

# Departmental Disclosure Statement

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Social Security (Winter Energy Payment) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Social Development.

The Ministry of Social Development certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

28 February 2019

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## Part One: General Policy Statement

This Bill ensures that social security legislation authorises 2 aspects of—

- winter energy payments, under the Social Security Act 2018, for the winter period (the 22-week period starting on 1 May) in and after the 2019 calendar year; and
- purported winter energy payments, under the former Social Security Act 1964, for the winter period (the 13-week period starting on 1 July) for the 2018 calendar year.

(This Bill ensures the lawfulness, under social security legislation, of payments and purported payments to recipients. However, this Bill does not address the lawfulness of the incurring of expenses by the Crown otherwise than in accordance with any appropriation or statutory authority, contrary to section 4(1) of the Public Finance Act 1989. That is a separate matter to be addressed in an Appropriation (Confirmation and Validation) Bill in line with that Act.)

### *Recipients of long-term residential care or residential care services (except some specified as disentitled to winter energy payment)*

This Bill ensures that social security legislation authorises a winter energy payment, or purported winter energy payment, to a person who is receiving long-term residential care in a hospital or rest home, or residential care services, unless the person is specified as disentitled to the payment.

### *First 28 days of absences from New Zealand for longer than 4 weeks during winter period*

This Bill also ensures that social security legislation authorises a winter energy payment, or purported winter energy payment, to a beneficiary for up to a maximum of 28 days of any 1 or more absences (however long each absence lasts in total) of the beneficiary from New Zealand during the winter period if—

- the payment would be payable to the beneficiary were it not for those days of those absences; and
- those days of those absences do not affect the beneficiary's eligibility, under the general eligibility requirements, for the payment.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>NO</b>

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>NO</b>
A regulatory impact statement was not required for this Bill. The Treasury Regulatory Quality Team determined that the decisions sought are exempt from the Regulatory Impact Analysis requirements on the basis that they will have no or only minor impacts on businesses, individuals and not-for-profit entities.	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
A regulatory impact analysis was not required for this Bill. The Treasury Regulatory Quality Team determined that the decisions sought are exempt from the Regulatory Impact Analysis requirements on the basis that they will have no or only minor impacts on businesses, individuals and not-for-profit entities.	

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>YES</b>
There are some benefits associated with passing this Bill. Without these amendments, certain clients who are in long-term residential care will not be eligible to receive WEP despite the intended policy. If the Bill is not passed, clients who are absent from New Zealand for more than four weeks would accumulate debt and their income would be reduced while the debt is recovered.	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>
The Bill improves the outcomes for clients who travel overseas for more than 28 days at a time, by ensuring they are not liable to repay debt associated with the first 4 weeks of overseas travel (which would be contrary to the intended policy). This reduces compliance for both individuals and MSD.	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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No specific issues relevant to international obligations were identified in the development of the policy in this Bill. As such, there have been no formal steps to determine whether the policies to be given effect by this Bill are consistent with New Zealand's international obligations.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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No specific issues were identified in the Bill that may have implications for the rights and interests of Māori protected by the Treaty of Waitangi. As such, no formal steps have been taken to determine whether the policies to be given effect by this Bill are consistent with the principles of the Treaty of Waitangi.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>
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YES
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Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website at introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <a href="http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights">http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights</a> .
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### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?
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NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?
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NO
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### Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>
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NO
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## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
The Ministry of Health, New Zealand Customs Service and the Treasury were consulted on the policy to be given effect by this Bill, and were consulted on a draft of this Bill.	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
The first winter period commenced on 1 July 2018 and the Winter Energy Payment was paid to eligible people in accordance with the Social Security Act 1964. This also included two groups who were intended to be eligible for WEP but where the law did not support making those payments lawfully. Bill's provisions are workable and will ensure all groups that should be eligible for WEP are receiving WEP lawfully.	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>YES</b>
<p>The amendments in the Bill have retrospective effect concerning decisions made by MSD to pay WEP in the last winter period (the 13-week period starting on 1 July 2018). This could be seen as contentious, as generally legislation should operate prospectively not retrospectively. However, the retrospective provisions can be justified to ensure:</p> <ul style="list-style-type: none"><li>• the Government policy intent is upheld</li><li>• practice and understanding that has been applied to date by the Ministry of Social Development is validated.</li></ul> <p>Amending the Social Security Act 2018 in this way is in line with the Legislation Guidelines 2018, which state that retrospection is appropriate if it is intended to “validate matters generally understood and intended to be lawful, but that are, in fact, unlawful as a result of a technical error.”</p> <p>No one will be adversely affected by the retrospective provisions, as WEP was paid to the benefit of clients who were intended to be eligible for WEP.</p>	

### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>



### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>

### Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>

### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>