FINANCE BILL (NO. 6)

AS REPORTED FROM THE LABOUR COMMITTEE

COMMENTARY

Recommendation

The Labour Committee has examined the Finance Bill (No. 6) and recommends that it be passed with the amendments shown in the bill.

Conduct of the examination

The Finance Bill (No. 6) was referred to the Social Services Committee on 12 December 1995, after its first reading. On 21 February 1996, the House rescinded this resolution and the bill was referred to the Labour Committee. The closing date for submissions was 9 February 1996. The committee received and considered 40 submissions from beneficiary groups, social service organisations, the Public Service Association, and other interested organisations and individuals. Twenty submissions were heard orally. Five hours were spent on the hearing of evidence, and consideration took approximately six hours.

Advice was received from the Inland Revenue Department, the Department of Social Welfare, and the State Services Commission. The Regulations Review Committee reported to the Labour Committee on clause 14 of the bill.

This commentary sets out the details of our consideration of the bill and the major issues that we addressed.

Background

Part I—Amendments to Social Security Act 1964

Clause 3 removes the special married rate of training benefit from 1 July 1996 by repealing section 60B (2) and clause 3 of the Ninth Schedule to the Social Security Act 1964. Currently a special married rate of training benefit of $47.35 per week is paid to trainees irrespective of spousal income. This historical provision does not fit well with the current targeted approach to welfare assistance, as trainees married to moderate or high income earners can receive the payment where otherwise the household would be excluded from entitlement to welfare assistance on the basis of household income.

Price Code: J

Those in receipt of the special married rate at 30 June 1996 will continue to receive that payment until the completion of their current training course. Trainees who have a low household income will continue to have access to a training benefit which will be abated by the income of the working spouse.

Clauses 4 to 6 repeal section 125 of the Social Security Act 1964, which provides for Major Repairs Advances (MRAs) to be paid to beneficiary recipients to cover essential repairs and maintenance to their homes.

The decision to remove this programme was prompted by increasing administrative costs associated with property title searches, drafting legal documents, and recording/tracking of repayments; and the programme's inconsistency with the department's agreed outcomes.

To compensate for the loss of the MRA, the department will create a category for urgent housing repairs and maintenance within its existing advance payment of benefit programme under section 82 (6) of the Act. This programme will require the Director-General to grant a benefit advance where she or he is satisfied that this payment will best meet the beneficiary's immediate needs.

Parts II and III—Amendments to Income Tax Act 1994 and Income Tax Act 1976

These Parts amend the Income Tax Act 1994 and the Income Tax Act 1976 respectively to prevent the continued payment of family support and guaranteed minimum family income to principal caregivers for children for whom orphan's benefit or unsupported child's benefit is being paid.

The amendment corrects an unintended legislative change to the 1991 family support legislation, which inadvertently allows family support and guaranteed minimum family income to be paid for a child for whom orphan's benefit or unsupported child's benefit is paid.

Before the abolition of family benefit in 1991, family support and guaranteed minimum family income were payable only for a child for whom family benefit was payable. Because family benefit was not payable for a child for whom orphan's benefit or unsupported child's benefit was being paid, family support and guaranteed minimum family income were not payable for such a child. Guaranteed minimum family income will continue to be payable to families for their other dependent children who are ineligible for orphan's benefit or unsupported child's benefit.

The amendment prevents principal caregivers from claiming family support and guaranteed minimum family income for children for whom orphan's benefit or unsupported child's benefit is being paid. This is achieved by excluding such children from the definition of "dependent child" in section OB1 of the Income Tax Act 1994 and section 374A of the Income Tax Act 1976. Family support and guaranteed minimum family income are payable only for a "dependent child".

Part IV—Transfer of Employees of Department of Survey and Land Information to State Enterprise

On 1 July 1996 the Department of Survey and Land Information will devolve all non-core activities to a new State enterprise under the State-Owned Enterprises Act 1986. Staff performing these activities will transfer to the new State enterprise and retain their terms and conditions of employment.

Social welfare issues

Training benefits

Clause 3 amends the Social Security Act 1964 to abolish the special married rate of training benefit for new applicants from 1 July 1996, but a married trainee whose spouse is a low-income earner will still qualify for a training benefit under standard criteria. Entitlement for current recipients will continue either until they no longer qualify for a training benefit or the special rate, or until their course ends.

