

# Regulatory Impact Statement: Additional policy options proposed as part of the Social Security Act 1964 Rewrite

## Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Social Development (the Ministry).

The rewrite of the Social Security Act 1964 (the Act) has identified certain provisions that are likely to be found inconsistent with human rights legislation<sup>1</sup> and/or government priorities to reduce long welfare dependency. These provisions give advantageous treatment to some disabled people, in particular people who are totally blind, when compared to other people/disabled people. The advantageous treatment arises primarily in situations where people who are totally blind receive a benefit while also undertaking paid employment.

Cabinet decided to retain these advantageous provisions until Ministry officials completed work to understand the additional costs of disability in employment, the mechanisms to address these costs, and to identify options for change [SOC Min (15) 12/1].

Part 1 of the RIS provides an analysis of options for change to mechanisms to meet additional costs of disability in employment, to ensure the mechanisms are fit for purpose, and consistent with human rights legislation.

The Ministry has very little data on the individual circumstances of people who currently receive the Supported Living Payment (SLP) on the grounds of being totally blind, or on the circumstances of people who currently do not qualify for a benefit but could potentially access SLP if the provisions for people who are totally blind were made more widely available. There are also data limitations relating to individuals who claim the special exemption for severe disablement under section 66A of the Act. The data limitation means that costs/savings identified for options for change are indicative rather than precise.

The Ministry is undertaking work to identify options for change to the Support Funds. Support Funds meet the additional costs of disability an individual incurs as a direct consequence of their disability, when undertaking the same job or training as a non-disabled person. This work will include options to improve Support Funds as identified as part of the additional costs of disability in employment work. The Ministry will provide advice to the Minister for Social Development on options for changes to Support Funds in the first quarter of 2016.

The rewrite of the Act also includes consideration of some changes to align the work obligations of single carers receiving Orphan's Benefit and Unsupported Child's Benefit (OB/UCB).<sup>2</sup>

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<sup>1</sup> New Zealand Bill of Rights Act 1990 and Human Rights Act 1993. If these provisions cannot be justified they will be found in breach of the legislation.

<sup>2</sup> These two benefits will be merged into the 'Supported Child's Payment' in the rewrite Act.

Part 2 of the RIS provides an analysis of options for aligning work obligations, to ensure that single carers receiving OB/UCB have the same work obligations as sole parents with children of the same age.

The options set out in both parts of the RIS are not likely to impose additional costs on businesses, impair private property rights, restrict market competition, or reduce the incentives on businesses to innovate and invest, or override fundamental common law principles.

If Cabinet approves either options 1A, 2A and/or 3A set out in the RIS, these will be included in the wider package of proposals for implementation under the Social Security Act 1964 Rewrite Bill (Rewrite Bill).

Implementation of these options would involve some costs, for example, changes to IT systems. IT, application forms, brochures and websites will be updated together to achieve the most cost-effective change process. All costs will be met within baseline without fiscal implications.

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## Executive summary

### Part 1: options for provisions that give advantageous treatment to totally blind people and section 66A of the Act

1. The rewrite of the Act identified provisions (dating back to 1924) for totally blind people that are likely to be found inconsistent with human rights legislation. These provisions give advantageous treatment to totally blind people compared to treatment of other people, including other disabled people.
2. In June 2015, Cabinet decided to retain these advantageous provisions until Ministry officials completed work to understand the additional costs of disability in employment, the mechanisms to address these costs, and to identify options for change [SOC Min (15) 12/1].
3. This work identified that there are already a range of mechanisms in place to meet the additional costs of disability for disabled people in employment. The main mechanism is Support Funds administered by Workbridge on behalf of the Ministry. Support Funds provide funding for a range of accommodations including transport, technology, and support people.
4. Removal of the advantageous provisions for totally blind people from the Act should be considered (option 1A), with grand-parenting arrangements for current recipients. It is likely that these provisions would be found to be inconsistent with human rights legislation. They are also inconsistent with Government priorities to reduce long term benefit dependence.
5. Ministry officials are undertaking work to improve the effectiveness of Support Funds. These improvements are expected to streamline the funds resulting in more cost-effective administration, improve clarity around how these funds can be used, and ensure appropriate levels of funding are available.
6. There is also the option of retaining the provisions in the Act (option 1B). The provisions would continue to be lawful as long as they continue in the Act, but it is likely they would have to be declared inconsistent with human rights legislation in the Section 7 report required on introduction of the Rewrite Bill. A declaration of inconsistency may result in human rights complaints from people with other forms of severe disability who cannot access the same provisions as people who are totally blind.
7. Cabinet should also consider whether to remove section 66A of the Act (option 2A), which exempts some income earned by severely disabled people from paid employment from the calculation of the benefit rate, with grand-parenting arrangements for current recipients. There are now better mechanisms available to support disabled people in work and this provision is inconsistent with Government priorities to reduce long term benefit dependence.
8. Alternatively, section 66A could be retained (option 2B). This would allow case managers to continue to exercise discretion to exempt some of the income of people with severe disablement from the income test that applies to benefits. However, this is a complex judgment for an individual case manager to make.

