Social Security (Benefit Categories and Work Focus) Amendment Bill 2012 (2013 No 67-2)

Purpose

The aim of this Bill is to amend the Social Security Act 1964 (the Act). “It forms part of a package of reforms being introduced over 2 years that will fundamentally shift the focus of the benefit system towards encouraging and supporting beneficiaries to move into paid work”¹. This Bill follows the Social Security (Youth Support and Work Focus) Amendment Act 2012.

The key changes introduced by the Bill are:

- “a new system of main benefits, to embed a work focus throughout the benefit system”;
- “delivering a new approach to working with people in the benefit system who are either sick or disabled”;

• “introducing drug testing requirements where a beneficiary is referred to a job or training programme where drug testing is a prerequisite, matched with financial sanctions for non-compliance”;

• “using the welfare system to reinforce some important social norms relating to children’s education and health, through the use of obligations that beneficiaries with children must meet in order to continue receiving Government assistance”; and

• “stopping benefit payments to beneficiaries with a warrant to arrest that remains unresolved after 28 days from issue, provided (except where public safety is at risk) the beneficiary is given appropriate notice and the opportunity to clear the warrant to arrest”\(^2\).

The Bill as introduced is described in Bills Digest No 2001.

Main changes

The Bill is very technical. The Select Committee has described in some detail its major recommendations for amending the Bill. Almost every provision of the Bill affects the rights of affected individuals. The following appear to be the more general amendments proposed.

Jobseeker support benefit

The jobseeker support benefit replaces the unemployment benefit, the sickness benefit, the domestic purposes benefit for solo parents whose youngest child is 14 years old or older, the widows benefit for persons whose youngest child is 14 years old or older or who have no children, and the domestic purposes benefit for women alone. A person granted jobseeker support (other than on the grounds of sickness, injury or disability) must comply with the work test.

The bar-2 Bill provides a new ground of eligibility for the jobseeker support benefit. This is where the person would comply with the work available obligation “but for circumstances that would qualify the person for an exemption from some or all of the work test obligation”\(^3\). The bar-2 Bill also provides that part-time work obligations may be applied to a person receiving the jobseeker support benefit on the ground of sickness, injury, or disability if they were later deemed able to work (Part 1, Clause 40, amending New Sections 88B(1) and 88F(2)).

Drug testing

The bar-2 Bill provides that potential employers or training providers may request lawful drug tests, but cannot compel candidates to undertake such tests. It also allows such a drug test to be presumed lawful unless proven otherwise; and, in the absence of contrary information, allows the chief executive to act on evidence given by the employer or training provider that a candidate has failed a drug test (Part 1, Clause 43, amending New Section 102B of the Act).

Regulations to implement policy and to amend primary legislation

The Bill provides that regulations may be made that gave effect to significant policy decisions. The Regulations Review Committee has expressed a concern “that substantive policy is more appropriate for Parliament to determine and should be in primary legislation rather than in delegated legislation”. The Bill also allows the making of transitional regulations that could amend, suspend, or override primary legislation (a Henry VIII power).

\(^2\) Ibid., p. 2.

\(^3\) Social Security (Benefit Categories and Work Focus) Amendment Bill, 2013 No 67-2, As reported from the Social Services Committee, Commentary, p. 3.
The bar-2 Bill provides for more policy detail in the relevant provisions.

However, the Select Committee made no recommendation to change the relevant provisions essentially because they enable regulations to be made in respect of “administrative processes necessary to operate the warrants for arrest policy and specified exclusions from it. Administrative processes are not usually specified in legislation, but we consider it necessary in this instance because the Ministry of Social Development, the New Zealand Police, and the Ministry of Justice do not have operational experience on which to base decisions on the need for and terms of exclusions. The regulation-making powers in the bill as introduced would allow the appropriate provisions to be made and added to in the light of experience”.

The bar-2 Bill include a statement of the purposes for which transitional and savings regulations may be made and an objective test (in New Section 102M in the Bill as introduced) that the Minister would have to apply before recommending the making of regulations (Part 1, Clause 54, amending New Sections 132L and 132M; Schedule 7, inserting New Schedule 32 into the Act, clause 14).

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4 Ibid., pp 11 and 12 (section headed; “Regulations Review Committee”)