Thirty-one submissions were received on this clause, although 20 submissions appeared to confuse this rate with the core training benefit, which has a rate payable to couples. Where these submissioners appeared before the committee, this misunderstanding was cleared up.

Submissions from ten organisations and individuals opposed the repeal of the special married rate of training benefit. It was felt that repeal of this rate would remove incentives for the spouses of working people to take up training. One oral submission opposed the repeal on the grounds that it would impact on low-income couples for whom receipt of the special married rate of training benefit, in effect, means the last approximately $47 of their benefit is not abated against their family income. Another submission suggested that there is insufficient financial gain from the repeal to warrant the abolition.

We do not agree that the special married rate of training benefit should be retained, as it is not well-targeted if high-income families are able to receive payment. It also creates inequities with other trainees on the grounds of marital status. Current recipients of the special married rate can test their entitlement to other benefits and may qualify for amounts of the core training benefit, depending on their partner's income.

We recommend that there be no change to the proposal in the bill.

Major repairs advances

Clauses 4 to 6 amend the Social Security Act 1964 to abolish advances to beneficiaries and war pensioners for major home repairs, with effect to new applications from 1 July 1996.

We received 38 submissions on clause 4, all of which opposed the repeal of major repairs advances.

The main concerns expressed in submissions were that:

- the $1000 limit on the general advances programme, which beneficiaries will have access to for major repairs, will be insufficient to cover such requirements;
- beneficiaries will be forced to approach commercial lending institutions;
- beneficiaries will experience difficulty accessing commercial loans because of poor credit ratings or failure to meet credit income requirements; and
- if commercial loans are able to be accessed, high interest rates may result in loan defaults and mortgagee sales.

While general advances are usually limited to $1000, there is discretion to exceed this amount. The administration of Major Repairs Advances, which requires the department to act in the manner of a bank and is outside its usual functions, is becoming increasingly complex and expensive. The administrative actions associated with Major Repairs Advances, such as title searches, are very time-consuming in comparison with the administrative actions associated with the General Advances Programme.

The Department of Social Welfare takes the exercise of discretion very seriously and has undertaken extensive work in this area in the last 12 months. The High Court case on special benefits made it clear to the department that discretion within special benefits was not being exercised in the correct way and serious action was required to ensure staff were trained in the exercise of discretion, particularly for special benefits.

Although the High Court decision related solely to special benefits, the department has taken the initiative to fully examine all legislation and policy to ensure that discretion is exercised appropriately in all discretionary programmes. The decision to establish a full ministerial direction on the exercise of discretion for advances is a result of this initiative. This direction was issued in October 1995. The direction outlines the factors that must be taken into account when considering an advance payment of benefit, and the matters which must be considered in the exercise of discretion. This ministerial direction makes it clear to all staff that exceptional circumstances must be taken into account in all cases.

Extensive training on how to exercise discretion for advance payment of benefit, as well as other discretionary programmes, is currently being undertaken by New Zealand Income Support Service. This training covers all staff in district offices. It is intended to be an ongoing training programme, the results of which are being monitored closely.

The department has also given assurances to the committee that the granting of advances for home repairs will be closely monitored to assess whether discretion is being used correctly and to determine whether the $1000 guideline is adequate.

While the committee took into account the assurances from the Department of Social Welfare in relation to the use of discretion, the majority of the members of the committee were not reassured. Consequently, the majority of members voted against the abolition of the Major Repairs Advances programme.

Income tax issues

Double payments

All submissioners opposed the amendment preventing a person from receiving family support and unsupported child's benefit at the same time. The proposed amendment corrects a drafting error which occurred in 1991, allowing family support to be paid to principal caregivers for children for whom orphan's benefit or unsupported child's benefit was also being paid. This has resulted in double State funding of such children.

The proposed amendment does not provide that families caring for orphans or unsupported children will be deprived of, or have to forgo, family support for their own children. Families will qualify for family support for their own children in the ordinary way. The proposed amendment prevents them from claiming family support for an orphan or an unsupported child in addition to the orphan's benefit or unsupported child's benefit.

We recommend that there be no change to the proposal in the bill.

