

Social Security (Winter Energy Payment) Amendment Bill

Government Bill

As reported from the Social Services and Community Committee

Commentary

Recommendation

The Social Services and Community Committee has examined the Social Security (Winter Energy Payment) Amendment Bill and recommends by majority that it be passed with the amendments shown.

About the bill as introduced

The Families Package (Income Tax and Benefits) Act 2017 amended the Social Security Act 1964 (which was replaced by the Social Security Act 2018) to include a new form of supplementary financial assistance—the winter energy payment (WEP). Any person receiving a qualifying benefit (a main benefit, New Zealand Superannuation, or a Veteran’s Pension) is eligible for, and automatically receives, the WEP.¹ The WEP is payable to eligible persons during the winter period, which is the 22-week period commencing 1 May each year. The winter period for 2018 was the 13-week period starting on 1 July 2018.

The Social Security (Winter Energy Payment) Amendment Bill would amend the Social Security Act 2018 to align with the policy intent in two specific scenarios. The amendments would ensure that the following people are eligible to receive the WEP:

¹ A main benefit is Jobseeker Support, Sole Parent Support, any type of supported living payment (on the ground of restricted work capacity or total blindness, or on the ground of caring for another person), a Youth Payment, a Young Parent Payment, or an Emergency benefit.

- People who are receiving government funding for long-term residential care or residential care services who are not eligible for the Residential Care Subsidy (RCS) or Residential Support Subsidy (RSS).
- People who are absent from New Zealand for longer than four weeks at any one time during the winter period would receive the WEP for the first 28 days of that absence. This is because they would receive the WEP for up to a maximum of 28 days of any 1 or more absences (however long each absence lasts in total) from New Zealand during the winter period.² Under current legislation, people receive a WEP for 1 or more absences from New Zealand during the winter period only if each such absence is equal to or shorter than four weeks.

The bill would also modify retrospectively the replaced former 1964 Act to authorise the Ministry of Social Development's decision to pay the WEP to these groups during the last winter period in 2018.

Proposed amendments

We understand that the policy intent of the legislation is that a person receiving the RSS should not be eligible for the WEP. Therefore, the policy intent is that clause 4 of the bill, amending section 72(d), would disentitle a person who is receiving an RSS.

An RSS helps with the cost of residential support for a person who has been assessed as needing residential care services because they have an intellectual, neurological, physical, psychiatric, or sensory disability, or a long-term chronic health condition. A person receiving this subsidy must contribute to the cost of their care. When they receive an RSS, the ministry redirects the person's benefit to the relevant care provider and pays a personal allowance if the person is receiving a benefit.

However, we were advised that a small number of people receiving residential care services with a long-term chronic health condition do not contribute to the cost of their care. The funding that they receive is not considered an RSS because they do not contribute for their care.

Additionally, some people who are in residential care due to a disability or a long-term chronic health condition do not have the ministry redirect their benefit. Instead, they have a private arrangement with their provider. This funding is also not considered an RSS because the ministry does not redirect their benefit.

To fit with the policy intent of the legislation, we recommend amending clause 4, which would amend section 72 of the Act. Our change (replacement of new section 72(d)) would make it clear that these two groups would be eligible for a WEP because the funding they receive is not considered to be an RSS.

We also recommend making the equivalent amendments in clause 7, inserting new clause 77 in Schedule 1 of the 2018 Act. These provisions relate to WEP payments

² As long as the WEP is payable to the person were it not for the absence and the absence does not affect the person's general WEP eligibility requirements.

that were made under the former Social Security Act 1964 for the winter period in 2018.

New Zealand National Party minority view

National reiterates concerns that legislative changes are being made in a rush due to mistakes having been made when the original legislative changes were rushed through Parliament without proper scrutiny.

National members are concerned that a bill that purports to correct a mistake related to those in funded residential care is still not being corrected. There will be a number (officials were unable to advise the precise number of people) who will be fully funded by the Government for their full-time residential care and will still receive a WEP. This does not make sense as their energy costs will be funded twice by taxpayers. This perpetuates an inequity and there is a risk of legal challenge for those who will be excluded from receiving the WEP.

We were relieved to hear from officials that no other mistakes, errors, or oversights have been identified with the Act in the course of fixing these errors. We were assured that there would be no need to make further changes to the Act to correct mistakes made through rushed legislation.

Appendix

Committee process

The Social Security (Winter Energy Payment) Amendment Bill was referred to the committee on 7 March 2019. The closing date for submissions was 12 March 2019. We received and considered eight submissions from interested groups and individuals.

We received advice from the Ministry of Social Development.

Committee membership

Gareth Hughes (Chairperson)

Darroch Ball

Anahila Kanongata'a-Suisuiki

Agnes Loheni

Hon Alfred Ngaro

Greg O'Connor

Maureen Pugh

Priyanca Radhakrishnan

Hon Louise Upston

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

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

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

- (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

**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 |
| (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 | 20 |
| (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 | 25 |
| (i) | has a disability that is an intellectual, neurological, physical, psychiatric, or sensory disability (including, without limitation, | 30 |

- ~~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~~ 5
- (d) neither **paragraph (c)** nor **paragraph (ca)** applies to the person, and the person is—
- (i) receiving, in relation to the person’s disability or long-term chronic health condition, residential care services that are partly funded under the New Zealand Public Health and Disability Act 2000; and 10
- (ii) contributing to the cost of those services by a payment redirected under section 339(1)(a) or (c)(i), or sections 341 and 344, of this Act; or 15

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— 20
- (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. 25

Part 2

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

6 Schedule 1 amended: new Part 1 heading inserted 30

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

In Schedule 1, after clause 76, insert: 35

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** 5
- 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 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: 10
- “(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 15
- “(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 20
- ~~“(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 — 25~~
- ~~“(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 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” 30~~
- “(d) neither **paragraph (c)** nor **paragraph (ca)** applies to the person, and the person is— 35
- “(i) receiving, in relation to the person’s disability or long-term chronic health condition, residential care services that are partly funded under the New Zealand Public Health and Disability Act 2000; and
- “(ii) contributing to the cost of those services by a payment redirected under section 82(3)(a) (but only to the extent that it refers to a payment to or on account of some other person authorised by the 40

beneficiary), section 82(3)(b)(i), or sections 179(4)(a), (5), and (6) and 180, of this Act; or”.

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

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: 5

- “(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— 10
- (a) the payment would be payable to the beneficiary were it not for those days of those absences; and
 - (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.” 15

Legislative history

4 March 2019
7 March 2019

Introduction (Bill 116–1)
First reading and referral to Social Services and Community Committee