

## SOCIAL SECURITY (WORK TEST) AMENDMENT BILL

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### EXPLANATORY NOTE

#### *General Policy Statement*

This Bill represents the third stage of the Government's employment and social welfare initiatives. The measures contained in this Bill further develop the concept of the community wage introduced in the Social Security Amendment Bill (No. 5). The introduction of the community wage is designed to reduce long-term unemployment and benefit dependency by encouraging those in receipt of social welfare to take up opportunities to move into paid work. It also reinforces the concept that social welfare implies reciprocal obligations. While the State has an obligation to provide income support and employment assistance to beneficiaries, beneficiaries have an obligation to help themselves, including an obligation, for those who are able, to seek paid work. The Bill introduces the concept of the "organised activity". An organised activity is any activity that the chief executive of the new employment and income support department considers would or might assist work-tested beneficiaries to obtain paid employment in the short or longer term. Organised activities may include the following:

- Interviews with staff of the new department, for the purposes of work assessment, or the creation of an employment action plan:
- Complying with an employment action plan:
- Attending a job interview:
- Participation in an employment programme, seminar, scheme, or specified activity, including community work or other work experience activity:
- Participation in training:
- Medical or psychological assessment, for those with a temporary deferral of obligations because of sickness or disability.

The Bill replaces the existing work test with one which is based on organised activities. From 1 October 1998, recipients of the community wage and other existing work-tested beneficiaries will sign a job seeker contract under which they accept their obligations to be available for and actively seek paid work, and to be available for, and to participate when directed in, organised activities. The work test in this Bill will cover all work-tested beneficiaries. Those work-tested beneficiaries whose circumstances preclude active job search, such as those who are sick or injured, will have a temporary deferral of some or all of their work-test obligations.

The Bill also replaces the existing graduated sanctions regime for work-test failure with a consistent set of sanctions designed to reinforce the message that “if you don’t work, you don’t get paid”. This helps to create an environment for work-tested beneficiaries which is as much like work as possible, in order to keep them attached to the labour market. The sanctions are consistent in that any work-tested beneficiary who commits a specific offence faces the same sanction. The sanctions are also designed to be broadly consistent with the severity of the offence. In keeping with the “work first” message, the most severe sanctions are incurred for leaving paid work voluntarily, or being dismissed from paid work for misconduct, and refusing an offer of paid employment. Lesser sanctions apply for refusal to attend, leaving, or being dismissed from, other organised activities, and unsatisfactory performance in other organised activities. As is currently the case, sanctions are not applied where the job seeker has a good and sufficient reason for the breach.

This sanctions regime will also apply to those beneficiaries who fail to fulfil their obligations to take part in work preparation exercises (activities designed to prepare beneficiaries to face work expectations). This ensures that beneficiaries who fail to meet their obligations face the same sanction for similar offences. Again, as is currently the case, sanctions are not applied where the beneficiary has a good and sufficient reason for the breach.

*Clause by Clause Analysis*

*Clause 1* relates to the Short Title and commencement. The Bill comes into force on 1 October 1998.

PART 1

AMENDMENTS TO PRINCIPAL ACT

*Clause 2* amends section 3 of the principal Act by substituting a new definition of the term “work test” to reflect the new regime set out in this Bill. The work test actually refers to a person’s obligations as a work-tested beneficiary. These obligations are set out in new *section 102 (2)*.

*Clause 3* amends section 12J of the principal Act and relates to the jurisdiction of the Social Security Appeal Authority. The amendment provides that there may not be any appeals against decisions and determinations of the chief executive under new *section 110* concerning the range or general provision of organised activities.

*Clause 4* amends section 60H of the principal Act to provide that the sanction under that section is cancellation of the work-tested benefit for 13 weeks rather than reduction of the benefit. The sanction can be applied at present where the beneficiary—

- Has voluntarily become unemployed without good and sufficient reason; or
- Has been in receipt of payments under a scheme and has voluntarily ceased to be part of that scheme without good and sufficient reason; or
- Has lost his or her employment because of misconduct as an employee; or
- Has ceased to be part of a scheme by reason of any misconduct.

*Clause 5* contains a consequential amendment to section 60HA of the principal Act.

*Clause 6* contains a consequential amendment to section 80C of the principal Act.

*Clause 7* inserts into the principal Act new *sections 101 to 123B*, which establish a new work test regime for work-tested beneficiaries in place of sections 60GA,

60HB, and 60HC, and sections 60HD to 60KA of the principal Act. The new sections are numbered to follow on from provisions establishing the community wage in the Social Security Amendment Bill (No. 5).

#### *Work Test*

*Section 101* provides that the purposes of section 60H and *sections 102 to 123B* are—

- To reinforce the reciprocal obligations of work-tested beneficiaries to seek work or take steps to improve their employment prospects:
- To provide a flexible work-test structure that applies to all work-tested beneficiaries:
- To provide the desired flexibility by creating a range of organised activities that work-tested beneficiaries may be required to undertake:
- To increase the prospect for self-reliance of work-tested beneficiaries by increasing their awareness of, and participation in, opportunities for self-betterment, education, training, and employment:
- To strengthen incentives for people to remain in employment and to move into unsubsidised employment.

