

In Confidence

Office of the Minister for Children
Chair, Cabinet Legislation Committee

Social Security (Financial Assistance for Caregivers) Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks Cabinet approval to introduce the Social Security (Financial Assistance for Caregivers) Amendment Bill (the Bill). The Bill makes amendments to the Social Security Act 2018 in order to implement two initiatives to improve financial assistance for caregivers of children who are unable to live with their parents.

Policy

- 2 Following a review of financial assistance for caregivers in 2019, Cabinet agreed to fund a package of initiatives that improve financial assistance for caregivers who provide day-to-day care for children and young people whose parents are unable to care for them [SWC-19-MIN-0040; CAB-19-MIN-0023; CAB-20-MIN-0219.25 refer].¹
- 3 In June 2020, Cabinet agreed that a Bill be drafted to give effect to two of the initiatives, which require amendment to the Social Security Act 2018 [SWC-20-MIN-0073]. They are:²
 - 3.1 extending eligibility for the Orphan's Benefit (OB) and Unsupported Child's Benefit (UCB) to principal caregivers who may provide care for less than 12 months (by removing the '12-month rule')
 - 3.2 extending the Christmas and Birthday Allowance to OB and UCB caregivers in the same way and at the same rate as that currently provided to recipients of the Foster Care Allowance (FCA).
- 4 These initiatives (described further below) seek to reduce inconsistencies between assistance provided to different groups of caregivers of children who are unable to live with their parents. Supporting short-term caregivers and assisting caregivers to enable the children they care for to have the same experiences as other children will contribute to children's overall well-being, identity, and feeling of inclusion within a family. They also aim to help soften the social and financial impacts of the COVID-19 pandemic and contribute to the resilience and stability of placements.

¹ The package was funded from the COVID Response and Recovery Fund (CRRF).

² These initiatives relate to the OB and UCB, which are governed by the Social Security Act 2018 and administered by the Ministry of Social Development (MSD). The OB supports children whose parents have died, are missing, or have a long-term disablement and the UCB supports children who have had a family breakdown.

- 5 I am seeking your agreement to introduce the attached Social Security (Financial Assistance for Caregivers) Amendment Bill (the Bill) on 30 July 2020, to give assurance to caregivers that these changes are being made, and to ensure that the Bill passes in time for the first initiative to start in July 2021.
- 6 The Financial Assistance for Caregivers Bill has priority category four (to be referred to select committee in the year) on the 2020 Legislation Programme.
- 7 I propose the title of the Bill be updated to the Social Security (Financial Assistance for Caregivers) Amendment Bill, to better reflect its purpose, which is to amend the Social Security Act 2018.
- 8 As Minister for Children, I will be the Minister in charge of the Bill. This is because the Minister for Children has responsibility for policies for payments to caregivers, including the OB, UCB and FCA.³ I will work closely with the Minister for Social Development throughout the legislative process.

Extending eligibility for the OB and UCB to short-term caregivers (removing the ‘12-month rule’)

- 9 One of the current criteria for accessing the OB and UCB under the Social Security Act 2018 is that the caregiver must be likely to be the principal caregiver of the child for at least one year from the date of the application for the payment (the ‘12-month rule’).
- 10 In practice, it means there are caregivers who take on the care of a child, often in difficult and/or short-term situations where there is little other choice, who are unable to access the appropriate financial assistance to help them provide care. This is despite the fact they, like other caregivers, have taken on primary responsibility for the day-to-day care of the child when the child’s parents are unable to care for them.
- 11 Cabinet agreed to address this barrier by removing the minimum time period requirement for a caregiving arrangement to qualify for the OB or UCB and associated payments [SWC-20-MIN-0073]. The eligibility criteria for the OB and UCB are outlined in sections 44 and 47 of the Social Security Act 2018. The initiative would take effect for all new OB and UCB applications, and existing applications not yet decided, on or after 1 July 2021.