9. Over time, it is expected small savings will be generated if Cabinet decides to remove the advantageous provisions for the blind and/or section 66A, due to the small number of people who will be impacted by these proposed changes though savings will be delayed by grand-parenting arrangements.
10. Disabled People's Organisations (DPOs) representatives advised Ministry officials that the status quo is no longer justifiable or desirable and they support the options to remove the advantageous provisions and section 66A. It should be noted that given the targeted nature of engagement agreed to by the Ministerial Committee on Disability Issues,<sup>3</sup> the comments and views expressed by DPO representatives only reflect that of the individuals involved rather than the organisations as a whole or wider membership.<sup>4</sup>

## **Part 2: options to align work obligations of single carers being paid Orphan's Benefit or Unsupported Child's Benefit**

11. As part of the rewrite, Cabinet also decided to consider some changes to Orphan's Benefit (OB) and Unsupported Child's Benefit (UCB) [CAB Min (13) 21/6]. OB and UCB provide weekly financial support to the carer of a child whose parents cannot support them due to family breakdown, parental illness, incapacity, or death.
12. One of the proposed changes is to align the work obligations of a small group of single carers who are receiving OB/UCB with those of sole parents. Under the Act, single carers who are paid OB/UCB are not eligible for Sole Parent Support (SPS) unless they are also caring for another dependent child under 14 years of age. This means these carers have different work obligations compared to sole parents with other children of the same age.
13. To better align the work obligations of these carers, Cabinet could consider the option of extending eligibility for SPS so that single carers being paid OB/UCB can receive it (option 3A). This will mean that these carers will have the same work obligations as sole parents with children of the same age.
14. Under this option, a single rate<sup>5</sup> of SPS would be introduced for these carers, to allow them to continue to be paid OB/UCB for the child in their care. All other benefit settings that apply to these carers would continue to apply if they transfer to the single rate of SPS.
15. Alternatively, the current arrangements for these carers, which include the option of granting either Jobseeker Support or Emergency Benefit, can continue (option 3B). Single carers who are paid OB/UCB and have no other dependent child would continue to be excluded from eligibility for SPS in the rewrite of the Act.

### **Options 1A, 2A and 3A**

16. The Rewrite Bill will be introduced in March 2016. If Cabinet approves any or all of options 1A, 2A or 3A, wider public consultation on these options can be undertaken as part of this legislative process.

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<sup>3</sup> In July 2015, the Ministry provided the Ministerial Committee on Disability Issues with information about the proposed removal of the advantageous provisions for the totally blind. The Committee agreed the scope of the additional costs of disability in employment work and targeted engagement with DPO representatives only.

<sup>4</sup> Ministry officials engaged with DPO chairs and Chief Executives.

<sup>5</sup> A single rate is a rate of benefit paid to a single beneficiary (ie not in a relationship). The rate does not take into account any dependent children of the beneficiary.

17. If approved, these options would be included in the wider package of proposed changes for implementation under the Rewrite Bill. IT, application forms, brochures and websites will be updated together to achieve the most cost-effective change process. All costs will be met within baseline without fiscal implications.

## Part 1: Removal of advantageous provisions

### Status quo and problem definition

18. The rewrite of the Act has identified provisions in the Act (dating back to 1924) for totally blind people that are likely to be found inconsistent with human rights legislation and government priorities to reduce long welfare dependency.

19. The discriminatory aspects of the various provisions are as follows:

- a totally blind person is granted Supported Living Payment (SLP) on grounds of sickness, injury, or disability without having to establish they are permanently and severely limited in their capacity to work. All other disabled people have to establish this incapacity to access SLP;
- a totally blind person, who regularly works 15 hours a week or more, including full-time work, can still receive SLP. Other disabled people who regularly work 15 hours or more a week are not eligible for SLP;
- as an incentive to personal effort, the personal earnings of a totally blind person on SLP are exempt from the benefit income test – so a blind person can still receive a full rate of benefit irrespective of the amount of wages or salary he or she receives. Other SLP recipients can only have \$20 of their personal earnings exempt from the income test;
- an additional allowance of 25% of their average personal earnings can be paid to a totally blind person in receipt of SLP (this is known as the “blind subsidy”). There is a limit on the total income that a person can receive and still access this allowance. Other SLP recipients are not eligible for this type of ‘top up’.

20. DPO representatives advised the Minister for Social Development that totally blind people originally sought these provisions to meet the additional costs of disability in employment. Historical records indicate policies for the blind were developed to provide support and incentives for blind people to undertake employment and therefore enable them to play a more active part in the community.

21. Since 1924, a number of mechanisms have been put in place to meet the additional costs of disability in employment for all disabled people. Overall, the mechanisms available to meet the range of types of additional costs of disability in employment are appropriate and adequate.