*Section 102* relates to the application of the work test.

*Subsection (1)* provides that the work test applies while a person is a work-tested beneficiary.

*Subsection (2)* sets out the obligations that make up the work test. The work-test obligations are—

- To be available for and take reasonable steps to obtain suitable employment; and
- To participate in such organised activities as the chief executive requires under *section 110*.

*Subsection (3)* specifies what constitutes suitable employment in this context for part-time work-tested beneficiaries and others. Essentially, it means that the requirements of the work test will be individualised to balance the needs of the State and of the individual.

*Subsection (4)* makes it clear that a person's work testing comes to an end when the person achieves the required level of employment.

*Section 103* provides for the delayed application of work-test obligations where a beneficiary has a dependent child and the beneficiary will become subject to work-test obligations when the child attains a particular age. This section delays the obligation to comply with the obligations for 4 weeks after the child's relevant birthday.

*Section 104* provides for beneficiaries to apply for exemptions from the work test and from the obligation in section 60HA to participate in work preparation activities. Exemptions may be granted by the chief executive on any ground set out in regulations made under the principal Act. However, an exempted beneficiary may still be required to attend a departmental interview.

#### *Deferral of Work-Test Obligations*

*Section 105* enables work-tested beneficiaries to apply for a deferral of some or all of their obligations, and enables the chief executive to grant a deferral on the following grounds:

- That the applicant's capacity for work is limited by sickness, injury, or disability:
- Any ground specified by regulations made under the principal Act.

*Section 106* enables the chief executive to grant deferrals—

- For a time specified by the chief executive; or
- On conditions specified by the chief executive; or
- For a time and on conditions specified by the chief executive.

*Section 107* states the effect of a deferral of work-test obligations. Those obligations are deferred for the period and to the extent specified in grant of the deferral.

*Section 108* requires work-tested beneficiaries to notify the chief executive of material changes in their personal circumstances that could affect the person's entitlement to a deferral.

#### *Organised Activities*

*Section 109* introduces the concept of organised activities, which replaces the requirements of section 60J (which includes programmes such as the Community Task Force).

*Subsection (1)* defines an organised activity. To qualify as an organised activity,—

- At a high level, it must be one that the chief executive has determined is in a range of activities which will help more people towards unsubsidised employment:
- At an individual level, the chief executive must consider that the activity would or might assist the particular work-tested beneficiary to improve his or her employment prospects.

*Subsection (2)* lists as examples of organised activities—

- Interviews by or on behalf of the chief executive:
- Work assessment:
- Attending a job interview for suitable employment:
- Creating an individual action plan:
- Complying with an individual action plan:
- Participation in a programme, seminar, scheme, or specified activity (including community work):
- Participation in a work experience or work exploration activity
- Participation in training:
- Activities for a person whose capacity for work is reduced by sickness, injury, or disability:
- Medical or psychological assessment or examination, and provision to the chief executive of a report or certificate relating to the assessment or examination.

*Section 110* enables the chief executive to determine the range of organised activities and the conditions relating to them. The activities must be ones which the chief executive considers will achieve the purposes set out in *section 101 (d) and (e)*.

The section also enables the chief executive to require individuals to participate in 1 or more specified activities and recognises that different organised activities may be utilised in different locations.

#### *Obligation to Accept Offer of Employment*

*Section 111* requires work-tested beneficiaries to accept any offer of suitable employment. For the purposes of this section, “employment” includes full-time employment, part-time work, seasonal or temporary employment, and subsidised employment.

### *Sanctions Regime*

*Sections 112 to 114* cover the same matters as are presently covered by sections 131B to 131D of the principal Act, although there are changes to reflect the fact that only 1 department will be involved in administering the new work test.

*Section 112* requires the chief executive to give a beneficiary a written notice of non-compliance with obligations. The notice must—

- State that the beneficiary has failed to comply with an obligation; and
- Specify the nature of that non-compliance; and
- State that, on the basis of that non-compliance, the chief executive is suspending or cancelling the benefit payable to the beneficiary; and
- Specify a date on which the suspension or cancellation is to take effect, and, in the case of a suspension, the nature and duration of the suspension; and
- State that the beneficiary has 5 working days from the giving of the notice to dispute the suspension or cancellation; and
- Advise the beneficiary to contact the new department if the beneficiary wants to dispute or discuss the decision to suspend or cancel the benefit; and
- Contain a clear statement of the beneficiary's right, under section 10A of the principal Act, to apply for a review of the decision, and of the procedure for applying for a review.

*Section 113* provides for the 5-day notice period under *section 116* to be reduced to 4 days where any day in that notice period would normally count as a working day but falls on a public holiday.