Extending the Christmas and Birthday Allowance to caregivers receiving the OB or UCB

- 12 Caregivers who receive the OB or UCB currently do not receive the Birthday and Christmas Allowances that are available to caregivers that receive the FCA. This means that OB and UCB caregivers either pay for these costs out of their own pocket or, if they are unable to do so, the children in their care go without. This disparity in payments contributes to the inequities between the levels of financial assistance provided to caregivers caring for children outside of the State care system, compared with those caring for children in State care.
- 13 Being able to celebrate and enjoy significant events in a child’s life is an important part of being able to provide children who are unable to live with their parents the same experiences as other children. It also contributes to their overall well-being,

³ Note the Social Security Act 2018 is the responsibility of the Minister for Social Development.

identity, and feeling of inclusion within a family and placement stability, which are even more critical during this time of economic upheaval.

- 14 Cabinet agreed that the Social Security Act 2018 be amended to establish these two Allowances for OB and UCB caregivers in the same way, and at the same rate, as for FCA caregivers [SWC-20-MIN-0073 refers]. The attached Bill adds the new Allowances to Part 4 of Schedule 4 (for the OB) and Part 5 of Schedule 4 (for the UCB) of the Social Security Act 2018.⁴ The Christmas Allowance would start in December 2021, and the Birthday Allowance would start for birthdays in January 2022.

Impact analysis

- 15 A Summary Regulatory Impact Assessment was prepared and submitted to Cabinet [SWC-20-MIN-0073]. An independent internal quality assurance review concluded that it met the Quality Assurance Criteria.

Compliance

- 16 The Bill complies with:
- 16.1 the principles of Te Tiriti o Waitangi (further detail below);
 - 16.2 the rights and freedoms set out in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 (further detail below);
 - 16.3 the principles and guidelines set out in the Privacy Act 1993;
 - 16.4 relevant international standards and obligations;⁵
 - 16.5 the Legislation Guidelines (2018 edition).
- 17 A disclosure statement has been prepared and is attached to the paper.

Te Tiriti o Waitangi

- 18 OB and UCB caregivers are largely members of a child's family, whānau, hapū, iwi or family group who have stepped up to care for the child. The majority of children for whom these payments are made are Māori,⁶ and a significant proportion of their caregivers are also Māori.⁷ These caregivers fulfil a vital role in reducing the need for children to enter or re-enter the State care system.
- 19 Improving financial assistance for OB and UCB caregivers will provide additional support to caregivers caring for children outside the State care system, and therefore

⁴ The Birthday Allowance will be paid in the month prior to the child's birthday and the Christmas Allowance in December. The rate will be tied to half the weekly rate of the FCA (currently ranging from \$86.42 to \$116.86 depending on the age of the child). As the rates are adjusted by the Consumer Price Index (CPI) in April every year, this will have a flow on impact to the amount of the Birthday and Christmas Allowance from April each year.

⁵ Increasing the rates of the OB and UCB will increase New Zealand's alignment with the United Nations Convention on the Rights of the Child, particularly Articles 3, 20, and 27.

⁶ Around 57% of children that OB and UCB are paid in relation to are Māori. Source: Stats NZ Integrated Data Infrastructure (IDI), as at 30 June 2018.

⁷ Around 40% of OB caregivers and around 46% of UCB caregivers are Māori. Source: MSD, 30 June 2018, operational data – subject to change.

better enable whānau, hapū, and iwi to exercise kaitiakitanga (guardianship) and whanaungatanga responsibilities over the children in their care, who are taonga (treasures). The proposal also affirms mana tamaiti by supporting children to maintain their connection to their whakapapa through their caregivers.⁸

The New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993

- 20 The initiatives will benefit caregivers in receipt of the OB and UCB and expand the numbers of caregivers and children that are able to access these benefits. The initiatives do not provide support to parents who are caring for their own children.
- 21 This is prima facie discrimination that is justified. The State has a role in ensuring children are cared for and have their well-being maintained. When a child's parents are unable to care for them, and where this has come to the attention of the State, the State needs to be satisfied that there is suitable alternative care for the child. OB and UCB caregivers offer a crucial care alternative, and prevent the need for statutory care and protection intervention.
- 22 Cabinet has recognised the distinction between the role that parents have in relation to their own children, compared with the role of caregivers of children who are unable to be cared for by their parents. In December 2019, Cabinet agreed that the State should provide support to caregivers, in addition to the general support available to parents, where they have taken responsibility for providing the day-to-day care of a child due to the child's natural or adoptive parents being unable to care for them [SWC-19-MIN-0199; CAB-19-MIN-0672 refer].