Liability to repay family support

Families who are receiving an orphan's benefit or unsupported child's benefit, and are also either receiving family support or have applied for family support before 12 December 1995, will receive family support until 31 March 1996. However, until the proposed amendment is enacted, the Inland Revenue Department is legally required to accept applications after that date and pay family support. Once the amendment is enacted, those families who have made applications on

or after 12 December 1995 for family support for the 1996/97 or previous income years will be required to repay any family support received.

Youth Law Project considered that recipients' liability to repay family support paid after 31 March 1996, until the date the legislation comes into force, is "penny pinching" and would cause significant hardship to low-income families affected.

Where the Inland Revenue Department is aware that families are claiming family support for an orphan or unsupported child, it has been advising such families of the consequences of applying for family support. Any family support overpayments will be required to be repaid by 7 February 1997 for the 1995/96 income year, and by 7 February 1998 for the 1996/97 income year.

In cases of serious financial hardship, the Commissioner of Inland Revenue has a discretion to release taxpayers from all or part of their tax liability. Each case is considered on its merits. The ability of the Commissioner to exercise discretion will ensure that those families who cannot repay the family support do not suffer significant hardship.

We recommend that there be no change to the proposal in the bill.

Discrepancies in payment levels

All submissioners considered that the effect of the proposed amendment leaves beneficiaries who care for an orphan or unsupported child worse off than if they were caring for a child who is their own.

Single beneficiaries, for example, who care for children who are not their own do not qualify for a parent rate of benefit, as the children are not defined as "dependent". They receive a single rate which makes no allowance for a child. The differences are:

(a)	Single Unemployment Benefit (highest rate)	138.46
	plus Unsupported Child's Benefit (highest rate)	86.53
		$224.99
(b)	Sole Parent Unemployment Benefit (1 child)	198.31
	plus Unsupported Child's Benefit (highest rate)	86.53
		$284.84
(c)	Sole Parent Unemployment Benefit (1 child)	198.31
	plus Family Support (1 child)	42.00
		$240.31

Barnardo's would like to see further investigation into this anomaly, and a remedy found, before legislation is enacted preventing the double payment of family support and orphan's or unsupported child's benefit.

The Wellington Downtown Community Ministry and Youth Law Project were concerned that the pending increases to family support widen such anomalies. The proposed amendment means the exclusion of a significant number of families.

The New Zealand Council of Christian Social Services submitted that clauses 7 to 12 create inequities between beneficiaries caring for unsupported or orphaned children and beneficiaries caring for their own children, and that beneficiaries caring for an orphan or unsupported child are worse off than if they were caring for a child who is their own. The proposed amendment is also opposed on this ground by the Wellington Unemployed Workers' Union and the Combined Beneficiaries' Union.

We were advised by officials that, depending on which option is most financially advantageous to them, single beneficiaries without any dependent children who care for a child who is not their own may either:

- select to receive (a), a single person caring for an orphan or unsupported child, in which case they receive a benefit with no child-related component, but are then eligible for the orphan's or unsupported child's benefit (which is a higher rate than family support); or
- select to receive (c), a sole parent (which has a higher parent benefit rate than a single person because of the built-in child-related component), but are then only eligible for family support (which is a lower rate than orphan's or unsupported child's benefit).

Of the options available to them, beneficiaries in this situation generally choose (c) because the amount paid is greater. Option (a) is retained because in a few cases it is advantageous to the beneficiary. For example, a single invalid's benefit plus an orphan's or unsupported child's benefit for a child aged 14-plus years is greater than the amount outlined in (c) above. In practice, therefore, the anomaly described does not exist.

Where a person is forced to leave the workforce to provide care for an orphan or unsupported child, they would be entitled to an emergency rate of benefit of the amount outlined in (c).

The orphan's or unsupported child's benefit is designed as a recognition payment available to all those people caring for children who are not their own, and paid for children who are not classed as "dependent" for the purposes of the Social Security Act 1964.

We have asked the Department of Social Welfare to write to submissioners outlining the choice available between (a) and (c) and to remind New Zealand Income Support Service staff of this policy.

We recommend that there be no change to the proposal in the bill.