*Section 114* specifies the manner in which notices relating to non-compliance may be given.

*Section 115* sets out the penalties where the chief executive considers a beneficiary has, without a good and sufficient reason, failed to accept an offer of suitable employment.

The penalties are as follows:

- For a first failure, payment of the person's benefit is suspended for at least 1 week and the suspension is continued until the person complies;
- For a second failure (which failure is one that occurs after a person has complied following a previous failure), the benefit is cancelled and the person is not entitled to any benefit for 13 weeks (subject to the "clean slate provisions" in *sections 122 and 123*).

*Section 116* sets out the penalties where the chief executive considers a beneficiary has, without a good and sufficient reason, failed to participate in or complete an organised activity or to attend an interview for suitable employment or to comply with a request under section 60HA.

The penalties are,—

- For a first failure, payment of the person's benefit is suspended until the person complies;
- For a second failure (which failure is one that occurs after a person has complied following a first failure), payment of the benefit is suspended for at least 1 week and the suspension is continued until the person complies;
- For a third failure (which failure is one that occurs after a person has complied following a previous failure), the benefit is cancelled and the person is not entitled to receive the benefit for 13 weeks (subject to the "clean slate provisions" in *sections 122 and 123*).

Where a first failure occurs and the person recomplies before the end of the relevant notice period, payment of the benefit will not be suspended but the failure is counted as a failure if the chief executive is subsequently required to calculate the number of failures under this section.

*Section 117* sets out the penalty for unsatisfactory participation in organised activities (eg, turning up late) or unsatisfactory compliance with a request under section 60HA. The penalty is a reduction of the person's benefit by the appropriate percentage specified in regulations made under the principal Act (which reduction must not be more than 40% of the benefit).

*Section 118* specifies how work-test failures are to be counted. The chief executive—

- May count applicable failures only while a benefit or benefits to which the applicable failure relates have been continuously paid in respect of that beneficiary;
- May not count any failure if—
  - (a) It is not of a kind to which that particular section applies; or
  - (b) It occurred more than 18 months before the failure for which the calculation is made;
- Must disregard any period during which the benefit was cancelled or suspended because the beneficiary commenced in employment that continued for less than 10 working days.

*Section 119* limits the effect of sanctions where a benefit is payable at a married rate.

#### *General Provisions*

*Section 120* defines the concept of recompliance for the purposes of *sections 115 and 116* as—

- Remedying the failure; or
- Where it is not possible to remedy the failure, undertaking some other organised activity to the satisfaction of the chief executive.

*Section 121* applies when a person who has had his or her benefit suspended, or who is subject to a non-entitlement period, under section 60H or *section 115 or section 116*,—

- Ceases to be a work-tested beneficiary or (as the case requires) ceases to be subject to the obligation to comply with section 60HA (for a reason other than the imposition of that suspension or non-entitlement period); or
- Obtains an exemption under *section 104* from the work test or from the obligation to comply with section 60HA.

When that happens, the period of suspension of the benefit ends or (as the case may be) the person is no longer subject to the non-entitlement period (which lapses). In the latter case, if the person wishes to again become entitled to a benefit, the person must apply for the benefit and establish the person's eligibility to receive it.

*Section 122* specifies the effect of employment on a non-entitlement period. If a person completes at least 6 weeks paid employment (which period starts at the end of the fourth week of the non-entitlement period), the remainder of the non-entitlement period lapses.

*Section 123* specifies the effect of participation in an approved organised activity on a non-entitlement period. The chief executive may, not less than 4 weeks after

the non-entitlement period took effect, grant the person a benefit during the person's satisfactory participation in the activities concerned. However, the grant is conditional on continued satisfactory participation in the activity or activities for a period of not less than 6 weeks, or until the end of the non-entitlement period, whichever is the earlier.

*Section 123A* relates to the application of the Health and Safety in Employment Act 1992. Where a person is participating in an organised activity that involves undertaking any work, that Act applies to the person participating and to the person who provides the work as if the relationship between them is that of employee and employer. However, that Act does not apply to any requirement that a person participate in an organised activity.

*Section 123B* empowers the making of regulations to—

- Specify the categories of beneficiaries who may be exempted from the work test, and the grounds on which exemptions may be granted for each category:
- Specify the grounds on which a person's work-test obligations may be deferred:
- Specify the percentage reduction in a benefit that is to be applied where specified kinds of unsatisfactory participation in an organised activity occur.

## PART 2

### REPEALS AND TRANSITIONAL PROVISIONS

*Clause 8* contains consequential repeals.

*Clause 9* contains transitional provisions relating to persons who, immediately before the section comes into force, were subject to a non-entitlement period of 13 weeks and had a potential under section 60KA to move onto the "clean slate" provisions of that section after 4 weeks of the non-entitlement period or were participating in a programme or project for that purpose. In those cases, section 60KA continues to apply (despite its repeal by *clause 8*) and the person may participate or continue to participate in a programme or project for the purposes of that section.