22. The Government funds a range of these mechanisms as shown in Table One:

**Table One: Government funded mechanisms to meet the additional costs of disability in employment**

<i>Mechanism to meet additional costs of disability in employment</i>	<i>Target group</i>
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<b>Ministry of Social Development</b>	
<p><i>Support Funds</i></p> <p>Meet the additional costs of disability an individual incurs as a direct consequence of their disability, when undertaking the same job or training as a non-disabled person.</p>	All eligible disabled people
<p><i>Disability Allowance</i></p> <p>Non-taxable assistance to people who have on-going additional costs because of a disability. An eligibility income threshold applies.</p>	All eligible disabled people
<p><i>Section 66A - -Special income exemption for severe disablement</i></p> <p>Discretion for people with severe disablement to have all or part of any personal earnings exempted. Case managers take into account matters such as work-related costs when deciding to exempt any additional income, and if so how much should be exempt – the exemption is not automatic.</p>	All eligible disabled people
<p><i>Supported Living Payment</i></p> <p>SLP provides financial support to people whose disability or health condition impacts their ability to adequately support themselves through paid work (more than 15 hours per week). Totally blind people have automatic entitlement to SLP as a means to meet basic living costs and additional costs of disability in employment, irrespective of ability to work and employment status</p>	All eligible disabled people. However, only people who are totally blind have automatic entitlement, regardless of their hours of work or income.
<b>Ministry of Health</b>	
<p><i>Equipment Modification Scheme</i></p> <p>Provides specialised equipment and vehicle purchase and modifications that are not funded by ACC.</p>	All eligible disabled people
<b>Regional Councils and New Zealand Transport Agency</b>	
<p><i>Total Mobility Scheme</i></p> <p>Scheme provides subsidised taxi and specialist mobility services to disabled people who have an impairment that prevents them from travelling on a bus, train or ferry in a safe and dignified manner.</p>	All eligible disabled people
<b>ACC</b>	
<p><i>Vocational Rehabilitation</i></p> <p>ACC's Vocational Rehabilitation provides support for people to stay at work following an injury, or return to alternative employment if they cannot return to their pre-injury role.</p> <p><i>Managed Rehabilitation Equipment Service</i></p> <p>ACC clients with an accepted claim can be entitled to receive</p>	All eligible disabled people

funding for rehabilitation equipment to enable a return to work	
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23. Ministry officials have identified there is support available to meet the additional costs of disability in employment, but some of the mechanisms to provide it could be improved.
24. There are two mechanisms that are likely to be inconsistent with human rights legislation and/or government priorities to reduce long welfare dependency:
  - SLP on the ground of total blindness
  - Section 66A - Special exemption for severe disablement.
25. Support Funds are the main mechanism for meeting the additional costs of disability in employment and they are not as effective as they could be.

### **SLP – advantageous provisions for the totally blind**

26. Benefit provisions for people who are totally blind date back to 1924 when an amendment was made to the Pensions Act, which made blind people the first group in New Zealand to qualify for a pension on the basis of a disability. In order to encourage employment, an additional bonus amount of 25% of any wages earned (the “blind subsidy”) was offered provided the accumulated income from all sources did not exceed a set amount per year.
27. In 1958, a Social Security Amendment Act removed from the means test the personally-earned income of those who received the Invalids Benefit on account of blindness. However, in line with other benefit entitlement provisions, earned income from a spouse was, and continues in the present day to be, taken into account in the assessment of the benefit.
28. Prior to a Bill being introduced, the Ministry of Justice is responsible for vetting the Bill for compliance with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 (BoRA) and Human Rights Act 1993. If retained in the Rewrite Bill, the advantageous provisions for people who are totally blind will likely be declared inconsistent with the BoRA, resulting in a notification to the House on introduction of the Bill. Any complaints to the Human Rights Commission from other disabled people would likely be upheld.
29. The purpose of SLP is to provide financial support to people whose disability or health condition impacts their ability to adequately support themselves through paid work. For the majority of SLP recipients this is the case and they use it to meet basic living costs.
30. Use of the SLP for purposes other than to financially support people who cannot support themselves is inconsistent with the Act’s purpose and Government priorities to reduce long-term benefit dependence.
31. The Cost of Disability Final Report<sup>6</sup> identified resources that would be required by disabled people with physical, visual, hearing, mental health or intellectual impairments, and focussed on two broad ranges of need, characterised as ‘high’ and ‘moderate’ as summarised in the table below. The research included only costs of accessing education,

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<sup>6</sup> The Cost of Disability Final Report – DRC (Disability Resource Centre, Auckland, Inc). This project was co-funded by the Ministry and the Health Research Council of New Zealand, and conducted by the Disability Resource Centre, in collaboration with the University of Auckland. Published in 2010.

employment, healthcare and community based support services, but not costs incurred within those services (e.g. transport and communication support).

32. The research shows that people with physical and mental health impairments have higher costs associated with costs of disability than people with vision impairments.

	Moderate needs	High needs
Physical impairment	\$639	\$2,284
Vision impairment	\$353	\$719
Hearing impairment	\$204	\$761
Intellectual impairment	\$578	\$2,568
Mental Health impairment	\$714	\$2,413

33. There is an argument that the Government can make separate provision for different disadvantaged groups when providing social assistance. However, this argument is tenuous when the distinctions apply within one benefit group.
34. There is no longer a strong justification for the advantageous provision for the totally blind and the Ministry has concluded that there is a high risk that the provisions will be found to be inconsistent with the BoRA because:
- there has been a significant shift in thinking about disability and employment – a shift that recognises most disabled people can work and should work, and that all disabled people should be treated on an equal basis
  - advances in technology have removed some barriers for totally blind people to participate and pursue their choice of career
  - a range of more appropriate mechanisms have been put in place to meet the additional costs of disability in employment for all disabled people in paid work.

### Section 66A – Special exemption for severe disablement

35. There is discretion under section 66A of the Act which allows the Ministry to disregard some or all of the income “derived from personal effort” of a severely disabled person. This exemption was added to the Act in 1972 to recognise the personal effort and costs that going to work involves for people who are severely disabled. At that time, only the “blind” provisions were in place – and they did not help people with other disabilities.
36. The exemption under section 66A is not an automatic entitlement. It is time-consuming and complex to administer due to the high level of disability threshold required for eligibility. In exercising discretion case managers take into account matters such as work-related costs when deciding whether to exempt any additional income, and if so, how much income should be exempt. This exemption can apply across all benefit types, including work-focused benefits, e.g. Jobseeker Support, but most people claiming the exemption are in receipt of SLP.

