

Departmental Disclosure Statement

Child Support (Pass On) Acts 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 the Ministry of Social Development and Inland Revenue.

The Ministry of Social Development and Inland Revenue certify that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

23 March 2023

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Part One: General Policy Statement

Overview

This Bill seeks to ensure that beneficiaries receiving a sole parent rate of main benefit are not treated differently than other beneficiaries. The Bill does that by “passing on” (paying) child support payments to beneficiaries receiving a sole parent rate of main benefit on and after 1 July 2023, and requiring MSD to treat these payments as income when determining entitlement to a benefit or other assistance.

Estimated general effect

Approximately 41,550 sole parent families will receive, on average, \$65 per week of child support income, with a median gain of \$24 per week.

Following the abatement of income-tested financial assistance, those families will gain overall by an average of \$47 per week, with a median gain of \$20 per week.

It is estimated that child support pass-on will reduce child poverty by around 6,000 (+/-3,000) children on the fixed-line AHC50 measure, and by around 10,000 (+/-4,000) children on the BHC50 measure in the 2023/24 financial year.

Current law

Parents and carers who are receiving a sole parent rate of main benefit or unsupported child’s benefit (**UCB**) are defined as social security beneficiaries in the Child Support Act 1991.

They are currently required to apply to the Inland Revenue Department (**Inland Revenue**) for a formula assessment of child support.

Child support payments are collected by Inland Revenue on their behalf and are retained by the Government to offset the cost of their main benefit or UCB. Once the full cost of their benefit has been offset, child support payments in excess of that full cost are paid out to them.

Under current law, excess child support payments are generally not treated as income by the Ministry of Social Development (**MSD**) when determining the sole parent’s entitlement to a main benefit. But the excess is taken into account by MSD for determining entitlements to other assistance, such as temporary additional support, special benefit, and childcare assistance.

However, other beneficiaries (such as re-partnered beneficiaries) are not required to apply for formula-assessed child support. If they do, child support payments are passed on in full and the payments are treated as income under the Social Security Act 2018 for the purposes of determining entitlement to a benefit or other assistance.

Bill removes different treatment for most sole parent beneficiaries

Current law settings create inequity and inconsistency between how beneficiaries receiving a sole parent rate of main benefit and other beneficiaries are treated in the welfare system.

To correct this inequity and inconsistency, this Bill proposes to—

- remove the obligation for beneficiaries on a sole parent rate of main benefit to apply to have child support assessed and paid through Inland Revenue:
- pass on any child support payments paid through Inland Revenue to

beneficiaries receiving a sole parent rate of main benefit:

- treat child support as income when determining entitlement to a benefit or other assistance.

Those proposals will provide consistent treatment of child support payments as income under the Social Security Act 2018 for beneficiaries receiving a sole parent rate of main benefit and other beneficiaries.

Those changes will apply on and after 1 July 2023.

Those changes will not, however, apply to recipients of the UCB. That exception is due to other work being led by Oranga Tamariki—Ministry for Children to reform the system of financial assistance and support for caregivers.

Child support payments will be income for benefits or other assistance

Those proposals will introduce new income-charging rules that are specific to child support payments relating to periods on or after 1 July 2023 (referred to in the Bill as information share child support payments). Along with the automated charging of child support payments as income, these new rules will enable efficient and effective administration of child support payments in the benefit system.

The general income-charging rules will be applied for some child support payments, for example, child support a person receives for earlier periods or court-ordered lump sums payable under section 109 of the Child Support Act 1991.

If a person receives child support but it is not received as a cash amount (for example, offset child support),¹ that child support will not be treated as income when determining entitlement to a benefit or other assistance under the Social Security Act 2018.

Temporary additional support and special benefit

Related to the proposals outlined above, this Bill also proposes that formula-assessed child support liability will be treated as an allowable cost for temporary additional support.

This proposal will allow for formula-assessed child support to be claimed as an allowable cost when applying for temporary additional support, to help people with the cost of their child support liability.

Any existing clients receiving temporary additional support on 1 July 2023 will be able to have these costs backdated for up to a 13-week period (to either 1 July 2023, or when they were assessed as being liable to pay child support, whichever is later).

Additional amendments will also be made to the Ministerial Direction in relation to special benefit. Those amendments will be made to give effect to relevant Cabinet decisions, and to create consistency with changes to temporary additional support.

¹ For example, if Sam owes Alex \$120 of child support and Alex owes Sam \$100 of child support, Sam only has to pay Alex \$20 and Alex pays nothing as \$100 of child support has been offset. Despite having an interest in the \$120 and \$100 respectively, only Alex will have \$20 charged as income for benefit purposes.

Information sharing and use of automated electronic systems

Child support payment information relating to periods on and after 1 July 2023 will be shared by Inland Revenue with MSD and matched with MSD clients. Using this information, MSD will automate charging of child support payments as income when determining entitlement to any benefit or other assistance payable under the Social Security Act 2018. Information sharing between Inland Revenue and MSD will occur under the Approved Information Sharing Agreement between those agencies.