No other existing sanctions are carried over by this Bill and they cease to have effect.

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Hon Peter McCardle

## SOCIAL SECURITY (WORK TEST) AMENDMENT

### ANALYSIS

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1. Short Title and commencement

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#### PART 2

##### REPEALS AND TRANSITIONAL PROVISIONS

8. Repeals
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## A BILL INTITULED

**An Act—**

- (a) To amend the Social Security Act 1964 to provide a new work-test framework, and a sanctions regime, for all work-tested beneficiaries; and 5
- (b) To provide for related matters

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

**1. Short Title and commencement—**(1) This Act may be cited as the Social Security (Work Test) Amendment Act 1998, and is part of the Social Security Act 1964\* (“the principal Act”). 10

(2) This Act comes into force on 1 October 1998.

\*R.S. Vol. 32, p. 625

## PART 1

## AMENDMENTS TO PRINCIPAL ACT

**2. Interpretation—**Section 3 (1) of the principal Act is amended by repealing the definition of the term “work test”\*, and substituting the following definition: 15

“ ‘Work test’, in relation to a person, means the person’s obligations under section 102 (2); and ‘work-test obligations’ has a corresponding meaning:” 20

\*As proposed to be inserted by clause 18 of the Social Security Amendment Bill (No. 5)

**3. Right of appeal—**Section 12J of the principal Act is amended by adding the following subsection:

“(4) Despite subsection (1), the Appeal Authority does not have the authority to hear and determine any appeal against any decision or determination made by the chief executive under subsection (1) or subsection (2) of section 110 (which provisions relate to the range and provision of organised activities).” 25

**4. Voluntary unemployment or loss of employment through misconduct, etc—**(1) Section 60H (1) of the principal Act is amended by repealing the definition of the term “rate of the benefit” 30

(2) Section 60H of the principal Act is amended by repealing subsections (4) and (5), and substituting the following subsections:

“(4) If this section applies, the chief executive must cancel the benefit (if granted), and the person is not entitled to the cancelled benefit or a work-tested benefit during the period of 13 weeks commencing on— 35

“(a) The date the person’s employment ceased; or

“(b) The date the person’s participation in the scheme ceased.

“(5) **Subsection (4)** is subject to subsection (6) and to **sections 121, 122, and 123.**”

5 (3) Nothing in **subsection (1)** entitles a person who, before  
1 October 1998, had his or her benefit reduced under  
section 60H of the principal Act, to receive the benefit without  
that reduction until either the expiry of the period for which  
10 the reduction was imposed under that section, or the person  
becomes entitled to another rate of benefit under the principal  
Act.

**5. Mandatory interviews**—Section 60HA of the principal  
Act is amended by repealing subsection (2), and substituting the  
following subsection:

15 “(2) An interview under this section is for the purpose of  
increasing the person’s awareness of the opportunities for  
education, training, and employment so as to increase his or  
her prospects for self-reliance.”

**6. Effect of work test on entitlement to supplementary  
20 benefits and on spouses**—Section 80C (1) of the principal Act  
is amended by repealing paragraph (c), and substituting the  
following paragraph:

“(c) The person is subject to a suspension of payment of the  
benefit under **section 115 (2) (a) or section 116 (4) (a) or (b).**”

**25 7. New heading and sections inserted**—The principal Act  
is amended by inserting, after **section 100\***, the following  
headings and sections:

\*As proposed to be inserted by clause 53 of the Social Security Amendment Bill (No. 5)

*“Work Test*

**“101. Purpose of section 60H and sections 102 to 123B—**  
30 The purposes of **section 60H and sections 102 to 123B** are—

“(a) To reinforce the reciprocal obligations of work-tested  
beneficiaries to seek work or take steps to improve  
their employment prospects as a condition of  
receiving the benefit:

35 “(b) To provide a work-test structure that applies to all work-  
tested beneficiaries but is sufficiently flexible to take  
account of the different situations of different work-  
tested beneficiaries:

40 “(c) To provide the desired flexibility by creating a range of  
organised activities that work-tested beneficiaries

may be required to undertake from time to time as the situation allows:

“(d) To use organised activities to increase the prospect for self-reliance of work-tested beneficiaries by increasing their awareness of, and participation in, opportunities for self-betterment, education, training, and employment: 5

“(e) To strengthen incentives for people to remain in employment and to move into unsubsidised employment. 10

“102. **Application of work test**—(1) The work test applies to a person while he or she is a work-tested beneficiary.

“(2) A person to whom the work test applies must—

“(a) Be available for, and take reasonable steps to obtain, suitable employment; and 15

“(b) Participate satisfactorily in such organised activities as the chief executive requires under **section 110**.

“(3) The employment referred to in **subsection (2) (a)** is—

“(a) For a part-time work-tested beneficiary, part-time work:

“(b) For any other work-tested beneficiary, full-time employment. 20

“(4) The work test does not apply to a work-tested beneficiary if the chief executive is satisfied that the beneficiary is undertaking employment of the kind required to satisfy the work test for that beneficiary. 25

“103. **Delayed application of work test**—(1) This section applies if a beneficiary has a dependent child and the beneficiary will become subject to the work test when the child attains a particular age.

