneficiary’s deceased spouse or partner of excess amount beneficiary obtained”.*
- (10) In section 86(5), replace “owing” with “due”.
- (11) Before section 86(6), insert: 25
- “Making, notice, and review of assessment of amount under subsection (4) or (5)”.*
- (12) Before section 86(9A), insert:
- “Debts caused wholly or partly by errors to which debtors did not intentionally contribute”.* 30
- (13) After section 86(9B), insert:
- “Approved welfare programmes: special assistance payments*
- “(9C) This section and **section 86AA** apply, in accordance with section 124(2A), to a payment to which section 124(2) applies—
- “(a) as if it were made by way of benefit under ~~Part 1~~ Parts 1A 35
to 1P; and

“(b) as if the person to whom the payment was made were a beneficiary entitled to a benefit of the amount determined under section 124(2A)(b).”

*Fraud measures: recovery of unapportioned
excess amount obtained by fraud*

5

10 New section 86AA inserted (Recovery from spouse or partner of unapportioned excess amount beneficiary obtained by fraud)

After section 86, insert:

“86AA Recovery from spouse or partner of unapportioned excess amount beneficiary obtained by fraud

10

“(1) **Beneficiary**, in this section, means a person ~~from whom the chief executive may, in his or her discretion, recover a penalty under section 86(2) because—~~

“(a) ~~the person who~~ has obtained any payment, or received any credit or advance, referred to in section 85A in excess of the amount to which he or she was entitled or to which he or she has no entitlement; and

15

“(b) who, in the chief executive’s opinion, obtained that payment or credit or advance in excess ~~was obtained~~ by fraud ~~(within the meaning of section 86(2) and (2C))~~.

20

“(1A) An amount is obtained by fraud by a person for the purposes of subsection (1) if the person—

“(a) obtained that amount by fraud (and, for the purposes of this paragraph, fraud means that the person—

25

“(i) made any statement knowing it to be false in any material particular; or

“(ii) knowingly said or did anything or omitted to do or say anything for the purpose of misleading any officer concerned in the administration of this Act); or

30

“(b) is convicted of a specified offence (as defined in section 127A(3)) in respect of obtaining that amount.

“(1B) Subsection (1A) does not limit—

“(a) the generality of the references in subsection (1) to fraud; or

35

- “(b) the operation of section 49 (conviction as evidence in criminal proceedings) of the Evidence Act 2006.”
- “(2) **Subsection (3)** does not apply to the beneficiary’s spouse or partner unless none of the amount in excess has been apportioned to him or her under section 83(1) or (2) and, in the chief executive’s opinion, the spouse or partner—
- “(a) knowingly benefited directly or indirectly from the beneficiary’s fraud ~~referred to in section 86(2)~~; or
- “(b) ought to have known (even if the spouse or partner did not know) that the spouse or partner was benefiting directly or indirectly from the beneficiary’s fraud ~~referred to in section 86(2)~~.”
- “(3) The amount in excess that the beneficiary obtained by the beneficiary’s fraud ~~referred to in section 86(2)~~ is a debt due to the Crown under section 85A(e) or (f), and subject to recovery under **section 86(1)**, from the spouse or partner.
- “(4) **Subsection (3)** enables recovery from the spouse or partner on the basis that he or she is jointly and severally liable, and therefore does not limit or affect—
- “(a) recovery under sections 85A(e) or (f) and **86(1)** from the beneficiary of the excess amount recoverable under **subsection (3)** from the beneficiary’s spouse or partner; or
- “(b) any other civil or criminal liability of the beneficiary, under any other laws, in respect of that excess amount.”
- “(5) Section 86(2) and this section apply, in accordance with section 124(2A), to a payment to which section 124(2) applies—
- “(a) as if it were made by way of benefit under ~~Part 1~~ Parts 1A to 1P; and
- “(b) as if the person to whom the payment was made were a beneficiary entitled to a benefit of the amount determined under section 124(2A)(b).”

*Recovery of amounts in excess of entitlements
and related penalties*

- 11 Section 124 amended (Money payable out of Crown Bank Account)** 35
- In section 124(2A), replace “and 86,” with “, 86, and **86AA**”.

