

# **Social Assistance (Debt Prevention and Minimisation) Amendment Bill**

Government Bill

As reported from the Social Services Committee

## **Commentary**

### **Recommendation**

The Social Services Committee has examined the Social Assistance (Debt Prevention and Minimisation) Amendment Bill, and recommends that it be passed with the amendments shown.

### **Introduction**

The bill amends current legislation affecting the sharing of information between the Ministry of Social Development, the Department of Corrections, the New Zealand Customs Service, and the Accident Compensation Corporation. More sharing of information between these organisations is expected to prevent recipients of student allowances, student loans, and benefits from accumulating debt when imprisoned. The bill also introduces measures to help recover debts that beneficiaries owe to the Crown. The bill would allow the Ministry of Social Development to immediately suspend benefits, student allowances, and student loans when a data match indicated that a recipient was in prison. This change would help prevent overpayments, thereby reducing debt amongst recipients. To achieve these goals the bill proposes amendments to the Corrections Act 2004 which would affect other Acts including the Social Security Act 1964. The bill would allow section 103(1) of the Privacy Act 1993 to be overridden. Section 103(1) relates to the minimum period of time that must elapse before action can be taken on a data match.

### **Work and Income representatives at courts**

We are concerned that circumstances might prevent beneficiaries entering prison from quickly receiving notifications that their benefits are to be cut as a result of a data match. We suggest that Work and Income consider placing representatives at major courts to adjust benefits immediately when a recipient is imprisoned. This would serve to prevent family members of prisoners having their benefits inadvertently suspended.

### **Minimise hardship**

We also wish to emphasise our concern that all possible efforts be made to ensure that data matches are correct and that when an error is made or a benefit, allowance, or student loan is cut off, any family members affected by this be informed as quickly as possible to minimise hardship. We understand that benefits are paid a week in arrears, and that it is likely that the family of any person affected in this way would receive notification up to a week before the benefit is suspended. The benefit would be reinstated before the next payment was missed. Reinstatement would occur overnight and emergency assistance would be available immediately if needed.

## **Appendix**

### **Committee process**

The Social Assistance (Debt Prevention and Minimisation) Amendment Bill was referred to the committee on 7 August 2007. The closing date for submissions was 24 September 2007. We received and considered two submissions from interested groups and individuals, and we heard one submission.

We received advice from the Ministry of Social Development.

### **Committee membership**

Russell Fairbrother (Chairperson)

Sue Bradford

Steve Chadwick

Bob Clarkson

Judith Collins (Deputy Chairperson)

Hon Harry Duynhoven

Dr Paul Hutchison

Lynne Pillay

Heather Roy

Katrina Shanks

Judy Turner

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Social Assistance (Debt Prevention  
and Minimisation) Amendment

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**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

*(Subject to this Act,)*

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

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*Hon Steve Maharey*

## **Social Assistance (Debt Prevention and Minimisation) Amendment Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:****1 Title**

This Act is the Social Assistance (Debt Prevention and Minimisation) Amendment Act **2007**.

**2 Commencement**

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

**Part 1****Amendments to Corrections Act 2004****3 Principal Act amended**

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This **Part** amends the Corrections Act 2004.

**4 Purpose of this Part**

The purpose of this **Part** is to amend the principal Act—

(a) so that it facilitates disclosure of prisoner information for the purposes of the operation of—

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(i) section 76(1) of the Social Security Act 1964 (which provides that a benefit is, in general, not payable *(during imprisonment or detention in prison)* in respect of any period during which a beneficiary is imprisoned or detained in, or is an escaper from, a prison, pursuant to a sentence of imprisonment, preventive detention, or corrective training); and

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(ii) sections 86 and 86A of the Social Security Act 1964 (which provide for the recovery of debts due to the Crown within the meaning of section 85A of that Act); and

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(iii) section 307B of the Education Act 1989 (which provides for the recovery of debts in respect of the payment to a person of allowances, student loans, or other money to which he or she was not, or is no longer, entitled); and

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(iv) regulation 28 of the Student Allowances Regulations 1998 (which provides that a student imprisoned or detained in a prison, pursuant to a sentence of imprisonment, preventive detention, or

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corrective training is not entitled to receive any payment under those regulations in respect of any period of any such imprisonment or detention); and

- (b) to enable benefits, allowances, and student loans, or any of them, payable to a person to be suspended, despite section 103(1) of the Privacy Act 1993, immediately a relevant discrepancy arises or is identified in prisoner information disclosed under the principal Act; and 5
- (c) to re-enact other elements of section 180 of the principal Act (which authorises disclosure of prisoner information for social security purposes). 10

**5 New heading and sections 180 to 180D substituted**

Section 180 and the heading above it are repealed and the following heading and sections are substituted: 15