“(2) A person to whom this section applies is not required to comply with the work test until 4 weeks after the child attains the particular age giving rise to the obligation to comply with the work test. 30

“104. **Exemption from obligations**—(1) A work-tested beneficiary of a category specified in regulations made under **section 123B** may apply to the chief executive for an exemption from the work test or from complying with **section 60HA**. 35

“(2) The chief executive may grant the exemption on any ground specified in regulations made for the purpose under **section 123B**. 40

“(3) Before determining the application, the chief executive may require verification of matters relevant to the application in such manner as the chief executive specifies, either generally or specifically.

“(4) An exemption under this section may be granted—

“(a) For a time set by the chief executive; or

“(b) On conditions set by the chief executive; or

5 “(c) For both a time and on conditions set by the chief executive.

“(5) On or after the grant of an exemption under this section from the work test, the chief executive may request the beneficiary to whom the exemption applies to attend and participate in an interview of a kind referred to in

10 **section 109 (2) (a)**, and **section 116** applies as if the person were a work-tested beneficiary and as if the interview were an organised activity.

“(6) The chief executive may from time to time review an exemption granted under this section, and may extend, vary,

15 or revoke it.

“(7) The chief executive may grant an exemption under this section whether or not a formal application is made by or on behalf of the person to whom it relates.

*“Deferral of Work-Test Obligations*

20 “**105. Application for deferral of work-test obligations**—(1) A person may apply to the chief executive for a deferral of all or any of the person’s work-test obligations.

“(2) An application may be made on any of the following grounds:

25 “(a) That the applicant’s capacity for work is limited by sickness, injury, or disability:

“(b) Any ground specified by regulations made under **section 123B**.

30 “(3) The chief executive may require an applicant to verify any particulars relevant to the application in such manner as the chief executive specifies either generally or specifically.

35 “**106. Chief executive may defer work-test obligations**—(1) If the chief executive is satisfied that an application for a deferral of all or any of the applicant’s work-test obligations is made on a ground referred to in **section 105 (2)**, he or she may defer all or any of the applicant’s work-test obligations.

“(2) In granting a deferral under this section of some of the applicant’s work-test obligations, the chief executive may still

40 require the applicant to participate in 1 or more specified organised activities.

“(3) A deferral under this section must be in writing and may be granted—

“(a) For a time set by the chief executive; or

“(b) On conditions set by the chief executive; or

“(c) For both a time and on conditions set by the chief executive.

“(4) The chief executive may from time to time review a deferral granted under this section and may extend, vary, or revoke it. 5

“(5) The chief executive may grant a deferral under this section on a ground set out in **section 105 (2)** whether or not a formal application is made by or on behalf of the person to whom it relates. 10

“107. **Effect of deferral**—While a deferral under **section 106** is in force, the work-test obligations of the person concerned are deferred for the time and to the extent specified in the deferral. 15

“108. **Persons who are to notify change of circumstances affecting exemption or deferral**—(1) This section applies to a person who is granted an exemption under **section 104** or a deferral under **section 106**.

“(2) A person to whom this section applies must notify the chief executive as soon as practicable of any change in the person’s circumstances that may affect his or her entitlement to the exemption or deferral. 20

*“Organised Activities*

“109. **Organised activities**—(1) For the purposes of this Act, an activity is an organised activity if— 25

“(a) It is an activity within the range of activities determined by the chief executive under **section 114 (1)**; and

“(b) The chief executive considers the activity would or might assist any work-tested beneficiary to improve his or her prospects for employment. 30

“(2) Without limiting **subsection (1)**, organised activities may include all or any of the following:

“(a) Interviews by or on behalf of the chief executive:

“(b) Work assessment: 35

“(c) Attending a job interview for suitable employment:

“(d) Creating an individual action plan:

“(e) Complying with an individual action plan:

“(f) Participation in a programme, seminar, scheme, or specified activity (including community work): 40

“(g) Participation in a work experience or work exploration activity:

“(h) Participation in training:

“(i) Activities for a person whose capacity for work is reduced by sickness, injury, or disability:

5 “(j) In any case where the chief executive considers it appropriate, medical or psychological assessment or examination, and provision to the chief executive of a report or certificate relating to the assessment or examination.

10 **“110. Chief executive to determine range and application of organised activities—**(1) Subject to any direction from the Minister under section 5, the chief executive may from time to time determine—

15 “(a) The range of organised activities in which persons to whom the work test applies may be required to participate, which activities are those the chief executive considers achieve the purposes set out in **paragraphs (d) and (e) of section 101**; and

“(b) The conditions applying to those activities.

20 “(2) Different organised activities may be provided in different geographical locations, as the chief executive considers appropriate.