Retrospective effect

All submissioners took issue with the retrospectivity aspect of the provisions. An individual submissioner submitted that the bill's retrospective nature is constitutionally unsound. *Phillips v Eyre* (1870) LR 6 QB 1 was cited as a judicial caution against the use of retrospective legislation, in that retrospective legislation should only be used in special and unusual circumstances and it should not be used to remove a right legally vested.

The Wellington People's Resource Centre submitted that the proposed amendment is retrospective and abusive; that those who have been missing out for the last four years will never be reimbursed, and that people are being deprived of what is legally theirs. The amendment was also opposed by the Combined Beneficiaries' Union.

The proposed amendment seeks to prevent, retrospectively, caregivers from claiming family support for children for whom orphan's benefit or unsupported child's benefit is also being paid. It will affect only those who have not claimed family support for such children from the date of the bill's introduction—12 December 1995. It does not attempt to claw back family support received for them if an application was made before that date.

The officials agreed that the case of *Phillips v Eyre* sets out a general rule cautioning against the use of retrospective legislation, but they noted that it also sets out some exceptions to this general rule, revenue laws being one.

We recommend that there be no change to the proposal in the bill.

Administration of applications

A number of submissions stated that the Department of Social Welfare and the Inland Revenue Department have unfairly administered, or are unfairly administering, family support applications.

The Wellington People's Resource Centre, the Wellington Unemployed Workers' Union, the Wellington South Community Law Centre, and two individual submissioners were all concerned that the two departments had not adequately informed beneficiaries of their entitlement, and, consequently, these people are disadvantaged because they did not claim family support.

We have been advised by officials that the Inland Revenue Department will accept applications from those families that can show that before 12 December 1995 they would have made an application but were advised by either the Department of Social Welfare or the Inland Revenue Department that they were not entitled to family support. Beneficiaries who were entitled to receive family support will be able to receive a "square-up" in their tax return.

We recommend no change to the proposal in the bill.

Transfer of employees to State enterprise

Heads of Agreement

The Public Service Association (PSA) provided the only submission on Part IV of the bill, with comment on clauses 16 and 17. While the PSA was pleased that the legislation had been introduced, it was concerned that a Heads of Agreement signed by the PSA, the State Services Commission, and the Establishment Units on 8 December 1995 should be acknowledged in the legislation. This was not the case with the bill as introduced.

The PSA was concerned that there was no express provision in the bill for the continuation of any collective employment contract that might be current at the time of transfer. Also, the bill did not import the provision in the Heads of Agreement that the transfer of staff be subject to the provisions in employment contracts.

The PSA proposed two amendments that would make the Heads of Agreement and the bill consistent with each other, while ensuring full protection of the conditions of employment of PSA members during the transition.

We were concerned that an apparently legally binding document should be overridden in the legislation, and requested that the interested parties discuss the matter and work towards a resolution. Consequently, an agreement was reached by the parties. We recommend amendments to clauses 16 and 17 to incorporate the provisions contained in the Heads of Agreement.

Naming of State enterprise

The name of the new State enterprise has recently been confirmed, and we consider it preferable to amend the legislation to include the name of the new business. Consequently, we recommend that clause 15, the interpretation clause, be amended to include the name of the new business.

Commencement date

A further point that arose concerns clause 14, which provides for commencement of this Part of the Act at a date to be set by the Governor-General by Order in Council. We noted the concern of the Regulations Review Committee at the lack of specificity of this clause. The date on which the State enterprise is to commence business is known to be 1 July 1996. As it is preferable to include an

exact date for commencement of this Part in clause 14, we recommend that clause 14 be replaced with a new clause 14 to provide for the commencement date of Part IV to be 1 July 1996.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act, — Text struck out unanimously

New (Unanimous)

Subject to this Act, — Text inserted unanimously

Struck Out (Majority)

Subject to this Act, — Text struck out by a majority

New (Majority)

Subject to this Act, — Text inserted by a majority

(*Subject to this Act,*) — Words struck out unanimously

⟨*Subject to this Act,*⟩ — Words struck out by a majority

Subject to this Act, — Words inserted unanimously

Right Hon. W. F. Birch

FINANCE (NO. 6)

ANALYSIS

A BILL INTITULED

An Act to make provision with respect to public finances and other matters

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Finance Act (No. 6) **1995.**

PART I

AMENDMENTS TO SOCIAL SECURITY ACT 1964

2. Part to be read with Social Security Act 1964—(1) This Part of this Act and the Schedule to this Act shall be read

together with and deemed part of the Social Security Act 1964* (in this Part referred to as the principal Act).

