

# **Social Security (Winter Energy Payment) Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

#### *Authorising 2 aspects of payments or purported payments*

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.

### **Departmental disclosure statement**

The Ministry of Social Development is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2019&no=116>

### **Regulatory impact assessment**

A regulatory impact assessment is not required for this Bill.

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* relates to commencement. *Part 1*, which relates to winter periods in and after the 2019 calendar year, is to come into force, or be taken to have come into force, on **1 May 2019**. The rest of the Act is to come into force on the day after the date of Royal assent.

*Clause 3* indicates that the principal Act amended is the Social Security Act 2018.

## **Part 1**

### **Winter energy payment for winter periods in and after 2019 calendar year**

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

*Clause 4* amends section 72, which contains general eligibility requirements.

Section 72(2)(c) disentitles a person from a winter energy payment if the person is receiving long-term residential care in a hospital or rest home, and that care is funded, in whole or in part, under the New Zealand Public Health and Disability Act 2000.

*New section 72(2)(c) and (ca)*, by contrast, disentitles from a winter energy payment only specified recipients of publicly funded long-term residential care in a hospital or rest home.

*New section 72(2)(c)* disentitles a recipient of publicly funded long-term residential care in a hospital or rest home who is aged 65 years or over, is a qualifying person as defined in section 12 of the Residential Care and Disability Support Services Act 2018, and must under section 17 of that Act pay a contribution based on income towards the cost of that person's LTR contracted care that is less than the maximum contribution (as defined in section 15(2) of that Act).

*New section 72(2)(ca)* disentitles a recipient of publicly funded long-term residential care in a hospital or rest home who is aged 50 to 64 years, is a 50+ single person as defined in section 21 of the Residential Care and Disability Support Services Act 2018, and is under section 22 of that Act liable to make a contribution based on income towards the cost of the person's LTR contracted care that is less than the maximum contribution (as defined in section 15(2) of that Act).

Section 72(2)(d) disentitles a person from a winter energy payment if the person is receiving residential care services, and those services are funded, in whole or in part, under the New Zealand Public Health and Disability Act 2000.

*New section 72(2)(d)*, by contrast, disentitles from a winter energy payment only specified recipients of publicly funded residential care services.

*New section 72(2)(d)* disentitles a person who is a recipient of publicly funded disability support services that are residential care services (other than long-term residential care) because the person—

- has a disability that is an intellectual, neurological, physical, psychiatric, or sensory disability (including, without limitation, an autistic spectrum disorder) or is a long-term chronic health condition; and
- is not a qualifying person or special case person, as those terms are defined respectively in sections 12 and 20 of the Residential Care and Disability Support Services Act 2018, who is funding eligible, and has been positively needs assessed, under sections 13 and 14 of that Act.

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

*Clause 5* amends section 220, which contains a special absence rule.

Section 220 makes the winter energy payment not payable to a beneficiary for the first 28 days of any 1 or more absences of the beneficiary from New Zealand if each such absence is longer than 4 weeks during the winter period.

*New section 220(2)* makes the winter energy payment payable 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 (as defined in section 71) if—

- the payment would be payable to the beneficiary were it not for those days of those absences; and
- MSD is satisfied that those days of those absences do not affect the beneficiary's eligibility for the payment under section 72 (which contains general eligibility requirements).

## Part 2

### Purported winter energy payment for winter period for 2018 calendar year

*Schedule 1 amended to insert new clauses 77 and 78*

*Part 2 amends Schedule 1 (transitional, savings, and related provisions).*

*Clause 6 inserts in Schedule 1 a new Part 1 heading (above clause 1).*

*Clause 7 inserts in Schedule 1 a new Part 2 (new clauses 77 and 78).*

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

*New clause 77 of Schedule 1 relates to section 61FG(2)(c) and (d) of the Social Security Act 1964 (as in force after 30 June 2018 and until 26 November 2018). It makes a purported winter energy payment made for the winter period for the 2018 calendar year as authorised as if those paragraphs were replaced with a new section 61FG(2)(c), (ca), and (d) (in force for that period) that read as stated in the clause.*

Section 61FG(2)(c) disentitles a person from a winter energy payment if the person is receiving long-term residential care in a hospital or rest home, and that care is funded, in whole or in part, under the New Zealand Public Health and Disability Act 2000.