37. As with the blind, there are other mechanisms in place to meet the cost of disability in employment including Support Funds. This exemption creates an anomaly in the benefit system where a person who is able to support themselves through paid employment can access part or full benefit. This reduces the incentive for people to completely move off a main benefit.
38. The exemption is not likely to breach human rights legislation as it covers all forms of severe disability but there may be good reason to remove it as better ways of supporting disabled people in employment are now available.
39. Since 1972 there have been significant advances in assistive technologies and more enlightened attitudes towards people with disabilities. The labour market is less reliant on physical labour. As a result of these changes there are better ways to assist disabled people to work.

### **Support Funds need to be modernised and could be more effective**

40. Support Funds are the main mechanism used to meet the additional costs of disability in employment that an individual incurs as a direct consequence of their disability, when undertaking the same job or training as a non-disabled person.
41. In 2014/15, the Ministry funded a total of approximately \$5.658 million to meet the additional costs of disability in employment.<sup>7</sup> Twenty-nine percent of this (approximately \$1.608 million) went to 265 individuals with vision impairment - an average of \$6,069 per annum per individual.
42. DPO representatives told Ministry officials that there are two main issues with Support Funds:

- *Maximum funding available under the Job Support component is not sufficient for some*

Inadequate support to meet additional costs of disability in employment can be a barrier to career progression and higher incomes for some disabled people. Additional costs of disability in employment increase as disabled people progress through their careers.

This issue impacts only a small number of people. In particular a small number of deaf people require deaf interpreters at a frequency that costs more than the available cap. Currently there is flexibility to provide additional funds on a case by case basis, if this will add to the client's ability to secure employment but this flexibility is not well known by Support Funds applicants. As such this issue is one of ensuring people are aware of what is available to them as opposed to increasing funding.

- *Inconsistency of decision making*

There is inconsistency and lack of clarity about what types of costs are covered by Support Funds. This can result in inequity of access to funding, i.e. some people will be funded for a particular cost and other people will not be.

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<sup>7</sup> Job Support component within Support Funds. Up to \$16,900 per annum is available to individuals via Job Support.

43. Ministry officials are undertaking work to improve the effectiveness of Support Funds. These improvements are expected to streamline the funds resulting in more cost-effective administration, improve clarity around how these funds can be used, and ensure appropriate levels of funding are available.

## Objectives

44. Cabinet asked for proposals for changes to the Act in order to reduce the risk of provisions being found in breach of the BoRA when they are re-enacted as part of the rewrite Act. Provisions in breach of BoRA should not be continued in the rewrite Act unless there are strong countervailing considerations.
45. As an interim measure, Cabinet decided to retain the advantageous provisions for totally blind people, until Ministry officials completed work to understand the additional costs of disability in employment, the mechanisms to address these costs, and options for change.

## Options and impact analysis

### SLP – advantageous provisions for the totally blind

46. No non-legislative options were identified as the problem lies within the legislation.
47. Four broad options were identified to address the problem with the SLP provisions for the totally blind. The advantages and disadvantages are summarised below:

	Option	Advantages	Disadvantages
1A	Remove discriminatory provisions	<p>Clients in similar situations would be treated the same</p> <p>All severely disabled people are treated the same so would be more consistent with BoRA</p> <p>Work capacity of totally blind people assessed and employment focus encouraged</p> <p>Some support from the disability sector</p>	<p>Some totally blind people lose eligibility (but current recipients protected by grand-parenting)</p> <p>People affected may perceive the policy change as reducing the welfare safety net, or a benefit cut</p>
1B	Status quo	<p>No-one would be adversely affected</p> <p>If re-enacted it will continue to be legal, even if inconsistent with human rights legislation</p> <p>Assists a group of disabled</p>	<p>Preserves advantages for blind people over other disabled people with comparable barriers</p> <p>Likely to be declared inconsistent with BoRA</p> <p>People with other forms of</p>

		people	<p>disability may complain to the Human Rights Commission and have their complaints upheld</p> <p>People who are not in financial need and may be working fulltime continue to receive SLP – which is inconsistent with the purpose of SLP</p>
1C	Extend the provisions to all disabled people	<p>All disabled people have the same policy settings – so would be more consistent with BoRA</p> <p>Some support from the disability sector</p>	<p>Difficult to establish a disability threshold for eligibility.</p> <p>Benefit eligibility would expand to include more people who are not in financial need and may be working fulltime - which is inconsistent with the purpose of SLP</p> <p>High cost, as more people get full rate benefit, including people who currently do not qualify</p>
1D	Change the Disability Allowance to a non means-tested disability allowance with an expanded limit and expanded range of costs payable	All disabled people have the same policy settings	<p>Eligibility would expand to include more people who are not in financial need and may be working fulltime</p> <p>High cost, as more people get the allowance, including people who currently do not qualify</p> <p>There are other mechanisms in place to meet the additional costs of disability in employment</p>

48. The current provisions are an anomaly in a system that is focused primarily on assisting people into employment and providing financial assistance to people who are not able to support themselves through paid work. However, they are longstanding provisions providing support to a group of severely disabled people.