Those arrangements will remove the need for clients with child support administered by Inland Revenue (excluding recipients of the UCB) to declare as income all the child support payments that they receive, so reducing the compliance burden for clients, and improving the consistency and accuracy of income charging. However, if a beneficiary thinks an error has occurred, they are still required to tell MSD and have this reviewed (under specified grounds for review of whether a person's payment is or was their weekly income).

Other related amendments

The other policies proposed in this Bill support Inland Revenue's administration of child support and enable MSD to treat child support payments as income for a benefit or other assistance.

The Public and Community Housing Management Act 1992 and regulations made under it are also amended by this Bill to better align what is child support income for income-related rents with what is child support income for benefits or other assistance payable under the Social Security Act 2018.

Omnibus Bill

This Bill is an omnibus Bill that amends the following child support legislation and related legislation:

Child support legislation

- Child Support Act 1991:
- Child Support Rules 1992:
- Family Court Rules 2002:

Related legislation

- Social Security Act 2018:
- Social Security Regulations 2018:
- Public and Community Housing Management Act 1992:
- Public and Community Housing Management (Prescribed Elements of Calculation Mechanism) Regulations 2018.

This omnibus Bill to amend more than one Act may be introduced under Standing Order 267(1)(a).

That is because the amendments in this Bill deal with an interrelated topic that can be regarded as implementing a single broad policy.

The interrelated topic is child support that is administered under the Child Support Act 1991, which a liable parent must pay to a receiving carer who is a recipient of a benefit or other assistance.

The single broad policy is to ensure that beneficiaries receiving a sole parent rate

of main benefit are not treated differently than other beneficiaries. The Bill does that by—

- removing the obligation for beneficiaries receiving a sole parent rate of main benefit to apply to have child support assessed and paid through Inland Revenue:
- requiring Inland Revenue to “pass on” (pay), to beneficiaries receiving a sole parent rate of main benefit, payments of that child support (instead of, as under current law, Inland Revenue having to make deductions from those child support payments to offset the cost of the main benefit):
- requiring MSD to treat those payments as income for a benefit (for example, a main benefit) or other assistance (for example, income-related rents):
- making related changes to provisions on administration of, income-charging for, income or cash assets exemptions for, deprivation of income or property for, allowable costs for, stand downs for, abatement of, debts that are overpayments of, and reviews of, a benefit (for example, a main benefit) or other assistance (for example, income-related rents).

Part Two: Background Material and Policy Information

Published reviews or evaluations

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?	YES
<u>Whakamana Tāngata – Restoring Dignity to Social Security in New Zealand Welfare Expert Advisory Group - Kia Piki Ake (weag.govt.nz)</u>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
RIS at 16 March 2022 www.taxpolicy.ird.govt.nz/publications/2023/2023-ris-cs-pass-on https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/regulatory-impact-statements/binder1.pdf RIS addendum at 17 November 2022 http://www.taxpolicy.ird.govt.nz/publications/2023/2023-ris-cs-pass-on-addendum https://msd.govt.nz/about-msd-and-our-work/publications-resources/information-releases/cabinet-papers/2023/Passing-on-Child-Support-to-Sole-Parent-Beneficiaries-phased-implementation.html	

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?	NO
The RIS did not meet the threshold for RIA Team assessment.	

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?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>RIS at 16 March 2022 www.taxpolicy.ird.govt.nz/publications/2023/2023-ris-cs-pass-on https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/regulatory-impact-statements/binder1.pdf</p> <p>RIS addendum at 17 November 2022 http://www.taxpolicy.ird.govt.nz/publications/2023/2023-ris-cs-pass-on-addendum https://msd.govt.nz/about-msd-and-our-work/publications-resources/information-releases/cabinet-papers/2023/Passing-on-Child-Support-to-Sole-Parent-Beneficiaries-phased-implementation.html</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>The key policies to be given effect by this Bill are the passing on of child support payments and treating these payments as income for a benefit or other assistance.</p> <p>The benefit of passing on child support payments is dependent on the liable parent making their payments. The compliance level with child support obligations is outlined in Inland Revenue's annual report.</p> <p>https://www.ird.govt.nz/-/media/project/ir/home/documents/about-us/publications/annual-and-corporate-reports/annual-reports/annual-report-2022.pdf?modified=20221018010503&modified=20221018010503</p>	

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?

Not applicable.

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?

Passing on child support aligns with the Crown's obligations under the Treaty of Waitangi and specifically addresses inequities in the treatment of child support for sole parent beneficiaries, of which, Māori make up 47 percent.

Passing on child support will enhance Māori wellbeing by increasing the financial resources available to those families receiving a sole parent rate of benefit, who under current settings do not receive all child support paid by the liable parent.