Consultation

- 23 This paper was prepared by Oranga Tamariki with input from the Ministry of Social Development. The following agencies were consulted: the Ministries of Health, Education, Justice and Youth Development; the Ministry for Pacific Peoples; the Ministry for Women; Te Puni Kōkiri; the Office of Disability Issues; Inland Revenue; the Treasury; the Policy Advisory Group, Child Well-being Unit and Child Poverty Unit at the Department of the Prime Minister and Cabinet.
- 24 Cross-party consultation was undertaken and the Ministers for/of Social Development, Child Poverty Reduction, Finance, Health, Education, Justice, Youth, Pacific Peoples, Women, Māori Development, Disability Issues, and Revenue were consulted.
- 25 The review of financial assistance for caregivers involved consultation with caregivers, advocacy groups, care-experienced young people, Oranga Tamariki frontline staff, NGO providers (including Māori and Pacific providers) and the Office of the Children's Commissioner. A subject matter expert group, which included Māori and Pacific members, met to help refine policy proposals. A summary of the engagement findings is available on the Oranga Tamariki—Ministry for Children website.⁹

⁸ Section 7AA(2)(b) of the Oranga Tamariki Act 1989 requires Oranga Tamariki policies to have regard for the mana tamaiti and whakapapa of tamariki Māori, and the whanaungatanga responsibilities of their whānau, hapū, and iwi.

⁹ Oranga Tamariki. (2020). Review of Financial Assistance for Caregivers: summary of engagement findings. Wellington, New Zealand: Oranga Tamariki—Ministry for Children.

Binding on the Crown

- 26 The Bill amends the Social Security Act 2018, which is binding on the Crown. The Bill does not create a new agency. It does not amend the existing coverage of the Ombudsmen Act 1975, the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987.

Allocation of decision-making powers

- 27 The Bill does not involve the allocation of decision-making powers between the executive, the courts, and tribunals.

Associated regulations

- 28 Regulations will not be needed to bring the Bill into operation.

Other instruments

- 29 The Bill does not include any provision empowering the making of other instruments.

Definition of Minister/department

- 30 The Bill does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department (or equivalent position).

Commencement of legislation

- 31 The legislation will commence on 1 July 2021.

Parliamentary stages

- 32 The Bill should be introduced on 30 July 2020 and should be passed by 1 July 2021.

- 33 It is proposed that the Bill be referred to the Social Services and Community Committee for consideration following the first reading.

Proactive release

- 34 This Cabinet paper will be released proactively within 30 business days of consideration by Cabinet.

Recommendations

The Minister for Children recommends that the Committee:

- 1 **note** that the Financial Assistance for Caregivers Bill (the Bill) holds a category four priority on the 2020 Legislation Programme (to be referred to select committee in the year);
- 2 **note** that the Bill amends the Social Security Act 2018 in order to give effect to two initiatives that improve financial assistance for caregivers and the children in their care. These are:
 - 2.1 extending eligibility for the Orphan's Benefit (OB) and Unsupported Child's Benefit (UCB) to principal caregivers who may provide care for less than 12 months (by removing the '12-month rule');

- 2.2 extending the Christmas and Birthday Allowance to OB and UCB caregivers at the same rate as that currently provided to recipients of the Foster Care Allowance (FCA);
- 3 **agree** that the title of the Bill be the *Social Security (Financial Assistance for Caregivers) Amendment Bill*;
- 4 **approve** the Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
- 5 **note** that the Minister for Children will be the Minister in charge of the Bill;
- 6 **agree** that the Bill be introduced on 30 July 2020;
- 7 **agree** that the Government propose that the Bill be:
- 7.1 referred to the Social Services and Community Committee for consideration;
- 7.2 enacted by 1 July 2021.

Authorised for lodgement

Hon Tracey Martin
Minister for Children