49. To extend the provisions to other severely disabled people (option 1C) would require government to establish a disability threshold for eligibility. This would be a complex task and not all disabled people would meet the threshold.

50. Extending the provisions to other severely disabled people would be costly<sup>8</sup> as severely disabled people who currently partly or fully support themselves through paid work would also be able to qualify for SLP with no reduction in rate resulting from their employment income. A Statistics New Zealand analysis<sup>9</sup> of data from the 2006 Disability Survey found there were 109,300 disabled people in employment – there were 13,500 with high support needs and 95,800 with medium support needs in employment. While these figures would include people who are totally blind, they give some indication of increased uptake of SLP that would result from extending the provisions to others.
51. During the Ministry’s engagement with DPO representatives, the representatives suggested changes to the Disability Allowance to remove the means test, expand the limit, and make it payable for an expanded range of additional costs of disability (option 1D).
52. Currently, there is an income eligibility threshold<sup>10</sup> for the Disability Allowance and a maximum weekly non-taxable rate of \$61.69.<sup>11</sup> Extending the provisions to other severely disabled people would also be costly, as identified in paragraph 47; there would be a potentially significant increase to the number of people accessing the Disability Allowance. There are already mechanisms in place to meet additional costs of disability in employment.
53. The proposed removal of the advantageous provisions (option 1A) is aimed at achieving a more equitable system and consistency with human rights legislation and government priorities, rather than at generating savings.
54. People who are totally blind, and expected to remain so for two years or more, would continue to qualify for SLP if their capacity to work regularly was assessed at less than 15 hours a week. Totally blind people working, or able to work, 15 hours or more a week would no longer qualify for the SLP, but would likely qualify for another benefit unless they are working full-time or earning more than the benefit cut out point.
55. Over time, savings would be generated as some totally blind people newly applying for benefit would not be eligible for SLP and others would be granted it at a reduced rate as their earnings will be taken into account. Under current settings these people would qualify for a full rate of SLP. However, the level of savings would be low, e.g. if 13<sup>12</sup> fewer people qualified for SLP the benefit savings generated over the subsequent full year would be approximately \$177,000.<sup>13</sup>

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<sup>8</sup> For example, the annual cost of paying an additional 10,000 single adults aged 18 and over a full rate of SLP is more than \$136.5 million.

<sup>9</sup> Disability and the Labour Market in New Zealand in 2006, Statistics NZ. While these figures would include people who are totally blind, they give some indication of increased uptake of SLP that may result from extending the provisions to others (see above footnote for an indication of the cost).

<sup>10</sup> As at 1 April 2015, gross weekly income limits for single people 16-17 years are \$518.76, for single 18+ years \$616.71, for married, civil union or de facto couple (with or without children \$914.71, for sole parent with 1 child \$723.49 and for sole parent 2+ children \$726.26.

<sup>11</sup> As at 1 April 2015.

<sup>12</sup> Representing 10 percent of new grants to blind people over a year.

<sup>13</sup> Based on the difference in rate between SLP and other benefits using the rates paid to a single person 18 years of age or older.

- 56. As at the end of January 2016, there were 1,049 totally blind people receiving SLP. Ministry officials estimate that 60 current SLP recipients would potentially have their benefit reduced or cancelled as a result of changes to the blind provisions (if no grand-parenting was provided).<sup>14</sup> Records show there was one person receiving the blind subsidy as at February 2015 but that person has since moved onto New Zealand Superannuation and no longer receives the subsidy.
- 57. If the current recipients were not protected by grand-parenting provisions the Ministry would need to assess their capacity to work. Any blind person assessed as being able to work 15 hours or more a week would no longer be eligible for SLP and would need to test their eligibility for another benefit.
- 58. Grand-parenting the entitlement for current recipients would minimise the impact so current beneficiaries would not have a reduction in their benefit income. Continuing the provisions for current recipients would mean savings are delayed. However, savings involved for the proposed grand-parented group would be small due to the small numbers involved and the likelihood that most would continue to qualify for a full rate of SLP.
- 59. For a number of reasons many totally blind people do not claim SLP, e.g. a person may prefer not to be a beneficiary, or may be unaware that they can claim the benefit while working. The removal of the advantageous provisions and associated publicity may lead to an increase in applications in the short-term as people become aware that they are entitled or seek to preserve entitlement by claiming the benefit and grand-parenting protection.
- 60. As set out at paragraphs 6 and 28, retaining the advantageous provisions for people who are totally blind in the Rewrite Bill (option 1B) would continue the long-standing advantageous treatment of totally blind people. These provisions would continue to be lawful as long as they continue in the rewritten Act.
- 61. However, the provisions would likely be declared inconsistent with the BoRA, resulting in a notification to the House on introduction of the Bill. This may lead to proposals for changes to the Bill from the Select Committee. In addition, any complaints to the Human Rights Commission about the provisions from other disabled people would likely be upheld.

**Section 66A - Special exemption for severe disablement**

- 62. No non-legislative options were identified as the problem lies within the legislation.
- 63. Two broad options were identified to address the problem with section 66A. The advantages and disadvantages are summarised below.