*“Disclosure of prisoner information*

**“180 Purpose of section 180A**

- “(1) The purpose of **section 180A** is to facilitate the disclosure of information, by the chief executive to the requesting department, for the purposes of the operation of all or any of the following provisions: 20
  - “(a) section 76(1) of the Social Security Act 1964 (which provides that a benefit is, in general, not payable in respect of any period during which a beneficiary is imprisoned or detained in, or is an escaper from, a prison, pursuant to a sentence of imprisonment, preventive detention, or corrective training): 25
  - “(b) sections 86 and 86A of the Social Security Act 1964 (which provide for the recovery of debts due to the Crown within the meaning of section 85A of that Act): 30
  - “(c) section 307B of the Education Act 1989 (which provides for the recovery of debts in respect of the payment to a person of allowances, student loans, or other money to which he or she was not, or is no longer, entitled):
  - “(d) regulation 28 of the Student Allowances Regulations 1998 (which provides that a student imprisoned or detained in a prison, pursuant to a sentence of imprisonment, preventive detention, or corrective training is not entitled to receive any payment under those regulations 35

in respect of any period of any such imprisonment or detention):

“(e) **section 180C.**

“(2) **Requesting department**, in **subsection (1)** and **sections 180A, (108C) 180C, and 180D**, means—

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“(a) the department for the time being responsible for the administration of the Social Security Act 1964, in relation to information requested for the purposes of the operation of a provision of that Act:

“(b) the department for the time being responsible for the administration of Part 25 of the Education Act 1989, in relation to information requested for the purposes of the operation of section 307B of that Act, or regulation 28 of the Student Allowances Regulations 1998.

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Compare: 1954 No 51 s 36F

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“**180A Prisoner information may be disclosed for social assistance purposes**

“(1) For the purpose stated in **section 180**, the chief executive of the requesting department may from time to time request the chief executive to supply all or any information specified in **section 180B** in respect of prisoners detained in a prison during the period specified in the request.

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“(2) A request under **subsection (1)** must be made in writing and in accordance with arrangements made from time to time between—

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“(a) the chief executive; and

“(b) the chief executive of the requesting department.

“(3) On receipt of a request made under **subsection (1)** the chief executive may supply the information requested to any person who is—

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“(a) an officer or employee of the requesting department; and

“(b) authorised for the purpose by the chief executive of the requesting department.

Compare: 1954 No 51 s 36F

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**“180B Information that may be requested and disclosed**

The information referred to in **section 180A(1)** is, for each prisoner detained in a prison during the period specified in the request,—

- “(a) a sufficient amount of biographical information to identify the prisoner; and 5
- “(b) the name of the prison in which the prisoner is or was detained during that period; and
- “(c) details of each period of detention of the prisoner in the prison during the period specified in the request. 10

Compare: 1954 No 51 s 36F

**“180C Social assistance may be suspended immediately if discrepancy discovered**

- “(1) The chief executive of the requesting department may suspend immediately the payment to a person of the benefits, allowances, and student loans, or any of them, payable to the person if— 15
  - “(a) information has been disclosed to the requesting department under **section 180A**; and
  - “(b) a discrepancy relating or apparently relating to the person arises, or is identified in that information; and 20
  - “(c) that chief executive wishes, on the basis of that discrepancy, to effect the suspension; and
  - “(d) immediately after the suspension is effected, the requesting department gives the person written notice 25 of the kind specified in **section 180D**.

- “(2) In this section and **section 180D**,—

“**adverse action** has the same meaning as in section 97 of the Privacy Act 1993

“**allowance** means an allowance established (whether established for the first time or continued) by regulations made under section 303 of the Education Act 1989 30

“**benefit** has the same meaning as in section 3(1) of the Social Security Act 1964

“**discrepancy** has the same meaning as in section 97 of the Privacy Act 1993 35

“**student loan** has the meaning given to it by section 2 of the Student Loan Scheme Act 1992

“**working day** has the same meaning as in section 2(1) of the Privacy Act 1993.

- “(3) A notice under **subsection (1)** may also be used to give the person concerned notice under section 103(1) of the Privacy Act 1993 in relation to some proposed adverse action other than the suspension or suspensions concerned; but in that case that section applies to the taking of that action.
- “(4) **Subsection (1)** overrides section 103(1) of the Privacy Act 1993.

**New (unanimous)**

- “(5) Nothing in this section prevents any adverse action from being taken in respect of benefits, allowances, or student loans in accordance with section 103(1) of the Privacy Act 1993 instead of this section.

**“180D Notice required by section 180C(1)(d)**

- “(1) A notice required by **section 180C(1)(d)**—
- “(a) must specify particulars of—
    - “(i) the discrepancy or discrepancies concerned; and
    - “(ii) the suspension or suspensions concerned; and
  - “(b) must state that the person concerned (*has 5 working days from*) may, after the receipt of the notice (*to*), show cause why payments of any benefit, allowance, or student loan should not have been suspended.
- “(2) A notice required by **section 180C(1)(d)** must be delivered to the person concerned—
- “(a) personally; or
  - “(b) by leaving it at the person’s usual or last known place of residence or business or at the address specified by the person in any application or other document received from the person; or
  - “(c) by posting it in a letter addressed to the person at that place of residence or business or at that address.
- “(3) If a notice required to be given under **section 180C(1)(d)** is sent to a person by post,—
- “(a) the notice must, in the absence of proof to the contrary, be taken to have been delivered to that person on the fourth day after the day on which it was posted; and

“(b) in proving the delivery it is sufficient to prove that the letter was properly addressed and posted.”

