

Financial Assistance for Live Organ Donors Bill

Member's Bill

Explanatory note

General policy statement

The purpose of this Bill is to provide financial assistance to people who, for altruistic reasons, donate kidney or liver tissue for transplantation purposes, and who forgo income from, for example, employment during their convalescence. The Bill also provides for the payment of childcare assistance for those who require it during their convalescence.

New Zealand has one of the lowest rates of organ donation in the Western World. There are a number of reasons for this, but one of them is the financial barrier to live donation. This Bill addresses that barrier. It is not intended that the support provided to donors be material enough such that ambivalent or financially straightened citizens might be motivated to donate when otherwise they would not. That would be ethically and legally wrong. It eases the financial stress on those who will do so solely for altruistic reasons.

By Ministerial Direction such donors are presently eligible for a sickness benefit and childcare payments while they convalesce after surgery. This level of support is insufficient to recompense donors financially for the loss of income from time off work while recuperating from surgery. This Bill would increase the level of support by enabling the Chief Executive of the Ministry of Social Development to pay income assistance equivalent to that which would be paid to the donor under the Accident Compensation Act 2001 if the time off work had been due to injury. This is 80% of lost earnings, for a period of convalescence after the surgery, for a maximum of 12 weeks. Childcare assistance that is currently provided by the Ministerial Direction would continue.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides for the Bill to come into force on the day after the date on which it receives the Royal assent.

Clause 3 defines terms used in the Bill.

Clause 4 sets out the purpose of the Bill, which is to provide financial assistance to people who, for altruistic reasons, donate kidney or liver tissue for transplantation purposes by—

- providing income assistance within set limits to those who forgo income from employment during their convalescence;
- ensuring that those in receipt of certain income-tested benefits will retain their entitlement to those benefits during their convalescence, notwithstanding they may not fully meet the eligibility criteria during that period;
- providing for payment of childcare assistance within set limits to those who require it during their convalescence.

Clause 5 states that certain sections of the Social Security Act 1964 will apply to the provision of income assistance.

Part 1

Income Assistance

Clause 6 sets out the eligibility criteria for income assistance to live organ donors.

Clause 7 provides the amounts of income assistance to be payable to live organ donors who forgo income from employment during a period of convalescence. The rate will be the greater of the weekly rate of the sickness benefit set out in Schedule 9 of the Social Security Act 1964, or the amount of weekly compensation that would be payable under Part 2 of Schedule 1 of the Accident Compensation Act 2001, as if the donor qualified for that weekly compensation.

Clause 8 provides the amount of income assistance to be payable to live organ donors who are in a receipt of certain income-tested benefits prior to the surgical operation in which tissue is retrieved. Income assistance for a period of convalescence will be available in the amount of the weekly rate of the income-tested benefit they were in receipt of immediately prior to the operation.

Clause 9 provides that donors who are work-tested spouses are exempted from work-test obligations during a period of convalescence.

Clause 10 provides for the commencement and termination of income assistance.

Part 2

Childcare Assistance

Clause 11 defines terms used in Part 2 of the Bill.

Clause 12 sets out the eligibility criteria for childcare assistance.

Clause 13 provides the period for which childcare assistance is payable.

Clause 14 provides the rate of payment of childcare assistance.

Clause 15 provides for the commencement of childcare assistance.

Clause 16 states that childcare assistance must be paid to the childcare provider except in certain limited circumstances.

Part 3

Miscellaneous

Clause 17 provides that the Assistance to Live Organ Donors Programme and Ministerial Direction dated 18 January 2005 will be revoked by the Bill.

Chris Bishop

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Financial Assistance for Live Organ Donors Act **2015**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

3 Interpretation

(1) In this Act, unless the context otherwise requires,—

applicant means a person who applies for assistance under this Act, and includes a person granted assistance under this Act 10

Chief Executive means the Chief Executive of the Ministry of Social Development

childcare assistance means the assistance under Part 2

employment means paid employment, and includes self-employment

income assistance means the assistance under Part 1 15

Regulations means the Social Security (Childcare Assistance) Regulations 2004.

(2) Terms otherwise defined in section 3(1) of the Social Security Act 1964 or regulation 3(1) of the Regulations have the meanings so defined.

4 Purpose 20

The purpose of this Act is to provide financial assistance to people who, for altruistic reasons, donate kidney or liver tissue for transplantation purposes by—

(a) providing income assistance within the limits set by this Act to those who forgo income from employment during their convalescence:

(b) ensuring that those in receipt of certain income-tested benefits will retain their entitlement to those benefits during their convalescence, notwithstanding they may not fully meet the eligibility criteria during that period: 25

(c) providing for payment of childcare assistance within the limits set by this Act to those who require it during their convalescence. 30

5 Application of Social Security Act 1964

(1) Sections 12, 62 to 64, 69G to 70, 71, 74(1)(a), 75 to 77, 80A, 80BD(1), 81, 82 (other than subsection (6)), 83, and 84 of the Social Security Act 1964 apply to this Act and any applicant as if the assistance under this Act were a benefit under Part 1 of the Social Security Act 1964. 35

- (2) Nothing in **subsection (1)** affects the application to this Act or any applicant of any other provision of the Social Security Act 1964.