(2) This Part of this Act and the Schedule to this Act shall come into force on the **1st day of July 1996.**

*R.S. Vol. 32, p. 625
Amendments: 1994, No. 86; 1994, No. 142

3. Abolishing special married rate of training benefit— (1) Section 60B of the principal Act (as inserted by section 33 (1) of the Finance Act 1989) is hereby amended by repealing subsection (2).

(2) The Ninth Schedule to the principal Act (as substituted by section 36 (1) of the Finance Act 1989) is hereby amended by repealing clause 3.

(3) So much of the First Schedule to the Social Security (Rates of Benefits and Allowances) Order 1995 (S.R. 1995/51) as relates to clause 3 of the Ninth Schedule to the principal Act, is hereby revoked.

(4) Notwithstanding **subsections (1) to (3)** of this section, the special rate of training benefit under section 60B (2) of the principal Act shall continue to be payable, as if this section had not been enacted,—

(a) To a married person receiving that rate immediately before this section comes into force; and

(b) Until the earlier of—

(i) The date on which the person is no longer entitled to a training benefit or to that rate of benefit; or

(ii) The end of the period the benefit is payable for, as determined under section 60C (1) of the principal Act.

Struck Out (Majority)

4. Abolition of power to make advances to beneficiaries and war pensioners for repair or maintenance of home, etc.—(1) Section 125 of the principal Act is hereby repealed.

(2) Notwithstanding **subsection (1)** of this section, subsections (3) to (5) of section 125 of the principal Act shall continue to apply, as if this section had not been enacted, to any advance made under that section.

(3) Every advance made under section 125 of the principal Act—

Struck Out (Majority)

(a) Shall not have its validity called into question by the repeal of that section; and

(b) May be recovered, when repayable under the terms and conditions of the advance under that section,—

(i) As a debt due to the Crown, at the suit of the Director-General; or

(ii) By deduction from any benefit subsequently payable to the person to whom the advance was made under the principal Act; or

(iii) Under section 86A of the principal Act.

(4) The following enactments are hereby consequentially repealed:

(a) Section 40 of the Social Security Amendment Act 1972:

(b) Section 26 of the Social Security Amendment Act 1975:

(c) Section 27 of the Social Security Amendment Act 1987:

(d) Section 23 of the Social Security Amendment Act (No. 2) 1988:

(e) Section 38 (4) of the Social Welfare (Transitional Provisions) Act 1990:

(f) So much of the Second Schedule to the Social Welfare (Transitional Provisions) Amendment Act (No. 2) 1993 as relates to section 125 of the principal Act.

(5) Clause 3 of the Social Security (Miscellaneous Rates) Order 1990 (S.R. 1990/258) is hereby revoked.

5. Transitional arrangements for advances—Notwithstanding **section 4** of this Act, the Director-General may make an advance under section 125 of the principal Act, as if that section was still in force, if—

(a) The application for the advance was made before **section 4** of this Act came into force; and

(b) The application had not been dealt with before that date.

6. Consequential amendments—The principal Act is hereby amended in the manner set out in the Schedule to this Act.

PART II

AMENDMENTS TO INCOME TAX ACT 1994

7. Part to be read with Income Tax Act 1994—This Part of this Act shall be read together with and deemed part of the

Income Tax Act 1994* (in this Part of this Act referred to as the principal Act).

*1994, No. 164
Amendments: 1995, No. 18; 1995, No. 21

8. Definitions—(1) Section OB 1 of the principal Act is amended by repealing paragraph (d) of the definition of the term "dependent child", and substituting the following paragraphs:

"(d) Who is not a child in respect of whom payments are being made under section 363 of the Children, Young Persons, and Their Families Act 1989; and

"(e) Who is not a child in respect of whom a benefit under section 28 or section 29 of the Social Security Act 1964 is being paid:".

(2) Except as provided in **section 9** of this Act, this section applies with effect from the commencement of the principal Act.