	<b>Option</b>	<b>Advantages</b>	<b>Disadvantages</b>
2A	Remove provisions	Work capacity of all disabled people assessed and employment focus encouraged	Some disabled people lose eligibility (but current recipients protected by grand-parenting)

<sup>14</sup> The Ministry’s systems are not well set up to record information on the earnings of totally blind people, as their earnings do not currently affect the rate of benefit they receive. Overall, people receiving the SLP have little other income, with only six percent recorded as having income over the income threshold, and these are likely to be partners.

			People affected may lobby and present the policy change as reducing the welfare safety net, or a benefit
2B	Status quo	No-one would be adversely affected  Assists a group of disabled people	People who are not in financial need and may be working fulltime continue to receive SLP – which is inconsistent with the purpose of SLP

64. As with the blind provisions this provision is an anomaly in a system that is focused primarily on assisting people into employment and providing financial assistance to people who are not able to support themselves through paid work. However, it is a longstanding provision providing support to a group of severely disabled people.

65. While a purpose of this exemption is to provide an incentive to work, it does not incentivise clients to move off benefit as they can keep receiving all or part of their benefit. It is an out-dated provision that “rewards” some disabled people for their effort in work, including taking into account employment costs. There are now more modern and inclusive mechanisms in place to meet additional costs of disability in employment.

66. Removing section 66A (option 2A), in practice, would mean that all new applicants would be assessed for their capacity to work and encouraged to work to the extent that they are able as happens for all beneficiaries.

67. Data from the Ministry identified 103 clients claiming this exemption.<sup>15</sup> The amounts of income exempted range from \$0 up to \$730<sup>16</sup> a week so any savings generated would be small.

68. Grand-parenting the entitlement for current recipients would minimise the impact so current beneficiaries would not have a reduction in their benefit income as a result of the change in policy.

69. Alternatively, section 66A could be retained (option 2B). This would allow case managers to continue to exercise discretion to exempt some of the income of people with severe disablement from the income test that applies to benefits.

70. However, this is a complex judgment for an individual case manager to make. The case manager has to weigh up:

- the severity of the person’s disablement
- the effort that person has to make in order to work
- the costs that work involves for the person, compared to the costs that work involves for a non-disabled person.

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<sup>15</sup> As at the end of September 2015.

<sup>16</sup> Data reliability and quality issues mean this range of income is a broad approximation only and a range of assumptions have been made. Some income exemptions are recorded as lump sums while other exemptions are over various periods of time.

## Consultation

71. The published Cabinet paper and Minute recording the decision to proceed on the rewrite contained reference to the risk that the provisions for totally blind people could be found inconsistent with the BoRA and recorded Cabinet's agreement to options being developed to mitigate such risks.
72. The Ministry consulted with the Ministry of Justice on the methodology used to identify whether an existing provision was likely to be inconsistent with the BoRA as part of the wider rewrite of the Act.
73. The Ministerial Committee on Disability Issues agreed to targeted engagement with DPO representatives only, i.e. DPO chairs and chief executives only. The views expressed by DPO representatives are of the individuals and not their DPO membership or wider disability sector.
74. The Ministry consulted with the Ministries of Health, Business, Innovation and Employment, and Transport, the Accident Compensation Corporation and Treasury during the development of the work on additional costs of disability in employment.

## Conclusions and recommendations

75. The advantageous provisions for the totally blind are likely to be found inconsistent with New Zealand human rights legislation and Government priorities for reducing long-term benefit dependency. Removing the advantageous provisions for the totally blind would mean that the benefit system treats all new applicants who are totally blind the same as other disabled people.
76. Section 66A of the Act is inconsistent with Government priorities for reducing long-term benefit dependency. Better ways of supporting disabled people in work are now available. Removing section 66A would mean that all new applicants for a benefit would be assessed for their capacity to work and encouraged to work to the extent that they are able, as happens for all beneficiaries.
77. If the provisions referred to above are removed, grand-parenting arrangements would be put in place for current totally blind SLP recipients and for those claiming the exemption under section 66A.
78. Removing these provisions would be supported by improvements to Support Funds to ensure people receive sufficient support to meet their additional costs of disability in employment. Any identified savings generated from removing these provisions should be reinvested in Support Funds.

## Implementation plan

79. Options 1A and 2A (to remove the advantageous blind provisions and section 66A) can be included in the Rewrite Bill which will be introduced in March 2016.
80. Implementation of these options could be included in the wider package of proposals for implementation under the Rewrite Bill. IT, application forms, brochures and websites will be updated together to achieve the most cost-effective change process. All costs will be met within baseline without fiscal implications.