Part 1

Income assistance

- 6 Income assistance: eligibility** 5
- (1) The Chief Executive may grant income assistance to an applicant if the Chief Executive is satisfied that the applicant—
- (a) is a person who, after an evaluation process, has given his or her free and informed consent to become a live donor of kidney or liver tissue to be transplanted into the body of another person: 10
 - (b) has made the decision to consent with a full understanding of the nature of the procedure and the possible consequences of becoming a donor:
 - (c) has made that decision freely and genuinely and has not been the subject of any coercion to make that decision:
 - (d) has made that decision solely for altruistic reasons: 15
 - (e) is not a beneficiary (within the meaning of that term in section 61E of the Social Security Act 1964):
 - (f) will forgo income from employment during the period of convalescence following the operation to retrieve the tissue.
- (2) Despite **subsection (1)(e) and (f)**, the Chief Executive may grant income assistance to an applicant to whom the Chief Executive is satisfied **subsection (1)(a) to (d)** apply if immediately prior to the operation to retrieve the tissue, the applicant was receiving an income-tested benefit under sections 21, 27B, 27C, 27G, 58, 60F, or 89 of the Social Security Act 1964. 20
- (3) Despite **subsection (1)(f)**, if a person to whom the Chief Executive is satisfied **subsection (1)(a) to (d)** apply— 25
- (a) has forgone employment for the purpose or the predominant purpose of undergoing an operation to retrieve kidney or liver tissue:
 - (b) has left his or her employment for that purpose on or about the date the person received notice that a date for the operation had been allocated: 30
 - (c) was not in employment on the date of the operation:
- the Chief Executive may, under **section 6(1)(f)**, treat the person as a person who will forgo income from employment during the person's convalescence from the operation.
- (4) In reaching a state of satisfaction in respect of the matters in **subsection (1)(a) to (d)**, the Chief Executive may rely on the certificate of a medical practitioner vocationally registered in nephrology or general surgery where the surgeon is specialised in transplant surgery. 35

- 7 Amount of income assistance for applicants who forgo income from employment**
- (1) The weekly amount of income assistance granted under section 6(1) is the greater of the weekly rate of the sickness benefit set out in Schedule 9 of the Social Security Act 1964, or the amount of weekly compensation that would be payable to the applicant under Part 2 of Schedule 1 of the Accident Compensation Act 2001, as if they qualified for that weekly compensation. 5
- (2) Where an applicant is entitled to be paid income assistance at the weekly rate of a sickness benefit set out in Schedule 9 of the Social Security Act 1964 any income test attached to that rate is to be disregarded. 10
- (3) Where an applicant is entitled to be paid income assistance in the amount of weekly compensation that would be payable under Part 2 of Schedule 1 of the Accident Compensation Act 2001, the amount of income assistance payable each week is,—
- (a) in the case of an applicant who had earnings as an employee prior to the date of the surgical operation in which the tissue was retrieved, the amount calculated using the formula in clause 34(1) of that schedule: 15
- (b) in the case of an applicant who was self-employed prior to the date of the surgical operation in which the tissue was retrieved, the higher of the amount calculated using the formula in clause 38(2) and the amount in clause 38(3) of that schedule: 20
- (c) in the case of an applicant who had earnings as a shareholder-employee prior to the date of the surgical operation in which the tissue was retrieved, the higher of the amount calculated using the formula in clause 34(1) and the amount calculated using the formula in clause 39(2) of that schedule: 25
- (d) in the case of an applicant who was a shareholder-employee who had earnings as a self-employed person prior to the date of the surgical operation in which the tissue was retrieved, the amount calculated using the formula in clause 39(2) of that schedule. 30
- (4) The maximum amount of weekly income assistance calculated under **subsection (3)** is set out in clause 46 of Schedule 1 of the Accident Compensation Act 2001, whatever amount is calculated under **subsection (3)**.
- (5) The period for which income assistance is payable in any case is determined by **section 10(1)**. 35
- 8 Amount of income assistance for applicants in receipt of income-tested benefit**
- (1) The weekly amount of income assistance granted under **section 6(2)** is the weekly amount set out in Schedules 3, 9, 16, 17, or 26 of the Social Security Act 1964 relating to the income-tested benefit the applicant was receiving im- 40

mediately prior to the date of the surgical operation in which tissue was retrieved, for the period of convalescence determined under **section 10(1)**.