*New section 61FG(2)(c) and (ca), by contrast, disentitles from a winter energy payment only specified recipients of publicly funded long-term residential care in a hospital or rest home.*

*New section 61FG(2)(c) disentitles from a winter energy payment a recipient of publicly funded long-term residential care in a hospital or rest home who is aged 65 years or over, is an eligible person as defined in section 136, and is under section 139(1) and (3) liable to pay an amount towards the cost of long-term residential care provided to them in a hospital or rest home that is less than the maximum contribution (as defined in section 136).*

*New section 61FG(2)(ca) disentitles from a winter energy payment a recipient of publicly funded long-term residential care in a hospital or rest home who is aged 50 to 64 years, is single, and has no dependent children, is an eligible person, and is under section 143 required to pay only a contribution based on income towards the cost of the long-term residential care provided to them in a hospital or rest home that is less than the maximum contribution (as defined in section 136).*

Section 61FG(2)(d) disentitles a person from a winter energy payment if the person is receiving residential care services, and those services are funded, in whole or in part, under the New Zealand Public Health and Disability Act 2000.

*New section 61FG(2)(d)*, by contrast, disentitles from a winter energy payment only specified recipients of publicly funded residential care services.

*New section 61FG(2)(d)* disentitles a person who is a recipient of publicly funded disability support services that are residential care services (other than long-term residential care) because the person—

- has a disability that is an intellectual, neurological, physical, psychiatric, or sensory disability (including, without limitation, an autistic spectrum disorder) or is a long-term chronic health condition; and
- is not an eligible person, exempt person, or elderly victim of crime, who is a resident assessed as requiring care (as those terms are defined in section 136).

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

*New clause 78 of Schedule 1* relates to section 61FJ(2) of the Social Security Act 1964 (as in force after 30 June 2018 and until 26 November 2018). It makes a purported winter energy payment made for the winter period for the 2018 calendar year as authorised as if that subsection read as stated in the clause.

Section 61FJ(2) disentitles a person from a winter energy payment for all days of any 1 or more absences of the beneficiary from New Zealand if each such absence is longer than 4 weeks during the winter period.

*New clause 78 of Schedule 1* requires section 61FJ(2), however, to be taken to have made the winter energy payment payable 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
- the chief executive is satisfied that those days of those absences do not affect the beneficiary's eligibility for the payment under section 61FG (which contains general eligibility requirements).



*Hon Carmel Sepuloni*

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Social Security (Winter Energy Payment) Amendment Act **2019**.

**2 Commencement**

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- (1) **Part 1** comes into force, or is taken to have come into force, on **1 May 2019**.
- (2) The rest of this Act comes into force on the day after the date of Royal assent.

**3 Principal Act**

This Act amends the Social Security Act 2018 (the **principal Act**).

**Part 1**

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**Winter energy payment for winter periods  
in and after 2019 calendar year**

**4 Section 72 amended (Winter energy payment: requirements)**

Replace section 72(2)(c) and (d) with:

