

Regulatory Impact Statement:

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Stopping benefit payments for warrants to arrest in criminal proceedings

Agency Disclosure Statement

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

It accompanies the Cabinet paper *Welfare Reform: Stopping Benefit Payments for Warrants to Arrest in Criminal Proceedings*, and provides regularly impact analysis of proposals made in that paper.

The proposal to stop benefit payments to beneficiaries with a warrant to arrest (WTA) reflects a National Party 2011 election manifesto commitment. Because that policy was a manifesto commitment, analysis of alternative options to this policy was not undertaken. Analysis instead focused on options to address questions related to how this policy is implemented.

The legislative changes proposed for this policy provide for Work and Income to initiate their process to stop benefit payments 28 calendar days after the WTA was issued, and if the person is considered to be a risk to the public, the Police can directly request Work and Income at any time to start the process.

Further work is required to develop the operational policy required to implement the proposal. This includes developing information sharing arrangements between the Ministry of Justice, New Zealand Police and the Ministry of Social Development.

Further decisions on how the policy will be implemented may be set out in regulations under the Social Security Act 1964.

After an appropriate period following implementation, a review of the operation of this policy will take place. This is necessary because the benefit system has not previously been used to enforce obligations other than work obligations. Unforeseen problems may arise that will need to be addressed.

No public consultation on this proposal has taken place and in the time available, only limited consultation has occurred with government agencies.

It is not expected that the proposals in the Cabinet papers this RIS accompanies will: impose additional costs on business; impair private property rights, market competition or the incentives on businesses to innovate and invest; or override fundamental common law principles.

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Stopping Benefit Payments for Warrants to Arrest in Criminal Proceedings

Status Quo and Problem definition

Warrants to arrest and extent to which those receiving a benefit are affected

- 1 At any one time, there are approximately 37,000 warrants to arrest (WTA) for 15,000 people. These range in age from those that were issued one day ago, to some that have been in place for several years.
- 2 In June 2012 the Ministry of Social Development and the Ministry of Justice ran a data-match to determine the extent to which beneficiaries were represented in the population of people with a warrant for their arrest. From a random sample of 1,000 people with a WTA in criminal proceedings, it was found that 55% are currently on benefit. By comparison, approximately 12% of the working age population are receiving a benefit.
- 3 Based upon this data-match, it was estimated that approximately 1,200 WTA are issued to beneficiaries every month. Currently, benefit payments cannot be stopped to beneficiaries because they have an unresolved warrant to arrest.

National Party Manifesto commitments

- 4 The National Party's 2011 election Manifesto (Manifesto) announced as policy that "if someone is on the run from the Police, with a warrant out for their arrest, we will stop their benefit".¹ It goes on to explain that benefit repayments will resume, with no back pay, once the warrant is cleared. Beneficiaries with children will have a 50% suspension of their benefit rather than have payments completely stop.
- 5 The rationale provided for this approach in the Manifesto is that, "taxpayers should not be paying people wanted by the Police to evade the law".

Problem

- 6 Benefits are not currently stopped when a beneficiary has a warrant to arrest in criminal proceedings (WTA). Giving effect to this manifesto commitment will require legislative amendments to the Social Security Act 1964. This gives rise to the question of what is the best legislative mechanism to attach this policy to benefit payments?

Objective

- 7 The objective is to remove the possibility that benefit income is used to actively facilitate non-compliance with legal obligations (using money to "evade the law"), by encouraging beneficiaries to clear their warrants to arrest.

¹ See http://www.national.org.nz/PDF_General/Welfare_Obligations_policy.pdf, page five.

Regulatory impact analysis

- 8 The manifesto has set the overarching policy, and therefore no other options to achieve the objective were explored. However, options on some aspects of the policy were investigated, such as how the policy is attached to benefit payments and when the policy should be applied to beneficiaries.