## Part 2: Aligning work obligations for single carers receiving Orphan's Benefit or Unsupported Child's Benefit

### Status quo and problem definition

81. OB and UCB provide weekly support to the carer of a child whose parents cannot support them due to a family breakdown (UCB), or parental illness, incapacity, or death (OB). The two benefits serve a similar purpose – providing financial support towards the cost of caring for a child who is not the carer's own.
82. These benefits are paid to around 9,000 carers looking after approximately 13,000 children whose parents cannot care for them. Rates of OB/UCB are set higher than the rate of Family Tax Credit paid for children of the same age, which recognises that the carer has taken on long-term responsibility for a child who is not their own.<sup>17</sup> In addition, the needs of children who qualify for OB or UCB are generally more complex and intensive than those of the broader population.
83. There is a small group of around 600 single carers<sup>18</sup> who are ineligible for Sole Parent Support (SPS) because they are paid OB/UCB for all of their dependent children.<sup>19</sup> This results in an anomaly in terms of the way these carers' work obligations are determined, as compared to the work obligations of other sole parents with children of the same age.
84. SPS takes all dependent children into account when setting the parent's work obligations. Work obligations are based on the age of the youngest dependent child in the parent's care. If the child is under 14, these obligations include work preparation or part-time work obligations. However, dependent children are not taken into account in the same way when setting work obligations for parents and carers receiving Jobseeker Support (JS) or Emergency Benefit (EB).
85. Single carers who are not eligible for SPS because they are paid OB/UCB generally fall into two situations regarding benefits and work obligations, even though they all have responsibility to care for at least one dependent child:
- they may receive JS, which has a full-time work expectation, unless the person qualifies for an exemption or deferral. There are about 491 single carers being paid OB/UCB on JS, of whom about 261 have full-time work obligations; or
  - they may receive EB on the grounds of hardship (as they are unable to meet JS's full-time work obligations). There are about 117 single carers being paid OB/UCB on EB. Work obligations may be applied as a condition of EB but this does not often

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<sup>17</sup> Carers who receive OB or UCB cannot collect the Family Tax Credit for that child.

<sup>18</sup> These carers are single, are paid OB/UCB for a child in their care under 14 years of age, and do not have another dependent child under 14 years who may be included in their benefit rate.

<sup>19</sup> This exclusion applies to prevent carers receiving two types of financial assistance for the same child (ie a benefit rate that includes financial support for the child *and* OB/UCB).

occur as there is no automated support for case managers to apply work obligations in EB.<sup>20</sup>

86. Some single carers have chosen to forgo payment of OB/UCB and include the child in their benefit,<sup>21</sup> therefore becoming eligible for SPS. These carers' work obligations on SPS are based on the age of their youngest dependent child. They are also eligible for the Family Tax Credit but some are financially disadvantaged by choosing this option. They also lose entitlement to extra assistance for children who qualify for OB/UCB, such as assistance towards the child's expenses from the Extraordinary Care Fund.

## Objectives

87. Options developed aim to align the work obligations of single carers being paid OB or UCB with those of sole parents who have children the same age. This will ensure greater consistency of treatment regarding work obligations for single people who care for dependent children.

## Options and impact analysis

### OB/UCB – alignment of carer's work obligations

88. No non-legislative options were identified as the problem lies within the legislation.

89. Five broad options were identified to address the problem of inconsistent treatment regarding work obligations. The advantages and disadvantages are summarised below:

	Option	Advantages	Disadvantages
3A	Extend eligibility to SPS (by creating a single rate of SPS for OB/UCB carers)	<p>Improves consistency in treatment between single clients caring for children of the same age as they will have the same work obligations (unless they opt to stay on JS)</p> <p>Carers paid OB/UCB will have work obligations based on the age of their youngest dependent child (rather than full-time work obligations on JS)</p> <p>Carers currently on EB (because they cannot meet full-time work obligations) will</p>	<p>Other carers may want to have access to the single rate of SPS (eg foster carers)</p> <p>Some carers will lose their eligibility for EB (and hence may be facing work obligations for the first time)</p>

<sup>20</sup> Cabinet agreed that the rewrite Act introduce a discretion to apply part-time or full-time work test or work preparation obligations, and the associated sanctions policy, to EB clients, where appropriate [SOC Min (15) 12/1].

<sup>21</sup> Carers may also choose to forgo payment of OB/UCB and include the child in their JS or EB. This may or may not be financially advantageous to the carer, depending on their individual circumstances.

		qualify for a main benefit (ie SPS) and transfer off EB	
<b>3B</b>	Status quo – retain current assessment process for JS or EB (or SPS if the carer forgoes payment of OB/UCB)	<p>No changes to the Act or implementation required</p> <p>Carers who cannot meet the full-time work obligations of JS may be eligible to transfer to EB. EB allows for all of a carer's circumstances to be taken into account</p>	<p>Preserves inconsistent treatment between single carers paid OB/UCB and sole parents regarding work obligations, even if caring for a child the same age</p> <p>Risk of clients with similar circumstances being treated differently as grant of EB is discretionary</p> <p>EB option only available to carers who meet the hardship criteria and leaves some carers with full-time work obligations on JS</p> <p>EB option creates some unfairness (compared to those on JS) as EB clients are not included in work focussed case management to meet their work obligations (if any have been applied).</p> <p>Increases the number of clients on an EB</p> <p>Does not specifically recognise carers being paid OB/UCB as 'parents'</p>
<b>3C</b>	Introduce work preparation and part-time work obligations in JS for OB/UCB carers	<p>Children for whom OB/UCB is paid would automatically be considered in the setting of obligations</p> <p>All carers being paid OB/UCB would be treated the same (as many would no longer need or be eligible for EB)</p> <p>Simpler for staff to administer as can be automated (compared to EB)</p> <p>Allows carer to continue to identify as a job seeker</p>	<p>Adds complexity to an already complicated area</p> <p>Undermines the focus of JS, which is that a person should be available and willing to look for work as much as they are able</p> <p>Other JS parents with children under the age of 14, including foster parents, might want the same settings</p> <p>Would require new exemptions (or extension of existing sole parent exemptions) for clients who cannot meet their part-time work obligations due to caring</p>