“(3) The chief executive may from time to time require a person to whom the work test applies to participate in 1 or more specified organised activities.

25 “(4) In exercising the power to require a person to participate in an organised activity, the chief executive—

“(a) Is not required to ensure that all activities within the range determined under **subsection (1)** are available to the applicant; and

30 “(b) May promote or utilise particular activities over other activities.

35 “(5) A requirement to participate in 1 or more particular organised activities in a particular geographical location is not invalid merely because the person could have been required to participate in any different organised activities if he or she were residing in a different location at the time the requirement was made of him or her.

40 “(6) A requirement to participate in organised activities is subject to the provisions of **section 98** and, for the purposes of this subsection, **section 98** applies with any necessary modifications to all work-tested beneficiaries.

*“Obligation to Accept Offer of Employment*

**“111. Work-tested beneficiary to accept offer of suitable employment—**(1) A person who is a work-tested beneficiary must accept any offer of suitable employment.

**“(2) Subsection (1) applies whether or not the employment is—** 5

**“(a) Full-time employment; or**

**“(b) Part-time work; or**

**“(c) Seasonal or temporary employment; or**

**“(d) Subsidised employment.**

*“Sanctions Regime*

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**“112. Procedure for imposing sanctions—**(1) This section applies where a sanction is to be imposed on a beneficiary under **sections 115 to 117.**

**“(2) Where this section applies, the chief executive must not suspend or cancel a benefit payable to a beneficiary unless the chief executive has given the beneficiary written notice—** 15

**“(a) Stating that the beneficiary has failed to comply with a specified obligation under this Act; and**

**“(b) Specifying the nature of that non-compliance; and**

**“(c) Stating that, on the basis of that non-compliance, the chief executive is suspending or cancelling the benefit payable to the beneficiary; and** 20

**“(d) Specifying a date on which the suspension or cancellation is to take effect, and, in the case of a suspension, the nature and duration of the suspension; and** 25

**“(e) Stating that the beneficiary has 5 working days from the giving of the notice to dispute the suspension or cancellation; and**

**“(f) Advising the beneficiary to contact the department if the beneficiary wants to dispute or discuss the decision to suspend or cancel the benefit; and** 30

**“(g) Containing a clear statement of the beneficiary’s right, under section 10A, to apply for a review of the decision, and of the procedure for applying for a review.** 35

**“(3) The suspension or cancellation of the benefit must not take effect before the close of the 5 working days specified in the notice under subsection (2) (e).**

**“(4) The provisions of subsections (2) (e) and (3) are subject to section 113.** 40

**“113. Reduction of notice period—**(1) This section applies where—

- 5 “(a) A day that would normally count as a working day for the purposes of a notice given under **section 112 (2)** would not count because that particular day falls on Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, or Waitangi Day; and
- 10 “(b) The fact that the particular day would not count as a working day means that **section 112 (3)** would prevent the chief executive from suspending or cancelling the benefit until the pay day following the pay day on which the suspension or cancellation would take effect if that day did count as a working day.
- “**(2)** Where this section applies, the references in **section 112** to 5 working days are to be read as references to 4 working days.
- 15 “**114. Notices**—A notice may be given under **section 112** to a person—
- “**(a)** By delivering it to that person personally; or
- “**(b)** By leaving it—
- “(i) At that person’s usual or last known place of residence or business; or
- 20 “(ii) At the address given by that person in the most recent application or other document received from that person,—
- in which case the notice is given when it is left for that person; or
- 25 “**(c)** By posting it in a letter addressed to that person at that place of residence or business or at that address, in which case the notice is given when it is posted.
- “**115. Penalties for failure to accept offer of suitable employment**—(1) This section applies to a person if the work test applies to the person and the chief executive considers the person has failed, without a good and sufficient reason, to accept an offer of suitable employment.
- 30 “**(2)** The chief executive must,—
- “**(a)** For a first failure, suspend payment of the person’s benefit for at least 1 week and continue the suspension until the person recomplies; or
- 35 “**(b)** For a second failure (which failure is one that occurs after a person has recomplied following a previous failure), cancel the benefit.
- 40 “**(3)** Where a benefit is cancelled under **subsection (2)**,—
- “**(a)** The person is not entitled to any benefit for 13 weeks commencing on the date of cancellation; and

“(b) If the person wishes to again become entitled to the benefit, the person must apply for the benefit and establish the person’s eligibility to receive it.

“(4) **Subsection (3)** is subject to **sections 122 and 123**.

“(5) A person has good and sufficient reason for failing— 5

“(a) To accept an offer of suitable employment, in terms of **subsection (1)**; or

“(b) To attend an interview for suitable employment, in terms of **section 116 (1) (c)**,—

if the person has at least 1 dependent child and the employment concerned involves working during hours when it would be unreasonable to expect any dependent child of the person to be without the person’s supervision. 10

“**116. Penalties for failure to participate in organised activity**—(1) This section applies to a person if the work test applies to the person and the chief executive considers the person has failed, without a good and sufficient reason,— 15

“(a) To commence participation in an organised activity in which he or she is required to participate; or

“(b) To complete any organised activity in which he or she is required to participate, because the person has left or been dismissed from the activity; or 20

“(c) To attend an interview for suitable employment that he or she is required to attend.