9. Transitional provisions—(1) A person who received or applied for a family support certificate of entitlement for the 1995–96 income year issued by the Commissioner under section KD 5 of the principal Act before 12 December 1995 in respect of a child for whom a benefit under section 28 or section 29 of the Social Security Act 1964 has been received for the 1995–96 income year is entitled, notwithstanding that that benefit has been paid, to receive any credit of tax allowable in accordance with either section KD 2 or sections KD 2 and KD 3 of the principal Act, as the case may be, in respect of that child until 31 March 1996.

(2) A person in receipt of an income-tested benefit who has also received or applied for a credit of tax for the 1995–96 income year from the Director-General of Social Welfare under section KD 6 of the Income Tax Act 1994 before 12 December 1995 in respect of a child for whom a benefit under section 28 or section 29 of the Social Security Act 1964 has been received in the 1995–96 income year is entitled, notwithstanding that that benefit has been paid, to receive any credit of tax allowable in accordance with section KD 2 of the principal Act in respect of that child until 31 March 1996.

(3) A person who has applied for a credit of tax under section 374F of the Income Tax Act 1976 for the 1994–95 income year before 12 December 1995 in respect of a child for whom a benefit under section 28 or section 29 of the Social Security Act 1964 has been received for the 1994–95 income

year is entitled, notwithstanding that a benefit under section 28 or section 29 of the Social Security Act 1964 has been paid in the 1995–96 income year, to apply for a credit of tax in respect of that child in accordance with section KD 4 of the Income Tax Act 1994 for the 1995–96 income year.

PART III

AMENDMENTS TO INCOME TAX ACT 1976

10. Part to be read with Income Tax Act 1976—(1) This Part of this Act shall be read together with and deemed part of the Income Tax Act 1976* (in this Part of this Act referred to as the principal Act), and that Act shall, in respect of matters to which it applied before its repeal by section YB 3 of the Income Tax Act 1994, be read as amended by the provisions of this Part of this Act.

*R.S. Vol. 29–1, p.1
R.S. Vol. 29–2, p. 999
Amendments: 1994, No. 76; 1994, No. 84; 1995, No. 17; 1995, No. 20

11. Interpretation—(1) Section 374A of the principal Act (as inserted by section 17 (1) of the Income Tax Amendment Act (No. 2) 1986) is amended by repealing paragraph (d) of the definition of the term "dependent child" (as inserted by section 13 (3) of the Income Tax Amendment Act (No. 2) 1991), and substituting the following paragraphs:

"(d) Who is not a child in respect of whom payments are being made under section 363 of the Children, Young Persons, and Their Families Act 1989; and

"(e) Who is not a child in respect of whom a benefit under section 28 or section 29 of the Social Security Act 1964 is being paid:".

(2) Except as provided in **section 12** of this Act, this section applies with respect to the tax on income derived in the 1991–92 income year and subsequent years.

12. Transitional provision—This **Part** of this Act does not apply to tax on income derived in an income year referred to in **section 11 (2)** of this Act if the person liable to receive the credit of tax applied to the Commissioner for the credit of tax under Part XIA of the principal Act in respect of a child for whom a benefit under section 28 or section 29 of the Social Security Act 1964 was received in that income year after the expiry of that income year and before 12 December 1995.

13. Repeal of amendments effected by this Part—The amendments effected by this **Part** of this Act shall be deemed to be repealed with effect from the commencement of the Income Tax Act 1994, and sections YB 4 and YB 5 of that Act shall apply in relation to those amendments as if they were enactments repealed by section YB 3 of that Act.

PART IV

TRANSFER OF EMPLOYEES OF DEPARTMENT OF SURVEY AND LAND INFORMATION TO STATE ENTERPRISE

Struck Out (Unanimous)

14. Commencement—(1) This Part of this Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

(2) The Order in Council made under **subsection (1)** of this section shall name the state enterprise to which employees of the Department of Survey and Land Information may be transferred under **section 16** of this Act.

New (Unanimous)

14. Commencement—This Part of this Act shall come into force on the 1st day of July 1996.

15. Interpretation—In this Part of this Act, unless the context otherwise requires,—

"Department" means the Department of Survey and Land Information:

Struck Out (Unanimous)

"State enterprise" means an organisation that is named in the First Schedule to the State-Owned Enterprises Act 1986.