**6 New heading inserted**

The following heading is inserted above section 181: “*Disclosure of offender information*”.

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**7 Consequential amendments to Privacy Act 1993**

(1) This section amends the Privacy Act 1993.

**New (unanimous)**

(1A) Section 103(1) is amended by inserting “and to **section 180C(1)** of the Corrections Act 2004” after “of this section”.

(2) The item in Schedule 3 relating to the Corrections Act 2004 is amended by inserting “to **180D**” after “180”.

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**Part 2  
Amendments to other Acts**

**Subpart 1—Amendments to Customs and Excise  
Act 1996**

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**8 Principal Act amended**

This **subpart** amends the Customs and Excise Act 1996.

**9 Purpose of this subpart**

The purpose of this **subpart** is to amend the principal Act so that the purposes for which it facilitates the exchange of information between the Customs and the department for the time being responsible for the administration of the Social Security Act 1964 include enabling the recovery of any debt due to the Crown in respect of any benefit.

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**10 Supply of arrival and departure information for benefit purposes**

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(1) The heading to section 280 is amended by inserting “**and benefit debt recovery**” after “**benefit**”.

- (2) Section 280((2) *is repealed and*) is amended by repealing subsection (2) and substituting the following subsection(s are substituted):

**Struck out (unanimous)**

- “(2) The purpose of this section is to facilitate the exchange of information— 5
- “(a) between the Customs and the department for the time being responsible for the administration of the Social Security Act 1964; and
  - “(b) for all or any of the purposes in **subsection (2A)**.
- “(2A) The purposes referred to in **subsection (2)(b)** are— 10
- “(a) to verify the entitlement or eligibility of any person to or for any benefit:
  - “(b) to verify the amount of any benefit to which a person is or was entitled or for which a person is or was eligible:
  - “(c) to enable the recovery of any debt due to the Crown in respect of any benefit. 15

**New (unanimous)**

- “(2) The purpose of this section is to facilitate the exchange of information between the Customs and the department for the time being responsible for the administration of the Social Security Act 1964 for all or any of the following purposes: 20
- “(a) to verify the entitlement or eligibility of any person to or for any benefit:
  - “(b) to verify the amount of any benefit to which a person is or was entitled or for which a person is or was eligible:
  - “(c) to enable the recovery of any debt due to the Crown in respect of any benefit.” 25

**Subpart 2—Amendments to Injury Prevention, Rehabilitation, and Compensation Act 2001**

**11 Principal Act amended**

This **subpart** amends the Injury Prevention, Rehabilitation, and Compensation Act 2001. 30

**12 Purpose of this subpart**

The purpose of this **subpart** is to amend the principal Act so that the purposes for which it facilitates the disclosure of information by the Corporation to the department for the time being responsible for the administration of the Social Security Act 1964 include enabling the recovery of any debt due to the Crown in respect of any benefit. 5

**13 Disclosure of information by Corporation for benefit purposes**

- (1) The heading to section 281 is amended by inserting “**and benefit debt recovery**” after “**benefit**”. 10
- (2) Section 281(2) *is repealed and* is amended by repealing subsection (2) and substituting the following subsection(s are substituted):

**Struck out (unanimous)**

- “(2) The purpose of this section is to facilitate the disclosure of information— 15
- “(a) by the Corporation to the department for the time being responsible for the administration of the Social Security Act 1964; and
- “(b) for all or any of the purposes in **subsection (2A)**. 20
- “(2A) The purposes referred to in **subsection (2)(b)** are—
- “(a) to verify the entitlement or eligibility of any person to or for any benefit:
- “(b) to verify the amount of any benefit to which a person is or was entitled or for which a person is or was eligible: 25
- “(c) to enable the recovery of any debt due to the Crown in respect of any benefit.

**New (unanimous)**

- “(2) The purpose of this section is to facilitate the disclosure of information by the Corporation to the department for the time being responsible for the administration of the Social Security Act 1964 for all or any of the following purposes: 30

**New (unanimous)**

- “(a) to verify the entitlement or eligibility of any person to or for any benefit:  
“(b) to verify the amount of any benefit to which a person is or was entitled or for which a person is or was eligible:  
“(c) to enable the recovery of any debt due to the Crown in respect of any benefit.”

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**Legislative history**

18 July 2007  
7 August 2007

Introduction (Bill 134–1)  
First reading and referral to Social Services Committee

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