How the policy is attached to benefit payments

Option 1 – making benefit eligibility contingent on not having any WTA

- 9 A person can be deemed ineligible to receive a benefit on the basis of certain situations, such as not meeting residency criteria. This option is to make it a requirement for eligibility for a benefit that a person must not have a WTA.
- 10 Although it would be possible to make someone ineligible for a benefit based on the fact they have a WTA, eligibility is not a flexible mechanism and does not lend itself to encourage people to comply with conditions. Eligibility consists of rigid administrative processes, particularly with regard to recompliance, including stand-down periods, reapplications, etc, which can reduce incentives to resolve a WTA.
- 11 Some people would be eligible in every other respect for a benefit, except for a WTA. Removing eligibility for a benefit may be a disproportionate response to a WTA, as it will be difficult to re-establish eligibility, particularly when a person may not be aware they have a WTA or if the offence is at a low level of seriousness.
- 12 For these reasons, this is not considered an appropriate mechanism to achieve the policy intent.

Option 2 – making being free of WTA a work obligation

- 13 This option is to make not having a WTA a work obligation. Financial sanctions would then be imposed if a beneficiary does not meet this obligation.
- 14 While this would link closely to the sanctions regime, the existence of a WTA is not sufficient proof that a person has breached their work obligations. It is difficult to make the appropriate and justifiable connections between work and an offence that may be completely unrelated. Additionally, not all beneficiaries have work obligations.
- 15 For these reasons, this is not considered an appropriate mechanism to achieve the policy intent.

Option 3 – a stand alone provision that specifies benefits are stopped where there is a WTA

- 16 This option would create an independent provision in the Social Security Act that specifies that benefits stop when a beneficiary has a WTA.
- 17 This provision would not link to eligibility or work obligations but will outline that notification to the beneficiary is required and that there are income protections on beneficiaries with children and on spouse/partner incomes.

- 18 This is the preferred option because it achieves the policy outlined in the government's election manifesto in the most direct and transparent manner, and will clearly signal to beneficiaries their obligations to clear any WTA they may have.

When the policy is applied and who this would affect

- 19 The Ministry of Justice, which initiates and resolves WTA, advise that approximately 25% of people with WTA (not just beneficiaries) clear them within 10 calendar days of them being issued, 50% of people clear their WTA within 20 calendar days, and 58% clear within 28 calendar days.
- 20 The aim of the policy is to encourage beneficiaries to clear their WTA without the threat of having their benefit stopped, so that the policy is only applied to those who show a resistance to clearing their WTA (the manifesto intent of beneficiaries "on the run").

Option 1: Policy is applied to every beneficiary from the day they are issued with a WTA

- 21 This option is that all beneficiaries with WTA to be in the Work and Income process to stop benefit payments from the day they are issued a WTA. Beneficiaries will be informed that they are at risk of having their benefit stopped after a specified period of time.
- 22 Under this option, Work and Income will contact every beneficiary issued a WTA. Some individuals will already have cleared their WTA when contacted by Work and Income, and others who intend clearing their WTA may feel worried or upset at being threatened with having their benefit stopped.
- 23 It is unnecessary to cause some people stress and anxiety about a possible reduction in their benefit when they have good intentions and just require a little time to organise themselves. It also would not be cost effective to initiate action to all beneficiaries when a proportion of them will, without prompting, clear their WTA.

Option 2: Policy is applied to every beneficiary with a WTA uncleared after 10 calendar days of it being issued

- 24 This option is that beneficiaries who have not cleared a WTA within 10 calendar days of it being issued will have the Work and Income process to stop benefit payments initiated. These beneficiaries will be informed that they are at risk of having their benefit stopped after a specified period of time.
- 25 The number of beneficiaries handled by Work and Income are reduced with this option, although only 25% are likely to have voluntarily resolved their WTA. A further 10 – 18 calendar days results in 50% - 58% of people clearing their WTA.