- |      |  |              |
|------|--|--------------|
| (c)  | the person is aged 65 years or over, is a qualifying person as defined in section 12 of the Residential Care and Disability Support Services Act 2018, and must under section 17 of that Act pay a contribution based on income towards the cost of that person's LTR contracted care that is less than the maximum contribution (as defined in section 15(2) of that Act); or       | 15<br><br>20 |
| (ca) | the person is aged 50 to 64 years, is a 50+ single person as defined in section 21 of the Residential Care and Disability Support Services Act 2018, and is under section 22 of that Act liable to make a contribution based on income towards the cost of the person's LTR contracted care that is less than the maximum contribution (as defined in section 15(2) of that Act); or | 25           |
| (d)  | the person is receiving disability support services as defined in section 6 of the New Zealand Public Health and Disability Act 2000 that are residential care services (other than long-term residential care) funded, in whole or in part, under that Act, because the person—   | 30           |
| (i)  | has a disability that is an intellectual, neurological, physical, psychiatric, or sensory disability (including, without limitation,   |              |



- an autistic spectrum disorder) or is a long-term chronic health condition; and
- (ii) is not a qualifying person or special case person, as those terms are defined respectively in sections 12 and 20 of the Residential Care and Disability Support Services Act 2018, who is funding eligible, and has been positively needs assessed, under sections 13 and 14 of that Act; or

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**5 Section 220 amended (Special absence rule: winter energy payment)**

Replace section 220(2) with:

- (2) The winter energy payment is payable 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 (as defined in section 71) if—
- (a) the payment would be payable to the beneficiary were it not for those days of those absences; and
- (b) MSD is satisfied that those days of those absences do not affect the beneficiary's eligibility for the payment under section 72.

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**Part 2**

**Purported winter energy payment for winter period  
for 2018 calendar year**

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**6 Schedule 1 amended: new Part 1 heading inserted**

In Schedule 1, before the cross-heading "*Interpretation*" above clause 1, insert:

**Part 1  
Provisions relating to Act as enacted**

**7 Schedule 1 amended: new Part 2 inserted**

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In Schedule 1, after clause 76, insert:

**Part 2  
Provisions relating to Social Security (Winter Energy Payment)  
Amendment Act 2019**

**77 Purported winter energy payment for winter period for 2018 calendar year: payments contrary to section 61FG(2)(c) and (d) of Social Security Act 1964**

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A purported winter energy payment made for the winter period for the 2018 calendar year is as authorised as if section 61FG(2)(c) and (d) of the

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Part 2 cl 7

Social Security Act 1964 (as in force after 30 June 2018 and until 26 November 2018) were replaced with a **section 61FG(2)(c), (ca), and (d)** (in force for that period and) that read as follows:

- “(c) the person is aged 65 years or over, is an eligible person as defined in section 136, and is under section 139(1) and (3) liable to pay an amount towards the cost of long-term residential care provided to them in a hospital or rest home that is less than the maximum contribution (as defined in section 136); or 5
- “(ca) the person is aged 50 to 64 years, is single, and has no dependent children, is an eligible person, and is under section 143 required to pay only a contribution based on income towards the cost of the long-term residential care provided to them in a hospital or rest home that is less than the maximum contribution (as defined in section 136); or 10
- “(d) the person is receiving disability support services as defined in section 6 of the New Zealand Public Health and Disability Act 2000 that are residential care services (other than long-term residential care) funded, in whole or in part, under that Act, because the person— 15
  - “(i) has a disability that is an intellectual, neurological, physical, psychiatric, or sensory disability (including, without limitation, an autistic spectrum disorder) or is a long-term chronic health condition; and 20
  - “(ii) is not an eligible person, exempt person, or elderly victim of crime, who is a resident assessed as requiring care (as those terms are defined in section 136); or”.

**78 Purported winter energy payment for winter period for 2018 calendar year: payments contrary to section 61FJ(2) of Social Security Act 1964** 25

A purported winter energy payment made for the winter period for the 2018 calendar year is as authorised as if section 61FJ(2) of the Social Security Act 1964 (as in force after 30 June 2018 and until 26 November 2018) read as follows: 30

- “(2) The winter energy payment is payable 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—
  - (a) the payment would be payable to the beneficiary were it not for those days of those absences; and 35
  - (b) the chief executive is satisfied that those days of those absences do not affect the beneficiary’s eligibility for the payment under section 61FG.”