Fraud measures: offences

12 **New section 127A inserted (Offences: spouse or partner ~~knowingly or recklessly~~ benefiting from excess amount knowing, or being reckless about whether, it is obtained by beneficiary's fraud)** 5

After section 127, insert:

“127A Offences: spouse or partner ~~knowingly or recklessly~~ benefiting from excess amount knowing, or being reckless about whether, it is obtained by beneficiary's fraud

“(1) A person (the ~~spouse or partner~~) who is the spouse or partner of another person (the ~~beneficiary~~) commits an offence if— 10

“(a) the beneficiary obtains any payment, or receives any credit or advance, referred to in section 85A in excess of the amount to which the beneficiary is by law entitled; and 15

“(b) that payment or credit or advance in excess (the ~~excess amount~~) is obtained by fraud; and

“(c) the spouse or partner benefits directly or indirectly from the excess amount the beneficiary obtained by fraud; and 20

“(d) in benefiting in that way, the spouse or partner knows that, or is reckless as to whether, the excess amount is an amount—

“(i) in excess of the amount to which the beneficiary is by law entitled; and 25

“(ii) that the beneficiary obtained by fraud.

“(1) A person (the ~~spouse or partner~~) commits an offence who—

“(a) is a spouse or partner of a person (the ~~beneficiary~~) who obtains an excess amount by fraud; and

“(b) benefits directly or indirectly from the amount or a part of it knowing that, or being reckless about whether, the amount or part is an amount or part— 30

“(i) in excess of the amount to which the beneficiary is by law entitled or to which the beneficiary has no entitlement; and 35

“(ii) obtained by the beneficiary by fraud.

“(1A) **Subsection (1)(b) applies to the amount or part even if the spouse or partner—**

“(a) does not benefit from it knowingly; and

- “(b) does not know at all or exactly its value; and
“(c) does not know, or (as the case requires) is not reckless about, the precise way in which it was obtained by the beneficiary by fraud.
- “(1B) The beneficiary obtains an excess amount for the purposes of **subsection (1)** if the beneficiary obtains any payment, or receives any credit or advance, referred to in section 85A in excess of the amount to which the beneficiary is by law entitled or to which the beneficiary has no entitlement. 5
- “(2) The excess amount is obtained by the beneficiary by fraud for the purposes of **subsection (1)** if— 10
- “(a) the beneficiary obtained that amount by fraud (~~within the meaning of section 86(2) and (2C)~~as defined in **sections 83AA(4)(a) and 86AA(1A)(a)**); or
- “(b) the beneficiary is convicted of a specified offence in respect of obtaining that amount. 15
- “(3) **Specified offence**, in **subsection (2)(b)**, means an offence against section 127 (offences: false statements, misleading, or attempting to mislead, to receive or continue to receive benefits) of this Act, or an offence against all or any of the following provisions of the Crimes Act 1961: 20
- “(a) section 228 (dishonestly taking or using document):
- “(b) sections 240 and 241 (obtaining by deception or causing loss by deception):
- “(c) section 256(1) and (2) (forgery): 25
- “(d) section 257 (using forged documents):
- “(e) section 258 (altering, concealing, destroying, or reproducing documents with intent to deceive):
- “(f) section 259 (using altered or reproduced document with intent to deceive). 30
- “(4) **Subsections (2) and (3)** do not limit—
- “(a) the generality of the references in **subsection (1)** to fraud; or
- “(b) the operation of section 49 (conviction as evidence in criminal proceedings) of the Evidence Act 2006. 35
- “(5) A person who commits an offence under **subsection (1)** is liable on conviction to a penalty that is either or both:
- “(a) imprisonment for a term not exceeding 12 months:
- “(b) a fine not exceeding \$5,000.”

Part 2
**Consequential amendments,
and application, savings, and
transitional provisions**

Consequential amendments

5

12A Section 3C replaced (Transitional and savings provisions relating to amendments to this Act)

Replace section 3C with:

“3C Transitional and savings provisions relating to amendments to this Act

10

“(1) The transitional and savings provisions set out in Schedule 32, which relate to amendments to this Act that come into force on or after 1 July 2001, have effect for the purposes of this Act.