Option 3: Beneficiaries with WTA uncleared after 28 days from issue

- 26 This option would mean that beneficiaries who have not cleared their WTA within 28 calendar days of issue will have the Work and Income process initiated. Only these people will be informed that they are at risk of having their benefit stopped after a specified period of time.
- 27 28 calendar days means that the majority of beneficiaries with WTA are likely to have cleared their WTA, with only those who are more resistant remaining. This time also

allows for the Ministry of Justice and the Ministry of Social Development to complete the information matching. The Ministry of Justice also advise that they are likely to be able to remove anyone from the list of matches who clear their WTA within that 28 days.

- 28 This time also is more than adequate for natural justice considerations.
- 29 A disadvantage of this option is that it means that for beneficiaries who are considered a risk to the public, the process may be unacceptably long. A separate process for such beneficiaries is discussed below.
- 30 The number of beneficiaries handled by Work and Income are significantly reduced with this option and the policy will not affect the majority of beneficiaries with WTA.

Police requests for beneficiaries who are a risk to the public

- 31 The manifesto describes stopping benefit payments for beneficiaries “on the run from Police”. While the intent of individuals is difficult to ascertain, there are clearly individuals who the Police would like to arrest quickly due to their risk to the public.
- 32 For some of these people, stopping their benefit may motivate them to hand themselves in, or at least reveal their whereabouts.

Option 1 – 28 days for beneficiaries with WTA assessed as posing a risk to the public

- 33 The Police can request under the Privacy Act a beneficiary’s address information, and the Ministry of Justice also informs the Police immediately of all WTA issued so they can undertake risk profiling.
- 34 However, there are a handful of beneficiaries who cannot be located and who are assessed as posing a risk to the public. Waiting through the 28 calendar day “voluntary” clearance period would not be appropriate for such people, particularly if they are known as a risk, they continue to undertake criminal behaviour while in receipt of government money, and where stopping their benefit may motivate them to come forward.

Option 2 – Police able to request Work and Income at any time to stop benefit payments to a beneficiary with a WTA who is assessed as posing a risk to the public

- 35 This option will, for some high-risk beneficiaries, motivate them to hand themselves in or at least reveal their whereabouts. The Police have indicated their preference for this option as they see it as a useful additional tool to those they already have to locate people who pose a risk to the public.
- 36 It will not be used as an alternative to actively seeking those individuals using the other tools, and it is proposed that strict criteria will be established before a request can be made to Work and Income to stop a beneficiary’s benefit. Police will have to have made a good faith effort to locate a person before the request is made.

Costs and Benefits and Impacts

- 37 The first set of options on attaching the policy to benefit payments does not in itself give rise to any financial costs as it is how the government chooses to amend the legislation, but does have impacts on the behaviour of the beneficiary.

- 38 The timing of when the policy is applied does have cost implications. These are discussed below.

Costs

- 39 Because of the volume of WTA issued, Police use a risk and prioritisation process to determine how each WTA should be managed. Based on the experience of benefit suspensions within the Work and Income environment, the proposed policy change should result in the majority of beneficiaries voluntarily resolving their legal obligations. The policy change will also ensure that the Police are able to quickly locate those individuals who pose a risk to the public's safety, using less Police time and resources, in line with the manifesto commitment.
- 40 There are no current costs to Work and Income. The costs of the proposal to Work and Income are estimated (on the basis of a 28 calendar day voluntary compliance period) to be \$139,509 per annum. The final cost will depend on the level of targeting that is applied with this policy. Final decisions on this, and other aspects of how this policy is applied, will be specified in regulations that are yet to be developed.
- 41 There is also likely to be non-cashable savings for the Ministry of Justice in terms of productivity improvements in the court system for less wasted court time from non-appearances, as a result of more people turning up to their court appearances.