“(2) For the purposes of **subsection (1) (b)**, where a work-tested beneficiary is in part-time work and leaves or is dismissed from it, then, except where section 60H applies, that work is to be treated as if it were an organised activity. 25

“(3) This section also applies to a person if the chief executive considers the person has failed, without a good and sufficient reason, to comply with a request under section 60HA. 30

“(4) The chief executive must,—

“(a) For a first failure, suspend payment of the person’s benefit until the person recomplies; or

“(b) For a second failure (which failure is one that occurs after a person has recomplied following a first failure), suspend payment of the benefit for at least 1 week and continue the suspension until the person recomplies; or 35

“(c) For a third failure (which failure is one that occurs after a person has recomplied following a previous failure), cancel the benefit. 40

“(5) Where a first failure occurs and the person recomplies before the end of the notice period in **section 112 (2)**, payment of

the benefit must not be suspended but the failure must be counted as a failure if the chief executive is subsequently required to calculate the number of failures under this section.

“(6) Where a benefit is cancelled under **subsection (4)**,—

5 “(a) The person is not entitled to receive any benefit for 13 weeks commencing on the date of cancellation; and

“(b) If the person wishes to again become entitled to a benefit, the person must apply for the benefit and establish the person’s eligibility to receive it.

10 “(7) **Subsection (6)** is subject to **sections 122 and 123**.

“**117. Penalties for failure to participate in organised activity to satisfaction of chief executive**—(1) This section applies to a person if the work test applies to the person and the chief executive considers that the person’s participation in an organised activity was, without a good and sufficient reason, unsatisfactory.

15 “(2) This section also applies to a person if the chief executive considers the person’s compliance with a request under section 60HA was, without a good and sufficient reason, unsatisfactory.

20 “(3) The chief executive must reduce the benefit of a person to whom this section applies by the appropriate percentage specified in regulations made under **section 123B** (which reduction must not be more than 40%).

25 “(4) A reduction under **subsection (3)** applies only to the payment of the benefit on the pay day on which the reduction is applied.

30 “**118. Calculation of failure rate**—(1) In calculating the number of failures under **section 115 or section 116 or section 117**, the chief executive—

“(a) May count applicable failures only while a benefit or benefits to which the applicable failure relates have been continuously paid in respect of that beneficiary; but

35 “(b) May not count any failure if—

“(i) It is not of a kind to which that particular section applies; or

40 “(ii) It occurred more than 18 months before the failure for which the calculation is made.

“(2) In determining whether a benefit has been continuously paid in respect of the beneficiary, the chief executive must disregard any period during which the benefit was cancelled or

suspended because the beneficiary commenced in employment that continued for less than 10 working days.

“(3) Nothing in **subsection (1) (b) (ii)** affects the implementation, after the 18-month period, of a sanction based on any prior calculation of the number of failures by a person to comply with the work test. 5

“(4) In this section, ‘working day’ means a day on which a person was required to work in the employment referred to in **subsection (2)**.

“**119. Effect of sanctions on married rate of benefit—** 10  
(1) Where under **section 115 or section 116** the payment of a benefit is to be suspended or the benefit is to be cancelled, and the benefit is payable at a married rate,—

“(a) The suspension or cancellation applies only to 50% of the applicable married rate of the benefit before any abatement on account of income; and 15

“(b) The person’s spouse is entitled to receive 50% of that married rate of the benefit, and the appropriate Income Test applies to that rate, but at half the abatement rate in that Income Test. 20

“(2) Where the benefit to be reduced under **section 117** is payable at a married rate,—

“(a) The reduction is to be calculated as the applicable percentage of that rate of the benefit before abatement on account of income; and 25

“(b) The reduction is to be applied,—

“(i) In the first instance, to the proportion paid under section 83 to the person whose failure led to the reduction; and

“(ii) Then to the proportion payable to that person’s spouse, but not so as to reduce the amount payable to the spouse to less than 50% of the applicable rate of the benefit after any abatement on account of income. 30

“*General Provisions* 35

“**120. Meaning of recompliance—**In **sections 115 and 116**, ‘recomplied’ means, in relation to a person’s failure to comply with the work test, that the person—

“(a) Has remedied the failure; or

“(b) Where it is not possible to remedy the failure, has undertaken some other organised activity to the satisfaction of the chief executive;— 40

and ‘recomplies’ has a corresponding meaning.