			for the OB/UCB child (for example, a child with special needs)
<b>3D</b>	Create an exemption from some or all of the work obligations on JS for carers of OB/UCB children between 0-13 years	<p>Could be achieved by a change to regulations rather than primary legislation</p> <p>Minimal changes to IT required</p> <p>Could be drafted so there are work preparation and part-time work obligations based on the age of the youngest dependent child (ie same as SPS)</p>	<p>Undermines the focus of JS, which is that a person should be available and willing to look for work as much as they are able</p> <p>There are no current exemptions that allow a client to have part-time work obligations. This would be a big change in JS settings but only for a small group of clients</p> <p>Other JS parents with children under the age of 14, including foster parents, might want the same exemption</p> <p>Does not align with the way that carers who receive SPS are treated</p> <p>Relies on case manager discretion</p> <p>Adds complexity to the Ministry's service delivery model streaming of clients (how the Ministry selects the clients we actively work with)</p>
<b>3E</b>	Create a new premia or 'top up' <sup>22</sup> within SPS (to prevent carers from being financially disadvantaged by forgoing the OB/UCB payment to qualify for SPS)	Does not require a fundamental change to existing benefit design/settings	<p>Introduces multiple new rates of payment</p> <p>Is complicated and would require multiple manual assessments for all carers</p> <p>Carers receiving the premia in SPS would not be able to receive OB/UCB and therefore would be treated differently to other carers</p> <p>A full review would be required every time there was a change of circumstances for the carer, increasing risk of errors and</p>

<sup>22</sup> A higher rate added onto the benefit rate to offset the loss of the OB/UCB payment.

			<p>incorrect payments</p> <p>Substitutes one manual process for another more complicated one</p> <p>Would make it more difficult to signal that the additional financial assistance must be used for the maintenance or education of the child or otherwise for the child's benefit (as provided in the OB/UCB provisions in the Act).</p>
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90. Upon analysis of options, we considered option 3A would achieve the policy aim of aligning the work obligations of single carers receiving OB/UCB with those of sole parents. It would also be the simplest option to administer. SPS is an existing statutory benefit with rules, expectations, and sanctions that are aligned to single people with dependent children. It has automated processes in place to set work obligations to the age of the youngest dependent child.

91. Option 3C was ruled out because JS is focussed on full-time work for all primary recipients of working age - unless they are sick, injured, or disabled. Modifying JS to include work preparation and part-time work obligations for single carers of OB/UCB would potentially dilute the focus of that benefit.

92. Options 3D and 3E were ruled out as they do not fit with the aims of the rewrite to support modern and efficient service delivery.

93. If option 3A is not approved by Cabinet, the current arrangements for single carers being paid OB/UCB would continue (option 3B). These carers would continue to receive either JS or EB, unless they decided to forgo payment of OB/UCB and receive SPS (or have another dependent child that can be included in the SPS benefit).

## Consultation

94. The Ministry consulted with the Ministries of Health, Education, Justice, Business, Innovation and Employment, and Pacific Island Affairs; the Ministry for Women's Affairs, the Treasury, Te Puni Kōkiri, Accident Compensation Corporation, Inland Revenue, and State Services Commission. The Department of Prime Minister and Cabinet has been informed.

95. The Ministry also consulted Grandparents Raising Grandchildren Trust (the Trust) on option 3A. The Trust was generally supportive of that option. However, in the Trust's view, the option needed to include a general exemption from part-time work obligations for some single carers, given the special circumstances that may exist (such as the advanced age and/or poor health of the carer, and the psychological and social needs of the children).

96. In December 2014, the Minister for Social Development, under her delegated authority, agreed to recommend that Cabinet introduce a new exemption for work preparation and

work obligations for OB/UCB carers who require a settling-in period when a child first comes into their care, subject to budget approval. The Minister proposes to introduce the new exemption at the same time as other changes are being made to regulations as part of the rewrite. This timing will allow any Ministry systems changes to be made at the same time and reduce costs.

## Conclusions and recommendations

97. Extending eligibility to SPS to single carers being paid OB/UCB is an appropriate option to align the work obligations of these carers with the work obligations of sole parents who have children of the same age. This would involve introducing a single rate of SPS for single carers being paid OB/UCB. The single rate of SPS would be the same as the single rate of JS to allow these carers to receive an appropriate rate of benefit while continuing to be paid OB/UCB.
98. All other settings (including full-time income test, weekly benefit, commencement date, and child support obligations) for single carers who transfer to the single rate of SPS could remain the same as the current settings for single carers receiving JS. This would mean that carers who transfer to SPS would not be eligible for Family Tax Credit but would remain eligible for extra assistance for the child from the Extraordinary Care Fund (amongst other assistance available for children for whom OB/UCB is paid).
99. Alternatively, the current arrangements for these carers could remain the same in the Rewrite Bill. The Rewrite Bill will include a change to EB allowing case managers to set work obligations and apply associated sanctions when an applicant is considered to have work capacity. This change would also apply to single carers on EB.

## Implementation plan

100. If approved by Cabinet, option 3A (extending eligibility for SPS to single carers being paid OB/UCB) can be included in the Rewrite Bill, which will be introduced in March 2016.
101. Implementation of option 3A could be included in the wider package of proposals for implementation under the Rewrite Bill. IT, application forms, brochures and websites will be updated together to achieve the most cost-effective change process. All costs will be met within baseline without fiscal implications.