Derivation of these costs

- 42 These costs are derived from the expected process that Work and Income would apply to this policy. The following process is for with Work and Income initiating their process 28 calendar days after the date of issue of the WTA on 3,244 beneficiaries a year (i.e. 58% of the 8,200 beneficiaries)
- It is assumed that 50% (1,622 beneficiaries) who receive a notification will contact Work and Income to clarify why their benefit is stopped. This assumption is because some clients will not know they have a current WTA and other clients will be worried by receiving the letter and require additional information. This contact with Work and Income will probably be minimal and easily resolved, and clients will be directed to the courts/police.
 - It is assumed that 2,433 clients will then obtain information from the court and the WTA is resolved. This assumption is that many WTA are easily resolved and most clients want to avoid their benefit being stopped. Client asks Work and Income to resume benefit. No payment has been missed and no appointment is required with the case manager.
 - It is assumed that 811 clients will not clear their WTA before they have missed a payment. A meeting with their case manager will be held if the client is in hardship.
- 43 Note that there is very little case manager time for the majority of the client interactions for this policy. Case manager time is only likely in complex cases after stopping the benefit, and has been factored into the costs.

One-off Costs.

- 44 There will be a one-off cost to make changes to Work and Income's IT systems to enable case managers to stop and restart benefits of beneficiaries with WTA. This cost is currently being analysed, with an exploration of efficiencies with the Ministry of Justice IT system. Initial scoping indicates that the cost will be upwards of \$25,000.

- 45 While the Ministry of Justice originally considered that the cost to them of this policy is minimal, with information sharing costs able to be met from baseline funding, this may not be the case if efficiencies require additional IT solutions.

Impacts

Impacts on Beneficiaries

- 46 This policy is designed to only affect those who are resistant to clearing their WTA. For most people, clearing WTA is relatively easy as it usually just involves gaining a new court date. While they may have to go to court, this was the action that they had failed to do in the first place. Processes that minimise the need to go back to a Work and Income office to prove clearance of the WTA are currently under consideration.
- 47 Allowing adequate time leverages the voluntary actions of many people in clearing their WTA, reducing non-financial detrimental impacts (in particular the stress of worrying that their benefit will be stopped) to a number of beneficiaries.
- 48 Regardless of when the policy is initiated, natural justice means that a notification period is required between the time that Work and Income contacts the beneficiary about stopping the benefit and before adverse action is taken. For most beneficiaries, this time is not to be less than 10 working days and allows the beneficiary to challenge the WTA is for them or to clear the WTA. However, for those identified by Police as being a risk to the public's safety, the benefit will be able to be stopped immediately.
- 49 Once the benefit is stopped, there are significant detrimental impacts, as losing an income can force people into hardship and potentially increasing criminality. However, these outcomes are significantly mitigated by the ease of clearing a WTA even after the benefit has been stopped (since it is not linked to eligibility of the benefit) and the immediate reinstatement of the benefit.

Impacts on government

- 50 This policy imposes costs on Work and Income that are not currently in place, but it is considered that these costs are modest.
- 51 While this policy does not provide any advantage to Work and Income, the Police have indicated that it can reduce Police time and resources in locating certain individuals, and the potential non-financial benefits can be significant in terms of public safety and confidence in the Police.
- 52 The main advantage is a wider message to beneficiaries that the government does not provide State support with one hand while they can ignore their obligations to another arm of government.

Consultation

- 53 Consultation on this Regulatory Impact Statement has been limited, due to the timing of the Cabinet paper. The Ministry of Justice and the New Zealand Police have been closely involved in the development of the policy, while RIAT in Treasury reviewed an earlier version of this paper.

Implementation

- 54 The provision for stopping benefits to people with WTA will be set in the Social Security Act 1964, with regulations providing details on the operational application of the policy.

- 55 Information sharing between the Ministry of Social Development and the Ministry of Justice, and the Police is critical to the success of this policy. Existing provisions under the Privacy Act, and the upcoming Privacy (Information Sharing) Bill will facilitate the implementation of these. Development of information sharing agreements will be undertaken once the Bill has been passed.

Monitoring, evaluation and review

- 56 After an appropriate period following implementation, a review of the operation of this policy will take place. This is necessary because the benefit system has not previously been used to enforce obligations other than work obligations. Unforeseen problems may arise that will need to be addressed.