- (2) The income assistance referred to in **subsection (1)** is payable for the period of convalescence, notwithstanding that the applicant may not be able to fulfil one or more of the eligibility criteria for the relevant income-tested benefit, including work-test obligations, during that period. 5

9 Work-tested spouses

An applicant who is a work-tested spouse and is unable to fulfil one or more of his or her work-test obligations during a period of convalescence determined under **section 10(1)**, is deemed to have good and sufficient reason under section 115(1) of the Social Security Act 1964 for failing to comply with those obligations. 10

10 Commencement and termination of income assistance

- (1) Income assistance commences on the later of the date of application for it or the date of the surgical operation in which the tissue was retrieved from the applicant, and continues for each week (not exceeding 12 weeks) in which the Chief Executive is satisfied the applicant is convalescing from that operation and forgoing income from employment or from an income-tested benefit under sections 21, 27B, 27C, 27G, 58, 60F, or 89 of the Social Security Act 1964, as the case may be. 15
20
- (2) Despite **subsection (1)**, if the application for it is received within 28 days after the date of the surgical operation, income assistance commences on the date of the operation.

Part 2

Childcare assistance 25

11 Interpretation

In this Part, **qualifying child**, in relation to an applicant, means a dependent child of the applicant—

- (a) who is aged less than 14; and
(b) in respect of whom the applicant is the principal caregiver. 30

12 Childcare assistance: eligibility

- (1) The Chief Executive may grant childcare assistance in respect of a qualifying child of an applicant if the Chief Executive is satisfied that the applicant—
(a) is a person to whom **section 6(1)(a) to (d)** apply; and
(b) requires childcare for the child during the period of convalescence from the operation to retrieve the tissue. 35

- (2) In reaching a state of satisfaction in respect of the matter in **subsection (1)(a)**, the Chief Executive may rely on the certificate of a medical practitioner vocationally registered in nephrology or general surgery where the surgeon is specialised in transplant surgery.
- (3) In reaching a state of satisfaction in respect of the matter in **subsection (1)(b)**, the Chief Executive may rely on the certificate of a medical practitioner vocationally registered in nephrology or general surgery where the surgeon is specialised in transplant surgery or of a registered medical practitioner. 5
- (4) Childcare assistance granted under **subsection (1)** is in addition to—
- (a) any childcare assistance granted to the applicant in respect of the child under section 61GA of the Social Security Act 1964 or for which the applicant is eligible under the Regulations; or 10
- (b) any assistance by way of special benefit or temporary additional support granted to the applicant for childcare costs in respect of the child.
- 13 Period for which childcare assistance payable** 15
- Childcare assistance granted in respect of a qualifying child is payable—
- (a) for each week (not exceeding 12 weeks) in which the Chief Executive is satisfied the applicant is convalescing from the operation to retrieve the tissue; and
- (b) for— 20
- (i) the number of hours in the week the child participates in an approved early-childhood programme, or as the case requires, one or more OSCAR programmes, not exceeding the maximum number of hours for which a childcare subsidy or, as the case may be, an OSCAR subsidy may be paid for an eligible child under the Regulations; but 25
- (ii) after deducting the number of hours in the week for which the applicant—
- (A) has been granted a childcare subsidy or an OSCAR subsidy under section 61GA of the Social Security Act 1964 in respect of the child, or would be eligible to be granted a childcare subsidy or OSCAR subsidy in respect of the child under the Regulations; or 30
- (B) has been granted assistance by way of special benefit or temporary additional support towards his or her childcare costs in respect of the child. 35
- 14 Rate of childcare assistance**
- Childcare assistance granted under section 12 must be paid at the rate per hour for the time being set out in the second column of clause 1(a) of the Schedule of the Regulations. 40

15 Commencement of childcare assistance

- (1) Childcare assistance commences on the later of the date of application for it or the date of the surgical operation in which the tissue was retrieved from the applicant.
- (2) Despite **subsection (1)**, if the application for it is received within 28 days after the date of the surgical operation, childcare assistance commences on the date of the operation. 5

16 Payment of childcare assistance

- (1) Childcare assistance—
- (a) payable for a qualifying child's participation in an approved early-childhood programme must be paid (as the case may be) to— 10
- (i) the service providing the programme;
- (ii) the service that arranged the scheme under which the programme is provided; and
- (b) payable for a qualifying child's participation in an OSCAR programme may be paid to the provider of the programme or to the applicant. 15
- (2) Subsection (1)(a) does not prevent the Chief Executive from paying a lump sum of childcare assistance directly to the applicant if—
- (a) the sum represents an underpayment of amounts—
- (i) that should have been paid to an approved early childhood service in respect of the child's participation in a programme it provides; or 20
- (ii) that should have been paid to an approved early childhood care arranger in respect of the child's participation in a programme provided under a scheme it arranged; and 25
- (b) the applicant has already paid to the service or arranger the amount of the underpayment.

Part 3 Miscellaneous

17 Ministerial Direction revoked 30

This Act revokes the Assistance to Live Organ Donors Programme and Ministerial Direction made on 18 January 2005 pursuant to section 5 and section 124(1)(d) of the Social Security Act 1964 and published in the *Gazette* on 3 February 2005.