



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

Social Security Legislation Rewrite Bill

22/06/2016

Social Security Legislation Rewrite Bill

1 Making social security legislation more accessible

- 1.1 The New Zealand Law Society welcomes the opportunity to comment on the Social Security Legislation Rewrite Bill (the Bill).
- 1.2 The Law Society supports the policy objective of the Bill, to make New Zealand's principal social security legislation more available, navigable, and clear. The Law Society recognises that this has been a significant piece of work. However, the Bill is still not fully oriented to the perspective of a person approaching the legislation with a view to working out their own entitlements and obligations. Such a person would need to navigate their way through different parts: to find out what benefit they are eligible for in Part 1, then work through each of the obligations in Part 2 to see which ones apply to their benefit, and then assess what other factors might affect their benefit in Part 3. Such a person may not be confident at the end of this process that they have fully understood how the Act applies to them. It may be possible to improve the navigability by providing a 'one stop' guide directing the reader to all the obligations and other factors that affect each benefit, so that the reader can be sure that all of them have been considered.

2 The Supported Living Payment and the totally blind

- 2.1 The Law Society agrees with the Attorney-General's view in his report of 8 March 2016 that the re-enactment of the Supported Living Payment (SLP) provisions which apply to benefit only the totally blind constitutes an unjustifiable limit on the right of people with other disabilities to freedom from discrimination, affirmed in section 19 of the New Zealand Bill of Rights Act 1990.
- 2.2 The Ministry of Social Development's regulatory impact statements recommended that the preferential provisions be removed, for a number of reasons including because if the entitlements are retained, "any complaints to the Human Rights Commission about the provisions from other disabled people would likely be upheld".¹ As the regulatory impact statements note, if the provisions were to be removed, current recipients of the SLP could be protected through grand-parenting provisions.²

3 Benefit redirection

- 3.1 Clause 421(2)(a) provides for the power to make regulations specifying the circumstances in which part or all of the benefit payment for a class of beneficiaries can be redirected to another recipient, with or without good cause, and with or without the beneficiary's consent.
- 3.2 The power to redirect part or all of the benefit payments for a class of beneficiaries without good cause, consent or consideration of the individual circumstances of the beneficiary is a significant power and one which runs contrary to the general statutory principle that benefits are inalienable.³ The current Act does not allow such sweeping powers.⁴ Further, redirecting the benefits of some

¹ See Regulatory Impact Statement: Policy changes proposed as part of the Rewrite of the Social Security Act 1964 (2015 RIS) at [62], and Regulatory Impact Statement: Additional policy options proposed as part of the Social Security Act 1964 Rewrite (2016 RIS) at [61], [75], [79].

² Note 1 above: 2015 RIS at [52]-[56], [62]; 2016 RIS at [58], [77].

³ Section 84 of the Social Security Act 1964, clause 396 of the Bill.

⁴ Sections 82(3) and 84.

beneficiaries and not others may give rise to issues of unjustifiable discrimination under the New Zealand Bill of Rights Act.⁵

- 3.3 The Law Society's view is that the classes of beneficiaries that may be subjected to this power and the circumstances in which this power can be exercised should be clearly defined in primary legislation, so that the power is properly constrained and subject to the full scrutiny of the legislative process. This would also be more consistent with the stated intention underlying the Bill set out in the Explanatory Note, namely that:⁶

Significant policy, matters relating to human rights and freedoms, rights of appeal, provisions that vary common law, and provisions that confer economic rights (such as eligibility) are in primary legislation. Matters relating to detail and administration will be more appropriately located in delegated legislation to provide an appropriate degree of flexibility and responsiveness to changes in society.

4 Loss of ACC entitlements

- 4.1 Clause 182 of the Bill carries over provisions in section 71A of the Social Security Act 1964. The effect of these provisions is that persons receiving a benefit and their close family members are effectively deprived of their statutory entitlement to weekly compensation under the Accident Compensation Act 2001 if they are injured.
- 4.2 Weekly compensation is payable to compensate for loss of earnings when a person who has been in paid employment is injured and unable to work for a period. People on benefits can be in paid employment up to a certain level of income, as can their close family, without losing access to their benefit. Such people have access to both their benefit and their wages: this is an important aspect of the policy of encouraging people into paid employment.
- 4.3 When such a person is injured and temporarily unable to continue in their usual work, the ordinary operation of the ACC scheme would result in them receiving their benefit plus weekly compensation to compensate for the loss of their earnings. The effect of clause 182 will be that they do not receive any compensation for their loss of earnings, because their benefit will be reduced by the amount of the payment from ACC. The consequence of the injury is then that the person (or their family unit) goes from receiving a benefit plus their wages, to only the quantum of their benefit. Their income therefore goes down at a time of increased vulnerability and need. At the same time, they have through the operation of the ACC legislation lost the right to sue for compensation for their loss of earnings.
- 4.4 The ACC regime is based on the social contract where the right to sue for injury was removed in exchange for universal entitlement to fair compensation. The effect of this clause is to exclude this one group from the principle of universal entitlement, on the basis that they are beneficiaries. This is an unfair distinction and one that is not warranted by the objectives of either the Social Security legislation or the ACC regime.
- 4.5 The Law Society recommends that clause 182 be removed from the Bill.

⁵ The possibility of such issues arising is recognised in the Ministry of Social Development Regulatory Impact Statement: Policy changes proposed as part of the Rewrite of Social Security Act 1964, 25 May 2015, at [114]-[115].

⁶ See page 2 of the Explanatory Note.

5 Conclusion

5.1 The Law Society does not wish to be heard.

A handwritten signature in black ink, appearing to be 'K. Beck', written in a cursive style.

Kathryn Beck
President
22 June 2016