

# Departmental Disclosure Statement

---

Social Security (Financial Assistance for Caregivers) Amendment Bill
--

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 Oranga Tamariki—Ministry for Children.

Oranga Tamariki certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

14 July 2020.

## Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information .....	5
Part Three: Testing of Legislative Content.....	7
Part Four: Significant Legislative Features .....	10

## Part One: General Policy Statement

The Bill amends the Social Security Act 2018 in order to implement 2 initiatives that improve financial assistance for caregivers that receive the Orphan's Benefit (OB) and Unsupported Child's Benefit (UCB). This will benefit the children in their care.

### *Background*

Caregivers in New Zealand provide day-to-day care for around 22,000 children whose parents are unable to care for them. Many caregivers are members of a child's whānau or extended family and have stepped up to take on the care of a child when their parents are unable to do this. The majority of children for whom these payments are made are Māori,<sup>1</sup> and a significant proportion of their caregivers are also Māori.<sup>2</sup>

Financial assistance for caregivers consists primarily of:

- the OB and UCB, which are administered by the Ministry of Social Development (MSD), for children living with caregivers outside the State care system; or
- the Foster Care Allowance (the FCA), which is administered by Oranga Tamariki—Ministry for Children, for those caring for a child in State care.

These payments are governed by the Social Security Act 2018 and the Oranga Tamariki Act 1989 respectively. While the FCA supports children who are in State care, the OB supports children whose parents have died, are missing, or have a long-term disablement. The UCB supports children who have had a family breakdown.

Changes to caregiver payments have not always kept pace with societal changes, and the payment system as a whole has never been fully reviewed. In May 2019, Cabinet agreed to the first comprehensive review of financial assistance for caregivers. This review was led by Oranga Tamariki—Ministry for Children.

In December 2019, Cabinet agreed to a response to the review, which included setting the strategic direction for the system of financial assistance for caregivers through a set of overarching objectives and principles. The initiatives in this Bill seek to make progress towards the following principles:

- regular, standardised payments should be available to, and accessible by, caregivers who provide the day-to-day care of children whose parents are unable to care for them; and
- there should be no disparity in the standardised payment rate provided to support a child in the State care system and a child living with a caregiver outside that system whose parents are unable to care for them.

In May 2020, a \$210 million package of support was funded from the COVID Response and Recovery Fund to ensure there continued to be safe and stable homes for children living with caregivers.

The Bill makes amendments to the Social Security Act 2018 in order to implement 2 of the initiatives, which are:

---

<sup>1</sup> Around 57% of children that OB and UCB are paid in relation to are Māori. Source: Stats NZ Integrated Data Infrastructure (IDI), as at 30 June 2018.

<sup>2</sup> Around 40% of OB caregivers and around 46% of UCB caregivers are Māori. Source: MSD, 30 June 2018, operational data – subject to change.

- extending eligibility for OB and UCB to caregivers who may provide care for less than 12 months (by removing the ‘12-month rule’); and
- extending the Christmas and Birthday Allowances to caregivers receiving OB and UCB at the same rates as those received caregivers receiving the FCA.

*Extending eligibility for OB and UCB to short-term caregivers (removing the ‘12-month rule’)*

One of the current criteria for accessing the OB and UCB under the Social Security Act 2018 is that the caregiver must be likely to be the principal caregiver of the child for at least 1 year from the date of the application for the payment (the ‘12-month rule’).

In practice, it means there are caregivers who take on the care of a child, often in difficult and/or short-term situations where there is little other choice, who are unable to access financial assistance to help them provide care. This is despite the fact that they, like other caregivers, have taken on primary responsibility for the day-to-day care of the child when that child’s parents are unable to care for them.

This Bill addresses this barrier by removing the minimum time period requirement for a caregiving arrangement to qualify for the OB or UCB and associated payments. The eligibility criteria for the OB and UCB are outlined in sections 44 and 47 of the Social Security Act 2018. This amendment will take effect for all new applications for the OB and UCB on or after 1 July 2021. It will also apply to applications that have been made, but have not been decided under section 301 of the Act, before that date.

*Extending Christmas and birthday allowances to caregivers receiving OB or UCB*

Caregivers receiving OB or UCB currently do not receive the birthday and Christmas allowances that are available to caregivers receiving the FCA. This means that caregivers receiving the OB or UCB pay for these costs out of their own pocket or, if they are unable to, the children in their care go without. This disparity in payments contributes to the inequities between the levels of financial assistance provided to caregivers caring for children outside of the State care system, compared with those caring for children in State care.

Being able to celebrate and enjoy significant events in a child’s life is an important part of being able to provide children who are unable to live with their parents with the same experiences as other children. It also contributes to their overall well-being, identity, and feeling of inclusion within a family, and placement stability and resilience, which are even more critical during this time.

The Bill amends the Social Security Act 2018 to establish these 2 allowances for caregivers receiving OB or UCB at the same rate as for caregivers receiving the FCA. The Bill adds the new allowances to Part 4 of Schedule 4 (for the OB) and Part 5 of Schedule 4 (for the UCB) of the Social Security Act 2018.