“(2) The transitional and savings provisions relating to, or to the provisions of, the amendment Acts specified in the first column of the following table are set out in the Parts of Schedule 32 specified in the second column of that table:

15

<u>Amendment Act or provisions of it</u>	<u>Schedule 32 Part</u>
<u>Social Security Amendment Act 2001</u>	<u>Part 1</u>
<u>Social Security (Benefit Categories and Work Focus) Amendment Act 2013</u>	<u>Part 2</u>
<u>Social Security (Fraud Measures and Debt Recovery) Amendment Act 2012</u>	<u>Part 3</u>

13 Section 12K amended (Procedure on appeal)

Replace section 12K(1C)(a) with:

“(a) the person to whom section 12J gives the right to appeal against the decision or determination; and”.

20

14 Section 60H amended (Voluntary unemployment or loss of employment through misconduct, etc)

In section 60H(7), replace “may be recovered from the person under section 86(1)” with “is a debt due to the Crown under section 85A(b), and subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A), from the person”.

25

- 15 Section 68A amended (Special provisions applying to insurance payments)**
- In section 68A(5), replace “may be recovered as a debt due to the Crown from the applicant or person or the person liable to make the payment” with “is a debt due to the Crown under section 85A(b) and (e), and subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A), from the applicant or person or the person liable to make the payment”.
- 16 Section 71 amended (Special provisions where compensation or damages recoverable by applicant)**
- In section 71(1)(b), replace “may be recovered as a debt due to the Crown” with “is a debt due to the Crown under section 85A(b) and (e), and subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A),”.
- 17 Section 80BB amended (Delayed redundancy and retirement payments)**
- (1) In section 80BB(4), replace “The chief executive may recover from the person, under section 86(1),” with “This subsection applies to”.
- (2) After section 80BB(4), insert:
- “(5) A payment to which subsection (4) applies is a debt due to the Crown under section 85A(b), and subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A), from the person.”
- 18 Section 80BC amended (Seasonal workers made redundant after benefit commences)**
- (1) In section 80BC(2), replace “The chief executive may, under section 86(1), recover from a person referred to in subsection (1)” with “This subsection applies to”.
- (2) After section 80BC(2), insert:
- “(3) A payment to which subsection (2) applies is a debt due to the Crown under section 85A(b), and subject to recovery under

section 86(1) (chief executive’s duty to recover debt referred to in section 85A), from the person.”

19 Section 82 amended (Payment of benefits)

In section 82(6), replace “may be recovered under section 86(1)” with “is a debt due to the Crown under section 85A(c), and subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A), from the beneficiary”. 5

20 Section 83A amended (Tax on benefits)

In section 83A(5), replace “as a debt due to the Crown within the meaning of section 85A” with “under sections 85A and 86”. 10

21 Section 86A amended (Deduction notices for debt)

(1) In section 86A(1), replace “Where any amount of money may be recovered from any person as a debt due to the Crown under this Act” with “If an amount of money that is a debt due to the Crown referred to in section 85A and that is subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A)”. 15

(2) In section 86A(2), replace “all reasonable steps” with “some other reasonably practicable steps”. 20

22 Section 86C amended (Discharge of debt)

In section 86C, replace “section 86” with “**section 86(1)**”.

23 Section 86E amended (Deductions held in trust)

(1) In section 86E(b), delete “; and, without prejudice to any other remedies against the debtor or any other person, any amounts deducted shall be held in trust for the Crown and shall be recoverable under section 86 as if it were money payable under a benefit to which the person who made the deduction was not entitled”. 25 30

(2) After section 86E(b), insert as subsections (2) and (3):

“(2) Any amounts deducted must be held in trust for the Crown, and are debts due to the Crown under section 85A(f), and subject