New (Unanimous)

"Terralink" means Terralink NZ Limited, being a State enterprise named in the First Schedule to the State-Owned Enterprises Act 1986.

16. Power to transfer employees of Department—(1) Notwithstanding anything in section 61A of the State Sector Act 1988, where the chief executive of the department finds, in respect of any duties being carried out by the department, that those duties are no longer to be carried out by the department and are to be carried out (in whole or in part) by (*a State enterprise that is named in the Order in Council made under* **section 14(1)** *of this Act*) Terralink, that chief executive may, subject to the relevant employment contract and to **subsection (2)** of this section, transfer, from the department to that State enterprise all or any of the employees of the department who are carrying out those duties.

(2) Before transferring any employee under **subsection (1)** of this section, the chief executive of the department shall consult with the employee about the proposed transfer.

17. Terms and conditions of employment—The terms and conditions of employment of every employee of the department who is transferred to (*a State enterprise*) Terralink under **section 16(1)** of this Act shall, unless varied by agreement, be based on the terms and conditions of employment that applied to that employee immediately before the date of transfer, as if the terms and conditions of employment were contained in an employment contract made between (*the State enterprise*) Terralink and the employee.

New (Unanimous)

17A. Application of collective employment contracts—Where any employees of the Department whose conditions of employment are governed by an unexpired collective employment contract are transferred, in accordance with **section 16** of this Act, to Terralink, the unexpired collective employment contract shall be deemed, as from the date of the transfer of those employees, to continue to apply on the same terms (including the period of the contract and any terms relating to new employees)—

New (Unanimous)

(a) As if it were a contract that had been made in respect of Terralink; and

(b) As if it were binding on both those employees, on any authorised representative of those employees recognised in the contract, and on Terralink.

18. Employment of transferred employees deemed to be continuous—(1) Every employee of the department who is transferred to (*a State enterprise*) Terralink pursuant to **section 16 (1)** of this Act shall, on the date of the transfer, become an employee of (*the State enterprise*) Terralink but, for the purposes of every enactment, law, contract, and agreement relating to the employment of each such employee, the contract of employment of that employee that applied immediately before the commencement of this section in respect of that person's employment in the department shall be deemed to have been unbroken and that employee's period of service with the department, and every other period of service of that employee that is recognised by the department as continuous service, shall be deemed to have been a period of service with (*the State enterprise*) Terralink.

(2) No employee of the department who is transferred to (*a State enterprise*) Terralink pursuant to **section 16 (1)** of this Act shall be entitled to receive any payment or other benefit for redundancy or otherwise by reason only of that person ceasing by virtue of that transfer to be an employee of the department.

19. Membership of Government Superannuation Fund—(1) Every person who, immediately before becoming an employee of (*a State enterprise*) Terralink by virtue of a transfer under **section 16 (1)** of this Act, was a contributor to the Government Superannuation Fund under the Government Superannuation Fund Act 1956, shall, for the purposes of that Act, be deemed to be employed in the Government service for so long as that person continues to be employed by (*the State enterprise*) Terralink; and that Act shall be deemed to apply to that person in all respects as if the person's service with (*the State enterprise*) Terralink were Government service.

(2) Subject to the Government Superannuation Fund Act 1956, nothing in **subsection (1)** of this section shall entitle any such person to become a contributor to the Government

Superannuation Fund after that person has ceased to be a contributor.

(3) For the purposes of applying the Government Superannuation Fund Act 1956 in accordance with **subsection (1)** of this section, the term "controlling authority", in relation to any transferee, means (*the State enterprise*) Terralink.

Struck Out (Majority)

Section 6 SCHEDULE

CONSEQUENTIAL AMENDMENTS TO SOCIAL SECURITY ACT 1964

Provision Amended	Amendment
Section 12J (1) (b) (as substituted by section 3 (1) of the Social Security Amendment Act 1976)	By omitting the words "Sections 124 (1) (d) and 125", and substituting the words "Section 124 (1) (d)".
Section 61H (1) (a) (as substituted by section 5 of the Social Welfare (Transitional Provisions) Amendment Act (No. 2) 1993	By omitting the words "61EC, and 125", and substituting the words "and 61EC".

WELLINGTON, NEW ZEALAND: Published under the authority of the New Zealand Government—1996

67108B —96/NS