**“121. Effect of ceasing to be subject to obligation to comply with section 60HA or work test—**(1) This section applies to a person—

5 “(a) Whose benefit has been suspended, or who is subject to an non-entitlement period, under section 60H or **section 115 or section 116**; and

“(b) Who either—

10 “(i) Ceases to be a work-tested beneficiary or (as the case requires) ceases to be subject to the obligation to comply with section 60HA (other than because of the imposition of that suspension or non-entitlement period); or

15 “(ii) Obtains, under **section 104**, an exemption from the work test or (as the case requires) the obligation to comply with section 60HA.

“**(2)** From the date the chief executive decides he or she is satisfied this section applies to a person,—

“**(a)** The period of suspension of the benefit ends; or

20 “**(b)** The person is no longer subject to the non-entitlement period and that period lapses.

“**(3)** If a person to whom **subsection (2) (b)** applies wishes to again become entitled to a benefit, the person must apply for the benefit and establish the person’s eligibility to receive it.

25 **“122. Effect of employment on non-entitlement period—**(1) This section applies to a person who is not entitled to a benefit for 13 weeks because of the operation of **section 115 or section 116**.

30 “**(2)** If a person to whom this section applies completes a period of employment approved by the chief executive for the purposes of this section of not less than 6 weeks, the remainder of the non-entitlement period lapses.

“**(3)** In calculating the period of employment, the chief executive must disregard any employment within 4 weeks after the date the non-entitlement period took effect.

35 **“123. Effect of participation in organised activity on non-entitlement period—**(1) This section applies to a person who is not entitled to a benefit for 13 weeks because of the operation of **section 115 or section 116**.

40 “**(2)** If a person to whom this section applies participates in an organised activity or activities approved by the chief executive for the purposes of this section, the chief executive must, not less than 4 weeks after the non-entitlement period took effect, on application grant the person a benefit during

the person's satisfactory participation in the activities concerned.

“(3) For the purposes of **subsection (2)**, an approved activity may include participation in part-time work if the person is a part-time work-tested beneficiary.

“(4) A benefit under **subsection (2)** is granted provisionally and on the condition that, if the person does not continue satisfactory participation in the activity or activities for a period of not less than 6 weeks, or until the end of the non-entitlement period, whichever is the earlier, the person is liable to repay the whole amount provisionally paid to him or her during the non-entitlement period.

“(5) At the end of the non-entitlement period, a benefit granted under **subsection (2)** ceases to be granted provisionally if the person is then still entitled to that benefit.

“(6) Any amount a person is liable to repay under this section may be recovered by the chief executive under section 86 (1A).

“**123A. Application of Health and Safety in Employment Act 1992**—(1) Where a person is participating in an organised activity that involves undertaking any work, the Health and Safety in Employment Act 1992 applies to the person participating and to the person who provides the work as if the relationship between them is that of employee and employer.

“(2) Nothing in the Health and Safety in Employment Act 1992 applies to any requirement of the chief executive under **section 110** that any person participate in an organised activity.

“**123B. Regulations**—Without limiting the general power to make regulations conferred by section 132, the Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

“(a) Specifying the categories of beneficiaries who may be exempted under **section 104** from the work test and specifying the grounds on which exemptions may be granted for each of those categories:

“(b) Specifying the grounds on which a person's obligations under the work test may be deferred for the purposes of **section 105 (2) (b)**:

“(c) Specifying the percentage reduction in a benefit that is to be applied where specified kinds of unsatisfactory participation in an organised activity occur.”

PART 2

REPEALS AND TRANSITIONAL PROVISIONS

**8. Repeals**—(1) Sections 60GA, 60HB, and 60HC, and sections 60HD to 60KA of the principal Act are repealed.

- 5 (2) The following enactments are consequentially repealed:  
(a) Section 16 of the Social Security Amendment Act 1991:  
(b) Sections 5, 6, 7, 8, 16, 17, 18, 19, 20, 22, 23, 24, 26, 27,  
and 28 of the Social Security Amendment Act 1996:  
10 (c) Section 2 of the Social Security Amendment Act (No. 2)  
1997.

**9. Transitional provisions relating to persons subject to sanction on commencement of this section**—(1) This section applies to every person who, immediately before the date of commencement of this section, was subject to a non-entitlement period of 13 weeks or a reduced benefit for 13 weeks, under section 60H or section 60JA of the principal Act.

- 15 (2) A person to whom this section applies may,—  
(a) In the case of a person who was participating in a  
20 programme or project referred to in section 60KA of  
the principal Act, continue to participate in that  
programme or project; or  
(b) In any other case, continue to serve his or her non-  
entitlement period or continue to receive a reduced  
25 benefit and, subject to section 60KA, participate in a  
programme or project referred to in that section.

(3) Section 60KA of the principal Act is deemed to continue to apply to persons referred to in **subsection (2)** of this section as if that section had not been repealed by **section 8**.

- 30 (4) Where a person was, immediately before the date of  
commencement of this section, subject to any sanction under  
the principal Act other than a sanction referred to in  
**subsection (1)**, that sanction is revoked with effect on the  
commencement of this section and any work-test failure on the  
35 person's part that occurred before that date is not to be  
counted as a work-test failure on or after that date.