- to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A), from the person who makes the deductions, as if the amounts were money payable under a benefit to which the person who made the deduction was not entitled. 5
- “(3) Any holding and recovery in accordance with **subsection (2)** is without prejudice to any other remedies against the debtor or any other person.”
- 24 Section 86I amended (Penalty for late deductions)** 10
In section 86I(3), replace “may be recovered under section 86” with “is a debt due to the Crown under section 85A(f), and subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A), from the person”.
- 25 Section 123B amended (Effect of participation in certain activities on non-entitlement period)** 15
In section 123B(7), replace “may be recovered by the chief executive under section 86(1)” with “is a debt due to the Crown under section 85A(b), and subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A), from the person”. 20
- 26 Section 124 amended (Money payable out of Crown Bank Account)**
In section 124(2A), replace “and 86” with “, 86, and **86AA**”.
- 27 Section 127 amended (Offences)** 25
In the heading to section 127, after “**Offences**”, insert “: **false statements, misleading, or attempting to mislead, to receive or continue to receive benefits**”.
- 28 Section 132G amended (Regulations providing for remittance or suspension of debt)** 30
In section 132G(1)(a), replace “section 86(1) to (1B) and (3) to (5)” with “sections 86(1) to (1B) and (3) to (5) and **86AA**”.

28A Section 151 amended (Conjugal status for purpose of means assessment)

Replace section 151(1) and (2) with:

The chief executive cannot under section 63 determine that, for the purposes of this Part, a person is single by reason only

that the person or his or her spouse or partner—

“(a) is a resident assessed as requiring care; or

“(b) has become unable to affirm his or her marriage or civil

union.”

28B Schedule 32 amended

(1) In Schedule 32, replace the cross-heading “Social Security Amendment Act 2001” with:

“Part 1

“Social Security Amendment Act 2001”.

(2) In Schedule 32, replace the cross-heading “Social Security (Benefit Categories and Work Focus) Amendment Act 2013” with:

“Part 2

“Social Security (Benefit Categories and Work Focus) Amendment Act 2013”.

(3) In Schedule 32, after clause 17, insert:

“Part 3

“Social Security (Fraud Measures and Debt Recovery) Amendment Act 2012

“18 Certain review and appeal amendments apply to decisions made before commencement

“(1) The following provisions apply to decisions made before the commencement of the Social Security (Fraud Measures and Debt Recovery) Amendment Act 2012:

“(a) **rows 1 and 2** of the table in **section 10A(1)** (as inserted by **section 4(2)** of the Social Security (Fraud Measures and Debt Recovery) Amendment Act 2012):

“(b) **section 12J(1) to (4) and (12) to (14)** (as inserted by **section 5** of that Act).

“(2) **Subclause (1)** does not limit or affect the application of **sections 10A(1) and 12J** of the principal Act (as so inserted) to decisions made after that commencement.

“19 **Amendments generally apply in respect of excess amounts obtained or received before or after commencement** 5

“(1) Every enactment that is amended or inserted by the Social Security (Fraud Measures and Debt Recovery) Amendment Act **2012**, and that is not specified in **subclause (3)**, applies to, or in respect of, an amount that a person has obtained or received— 10

“(a) in excess of the amount to which the person is by law entitled or to which the person has no entitlement; and

“(b) before or after the commencement of that Act.

“(2) Every enactment specified in **subclause (3)** applies only to, or in respect of, an amount that a person has obtained or received— 15

“(a) in excess of the amount to which the person is by law entitled or to which the person has no entitlement; and

“(b) after that commencement.

“(3) The following enactments apply only to, or in respect of, an amount of the kind specified in **subclause (2)**: 20

“(a) **section 83AA** as inserted by **section 6** of that Act:

“(b) section 86(3) and **(3A)** as amended or inserted by **section 9(5) and (6)** of that Act:

“(c) **section 86AA** as inserted by **section 10** of that Act: 25

“(d) **section 127A** as inserted by **section 12** of that Act.

“20 **Amendment, review, or replacement of existing debt-recovery decisions or determinations**

“(1) This clause applies to a decision or determination that is in force immediately before the commencement of the Social Security (Fraud Measures and Debt Recovery) Amendment Act **2012** and that relates to either or both of the rate and method of recovery of an amount that a person has obtained or received— 30

“(a) in excess of the amount to which the person is by law entitled or to which the person has no entitlement; and 35

“(b) before that commencement.