The Christmas Allowance will start in December 2021 and the Birthday Allowance will start for birthdays in January 2022.

## 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>YES</b>
<p>A review of financial assistance for caregivers was undertaken by Oranga Tamariki—Ministry for Children (Oranga Tamariki) in 2019. The policy to be given effect by the Bill forms part of the Government’s response to the findings of the review. The relevant documents are listed below, and can be accessed from the Oranga Tamariki website:</p> <p><a href="https://www.orangatamariki.govt.nz/about-us/reports-and-releases/cabinet-papers/financial-assistance-for-caregivers/">https://www.orangatamariki.govt.nz/about-us/reports-and-releases/cabinet-papers/financial-assistance-for-caregivers/</a></p> <ul style="list-style-type: none"> <li>• Cabinet paper: Financial Assistance for Caregivers: Review of the Foster Care Allowance, Orphan’s Benefit, Unsupported Child’s Benefit and Related Payments (June 2019).</li> <li>• Review of Financial Assistance for Caregivers: Summary of engagement findings (June 2020).</li> <li>• Cabinet paper: Reforming Financial Assistance for Caregivers: Proposed Response to the Review of Foster Care Allowance, Orphan’s Benefit, Unsupported Child’s Benefit and Related Payments (December 2019).</li> <li>• Caregivers raising children with the Orphan’s Benefit and the Unsupported Child’s Benefit - a survey of caregivers (December 2019) – accessible at: <a href="https://www.orangatamariki.govt.nz/research/latest-research/raising-children-with-the-orphans-and-unsupported-childs-benefits/">https://www.orangatamariki.govt.nz/research/latest-research/raising-children-with-the-orphans-and-unsupported-childs-benefits/</a></li> </ul>	

### 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>YES</b>
<p>To inform the policy decisions taken by the Government relating to the contents of this Bill, a Summary Regulatory Impact Assessment was completed: Impact Summary: Transforming financial assistance for caregivers of children whose parents are unable to care for them, Oranga Tamariki (10 June 2020). It is accessible at:</p> <ul style="list-style-type: none"> <li>• <a href="https://treasury.govt.nz/publications/risa/regulatory-impact-assessment-impact-summary-transforming-financial-assistance-caregivers-children-whose-parents-are-unable-care-them">https://treasury.govt.nz/publications/risa/regulatory-impact-assessment-impact-summary-transforming-financial-assistance-caregivers-children-whose-parents-are-unable-care-them</a></li> <li>• <a href="https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Report-and-releases/Cabinet-papers/Financial-assistance-caregivers/Impact-Statement-Transforming-Financial-Assistance-For-Caregivers-Whose-Parents-Are-Unable-to-Care-for-Them.pdf">https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Report-and-releases/Cabinet-papers/Financial-assistance-caregivers/Impact-Statement-Transforming-Financial-Assistance-For-Caregivers-Whose-Parents-Are-Unable-to-Care-for-Them.pdf</a></li> </ul>	
<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>

The Treasury's Regulatory Impact Assessment Team considered that Quality Assurance could be provided by Oranga Tamariki in this case. The Summary Regulatory Impact Assessment underwent independent internal review, which concluded that the Summary Regulatory Impact Assessment met the Quality Assurance Criteria.

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>

**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>

<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>NO</b>
<p>The Summary Regulatory Impact Assessment includes an assessment of the costs of the initiatives in the Bill, and describes the expected nature of the benefits of the initiatives (pages 16-17).</p> <p>The package of caregiver financial assistance initiatives analysed in the Assessment will be supported by a multi-year programme to evaluate the changes. This will assess whether the proposals are implemented as expected, and have the impacts anticipated.</p> <p>The policy is expected to confer benefits only to caregivers and the children they care for. It is not expected to lead to any group suffering a substantial unavoidable loss of income or wealth, so analysis of this nature was not undertaken.</p>	

<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>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

#### **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?**

In considering New Zealand's range of international obligations, the most relevant for this legislation is the United Nations Convention on the Rights of the Child (UNCROC).

The policy in this Bill will increase New Zealand's alignment with UNCROC. In particular:

- Article 3, relating to ensuring children have the protection and care necessary for their wellbeing
- Article 20, which relates to the entitlement to special protection and assistance for children who cannot remain in their family environment
- Article 27, which relates to children's rights to a standard of living adequate for their physical, mental, spiritual, moral and social development, and the State's role in providing material assistance and support programmes.