By removing the obligation for these beneficiaries to apply for a formula assessment, parents are given more flexibility to make child support arrangements that suit their circumstances (i.e., formula assessed child support, voluntary or private agreements or no child support). This reinforces the inherent mana of clients through preserving their right to exercise greater choice and control over solutions that work best for them.

By extension, these changes will contribute to enhancing Māori wellbeing and treat all parents eligible to receive child support equitably in the welfare system, a consideration raised in Cabinet Treaty guidance regarding Article Three.

Consistency with the New Zealand Bill of Rights Act 1990

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?

YES

The Ministry of Justice will complete vetting of the Bill with respect to the consistency of the Bill with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

Privacy issues

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?

YES

The Bill sets out provisions for how child support payments provided to MSD under an Approved Information Sharing Agreement are treated as income for benefits or other assistance. This income will be subject to prescribed automated charging rules.

The Bill also includes provisions for correcting information when an error has occurred with the information share.

3.5.1. Was the Privacy Commissioner consulted about these provisions?

YES

The Office of the Privacy Commissioner was consulted on the proposal to waive the 10-day notice in relation to MSD taking an adverse action against a client based on information obtained from Inland Revenue via an Approved Information Sharing Agreement.

<https://consultations.msd.govt.nz/aisa/amendment/>

The Office of the Privacy Commissioner was also consulted on the automated decision making provisions to enable the use of automated decision making for child support pass-on and introduce requirements for the Standard and publication of arrangements. Further consultation will be required with the Privacy Commissioner ahead of the Standard being approved.

External consultation

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?

NO

In 2018, the Minister for Social Development and Employment commissioned the Welfare Expert Advisory Group (WEAG) to undertake a broad-ranging review of the welfare system and advise Government of the future of New Zealand's welfare system. WEAG consulted extensively, hearing from nearly 3,000 New Zealanders from across the welfare system, including recipients of benefits, beneficiary advocates, and MSD staff. Many respondents thought that child support payments from the liable parent should be passed on to the receiving carer, which is what WEAG recommended.

Welfare advocacy groups, commissioned expert panels, and academics have all expressed the need for child support to be passed on in full or partially as they expect it will reduce child poverty rates and prioritise the child's wellbeing.

Officials have been unable to separately consult on the proposed change. The Minister for Social Development and Employment and the Minister of Revenue made the change public through the Budget 2022 process so further consultation with the affected group was not possible. Further consultation is expected via the select committee process as part of the passage of legislative changes required to pass on child support to sole parent beneficiaries.

Public consultation was undertaken on amending the Approved Information Sharing Agreement to remove the 10 working days' notice period. Consultation was generally supportive.

Other testing of proposals

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?

NO

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
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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
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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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
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Significant decision-making powers

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?	YES
The Bill limits MSD's ability to review a client's benefit to situations where the amount of child support income charged is an error or was not received.	

Powers to make delegated legislation

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?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill includes a regulation making power so further circumstances when reviews can be undertaken can be specified by regulations contained in the Social Security Regulations.</p> <p>The Bill also includes a regulation making power that allows MSD, for the purpose of the new part 3A (how weekly income is calculated: information share child support payments), to exempt certain payments from being considered under the new child support income rules.</p> <p>The Bill also includes a regulation making power to prescribe transitional and/or savings provisions, as agreed by relevant Minister(s), to ensure a workable transition to the amendments made by this Bill to the Social Security Act 2018, the Child Support Act 1991, and the Public and Community Housing Management Act 1992. This regulation-making power, and any regulations made under it, cease to have effect at the start of 1 July 2026.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>The Bill proposes to treat child support income in a prescribed way when determining a client's entitlement to a benefit or other assistance. Child support payments notified to MSD through the information share will be charged forward and spread over four or five weeks after the payment has been received. This type of child support will be treated as income predominantly on a cash basis which means reassessments of child support will not result in a reassessment of the client's benefit or other assistance from MSD for the period the income was originally charged. Instead, reassessments of child support will impact a client's benefit or other assistance in the periods their child support arrears or debt are paid out or repaid.</p> <p>To ensure that child support reassessments do not result in a reassessment of the client's benefit or other assistance in a past period, the Bill proposes to limit the circumstances under which the Ministry of Social Development may review the treatment of child support payments. This is to ensure that the treatment of child support payments as income for a benefit or other assistance remain forward-looking which is important for minimising potential debt accumulation for low-income families.</p> <p>The Ministry of Social Development will be able to review decisions in specified circumstances as a result of issues with the information provided in the information share or processed by the automated system (or subsequently by a human) to ensure people receive the correct amount of benefit or other assistance e.g., if the wrong person was matched. In these particular circumstances, the Ministry of Social Development will not recover any overpayment of benefit (debt), as required under section 362 of the Social Security Act 2018.</p> <p>The 10-working day period for notification of an adverse action under an Approved Information Sharing Agreement is being dispensed with.</p>	