“(2) The decision or determination is not required by **section 86(1BA)** (as inserted by **section 9(2)** of the Social Security (Fraud Measures and Debt Recovery) Amendment Act **2012**) to be amended, reviewed, or replaced until the chief executive determines as soon as is reasonably practicable after that commencement to amend, review, or replace it under that section (as so inserted).” 5

29 Social Security (Childcare Assistance) Regulations 2004 amended

(1) This section amends the Social Security (Childcare Assistance) Regulations 2004. 10

(2) Replace regulation 28(1) with:

“(1) A payment of childcare assistance that is an overpayment (within the meaning of section 85A(f) of the principal Act) is— 15

“(a) a debt due to the Crown under section 85A(f) of the principal Act from the applicant; and

“(b) subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A) of the principal Act from the applicant.” 20

30 Social Security (Debt Recovery Suspension) Regulations 2007 amended

(1) This section amends the Social Security (Debt Recovery Suspension) Regulations 2007.

(2) In regulation 3, replace the definition of **benefit debt** with: 25

“**benefit debt** means is a debt due to the Crown under section 85A, and subject to recovery under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A), of the Act”.

31 Social Welfare (~~Transitional Provisions~~)(Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990 amended 30

(1) This section amends the Social Welfare (~~Transitional Provisions~~)(Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990. 35

- (2) In section 2(1), definition of **social security debt**, paragraph (a), replace “may be recovered from any person under section 86 of the Social Security Act 1964” with “is subject to recovery from any person under **section 86(1)** (chief executive’s duty to recover debt referred to in section 85A) of the Social Security Act 1964”.

Application of amendments

32 Certain review and appeal amendments apply to decisions made before 4 November 2013

- (1) The following provisions of the principal Act apply to decisions made before **4 November 2013**:
- (a) **rows 4 and 2** of the table in **section 40A(1)** (as inserted by **section 4(2)** of this Act);
 - (b) **section 42J(1) to (4) and (12) to (14)** (as inserted by **section 5** of this Act);
- (2) **Subsection (1)** does not limit or affect the application of **sections 40A(1) and 42J** of the principal Act (as so inserted) to decisions made on or after **4 November 2013**.

33 Amendments generally apply in respect of excess amounts obtained or received before, on, or after 4 November 2013

- (1) Every enactment that is amended or inserted by this Act, and that is not specified in **subsection (3)**, applies to, or in respect of, an amount that a person has obtained or received—
- (a) in excess of the amount to which the person is by law entitled; and
 - (b) before, on, or after **4 November 2013**.
- (2) Every enactment specified in **subsection (3)** applies only to, or in respect of, an amount that a person has obtained or received—
- (a) in excess of the amount to which the person is by law entitled; and
 - (b) on or after **4 November 2013**.
- (3) The following enactments apply only to, or in respect of, an amount of the kind specified in **subsection (2)**:
- (a) **section 83AA** as inserted by **section 6** of this Act.

Social Security (Fraud Measures and
Debt Recovery) Amendment Bill

- (b) ~~section 86(3) and (3A) as amended or inserted by section 9(5) and (6) of this Act;~~
- (c) ~~section 86AA as inserted by section 10 of this Act;~~
- (d) ~~section 127A as inserted by section 12 of this Act.~~

Transitional provisions

5

**34 Amendment, review, or replacement of existing
debt-recovery decisions or determinations**

- (1) This section applies to a decision or determination that is in force at the close of **3 November 2012** and that relates to either or both of the rate and method of recovery of an amount that a person has obtained or received—
 - (a) in excess of the amount to which the person is by law entitled; and
 - (b) before **4 November 2013**.
- (2) The decision or determination is not required by ~~section 86(1BA)~~ (as inserted by **section 9(2)** of this Act) to be amended, reviewed, or replaced until the chief executive determines as soon as is reasonably practicable after **3 November 2013** to amend, review, or replace it under that section (as so inserted).

10

15

20

Legislative history

20 February 2013
27 August 2013

Introduction (Bill 98-1)
First reading and referral to Social Services
Committee