### Consistency with the government's Treaty of Waitangi obligations

#### **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?**

Section 7AA of the Oranga Tamariki Act 1989 sets out specific actions for Oranga Tamariki to meet its responsibilities under the Treaty of Waitangi. Proposals would be expected to help contribute to the following mana tamaiti objectives set out in the Oranga Tamariki Act 1989. These objectives underpin how Oranga Tamariki will ensure all policies, practices and services have regard to mana tamaiti (tamariki), whakapapa and whanaungatanga, in line with section 7AA(2)(b) of the Oranga Tamariki Act 1989 to:

- support, strengthen and assist whānau Māori to care for their children and young people to prevent the need for their removal from home into care or a youth justice response
- if removal from home is necessary, Oranga Tamariki will preference placements for tamariki Māori (including siblings) with members of their whānau, hapū, and iwi, ensuring support and assistance is provided to meet their needs
- support tamariki Māori to establish, maintain or strengthen their sense of belonging through cultural identity and connections to whānau, hapū and iwi.

The consultation that informed the review included face-to-face consultation with Māori and iwi NGOs and caregivers, including eight marae-hosted hui, fono, and other consultation sessions around the country.

The people primarily impacted by this Bill are children being cared for by caregivers that receive OB and UCB. These caregivers are largely members of a child’s family, whānau, hapū, iwi or family group who have stepped up to care for the child. The majority of children for whom these payments are made are Māori,<sup>3</sup> and a significant proportion of their caregivers are also Māori.<sup>4</sup> These caregivers fulfil a vital role in reducing the need for children to enter or re-enter the State care system.

Improving financial assistance for OB and UCB caregivers will provide additional support to caregivers caring for children outside the State care system, better enabling whānau, hapū, and iwi to exercise kaitiakitanga (guardianship) and whanaungatanga responsibilities over the children in their care, who are taonga (treasures).

### 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>	<b>[YES/NO]</b>
The Bill has been submitted to the Ministry of Justice for vetting regarding the New Zealand Bill of Rights Act 1990.	

### Offences, penalties and court jurisdictions

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

<sup>3</sup> Around 57% of children that OB and UCB are paid in relation to are Māori. Source: Stats NZ Integrated Data Infrastructure (IDI), as at 30 June 2018.

<sup>4</sup> Around 40% of OB caregivers and around 46% of UCB caregivers are Māori. Source: MSD, 30 June 2018, operational data – subject to change.

## 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>	<b>NO</b>

## 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>
<p>From June through to August 2019, targeted consultation was undertaken with key stakeholders as part of the review of financial assistance for caregivers. Stakeholders included caregivers, advocacy groups, care-experienced young people, Oranga Tamariki frontline staff, NGO providers (including Māori and Pacific providers) and the Office of the Children's Commissioner. The consultation sought to better understand the experiences, challenges and concerns of key stakeholders. A mixed methodology, including quantitative and qualitative methods, was used to collect information.</p> <p>A summary of the engagement findings has been published and can be accessed at: <a href="https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Report-and-releases/Cabinet-papers/Financial-assistance-caregivers/Impact-Statement-Transforming-Financial-Assistance-For-Caregivers-Whose-Parents-Are-Unable-to-Care-for-Them.pdf">https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Report-and-releases/Cabinet-papers/Financial-assistance-caregivers/Impact-Statement-Transforming-Financial-Assistance-For-Caregivers-Whose-Parents-Are-Unable-to-Care-for-Them.pdf</a>. This consultation took place prior to policy decisions. External consultation has not been undertaken on the Bill. A subject matter expert advisory group, which included Māori and Pacific members, met to help refine policy proposals.</p> <p>The Summary Regulatory Impact Assessment provides further information on the external consultation undertaken (pages 18-19).</p>	

## 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>NO</b>
<p>Testing and assessing policies will be considered as part of the implementation process for the initiatives and development of operational guidelines.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

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

### Charges in the nature of a tax

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

### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

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

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

### Civil or criminal immunity

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

## 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>YES</b>
<p>The Bill amends the eligibility criteria for two forms of financial support: OB and UCB. The Bill removes the minimum time period requirement for a caregiving arrangement to qualify for the OB or UCB and associated payments (the ‘12-month rule’). The eligibility criteria for the OB and UCB are outlined in sections 44 and 47 of the Social Security Act 2018. This change effectively extends eligibility for these payments to an increased number of care arrangements, where the arrangements are expected to be either short-term, or for an unknown duration. The change will not remove eligibility for anyone, as no additional eligibility criteria are proposed.</p> <p>Removing the 12-month rule would mean that OB and UCB could potentially be received for caregiving for short periods of time. Although potentially for shorter durations, the OB and UCB will continue to be paid only in circumstances where a child is genuinely unable to continue living with their parents. Applications would still need to meet the remaining eligibility criteria, including that there must have been a family breakdown or that the parents have died, are missing, or have a long-term disablement. This will continue to be investigated and evidenced through the Family Breakdown Assessment process or through a Family Group Conference.</p> <p>If a decision is made by MSD that any person does not agree with, they are able to ask for a formal review of decision. For more information about the review process, see here: <a href="https://www.workandincome.govt.nz/about-work-and-income/complaints/review-of-decisions.html#null">https://www.workandincome.govt.nz/about-work-and-income/complaints/review-of-decisions.html#null</a></p>	

## 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>