

In Confidence

Office of the Minister for Children
Chair, Cabinet Legislation Committee

SOCIAL SECURITY (COVID-19 INCREASE TO RATES OF ORPHAN'S BENEFIT AND UNSUPPORTED CHILD'S BENEFIT) ORDER 2020

Proposal

1. This paper seeks authorisation for the *Social Security (COVID-19 Increase to Rates of Orphan's Benefit and Unsupported Child's Benefit) Order 2020* to be submitted to the Executive Council for approval. This order seeks to increase the base rates of the Orphan's Benefit and Unsupported Child's Benefit by \$25 per week per child.

Executive Summary

2. The Government has committed funding to increase the base rates of the Orphan's Benefit (OB) and Unsupported Child's Benefit (UCB) through the COVID-19 Response and Recovery Fund. Enacting the increase requires an amendment to the Social Security Act 2018 via an Order in Council.
3. The OB and UCB are paid to caregivers who care for some of New Zealand's most at-risk children outside of the State care system. These caregivers play an important role in supporting children who are unable to be cared for by their parents.
4. Work undertaken in 2019 to review financial assistance for caregivers found that the current rates of caregiver payments are insufficient to cover the costs of caring for a child. The impacts of COVID-19 are placing further financial pressure and hardship on caregiving households.
5. A waiver of the 28-day rule is required to meet an implementation date of 6 July 2020. This will ensure caregivers and children can benefit from increased financial support as soon as possible.

Policy

The Government has committed funding to increase payments to caregivers

6. On 11 May 2020, Cabinet agreed to fund a \$210 million package of support for caregivers through the COVID-19 Response and Recovery Fund, as part of the Government's wide-ranging response to support recovery from the social and economic impacts of the COVID-19 pandemic [CAB-19-MIN-0219.20 refers].
7. The caregiver support package includes increasing the base rates of the Orphan's Benefit (OB), Unsupported Child's Benefit (UCB) and Foster Care Allowance (FCA) by \$25 per week per child. The Government has committed \$143 million over four years to increase the base rates of these payments.

8. The FCA is paid to caregivers of children in State care. Increasing the base rate of the FCA can be done administratively under the Oranga Tamariki Act 1989, and therefore legislative change is not required.¹
9. The rates of the OB and UCB are prescribed in Schedule 4 of the Social Security Act 2018. Enacting the increase to the base rates of these payments requires an amendment to the Social Security Act 2018 via an Order in Council.²
10. I am submitting this paper and Order in Council on behalf of the Minister for Social Development, who holds responsibility for administering the Social Security Act 2018.

The OB and UCB are paid to caregivers who care for some of New Zealand's most at-risk children outside of the State care system

11. Caregivers take on a critical role in supporting children who are unable to be cared for by their parents. OB and UCB caregivers are largely members of a child's family, whānau, hapū, or iwi who have stepped in to care for that child. They play a crucial role in reducing the need for children to enter or remain in State care.
12. The OB is paid to around 270 caregivers, in relation to around 370 children and young people. The UCB is paid to around 12,200 caregivers, in relation to around 18,800 children and young people.³
13. Eligibility for these payments requires that a child's parents must either be dead, missing, or have a long-term serious disability (for OB);⁴ or that there must have been a breakdown in the child's family, which in practice is independently assessed as part of the application process (for UCB).⁵
14. The purpose of these payments is 'to provide financial support for the cost of caring for a child who is not the caregiver's own', and the caregiver 'must use the benefit for the benefit of the child in respect of whom it was granted, including the child's maintenance and education'.⁶

The review of financial assistance for caregivers found that the current rates of payments are insufficient

15. A comprehensive review of financial assistance for caregivers was undertaken by Oranga Tamariki in 2019 [SWC-19-MIN-0040; CAB-19-MIN0023 refer]. The review included targeted consultation with stakeholders, and identified a range of systemic and discrete policy issues with the caregiver payment system.
16. A significant finding from the review was that the current rates of caregiver payments are insufficient to cover the costs of caring for a child. Caregivers and stakeholders identified that the current rates do not enable caregivers to provide children with the same experiences as other children, or to meet the additional needs of some children.

¹ Note that two other initiatives in the package require changes to primary legislation (the Social Security Act 2018) and will be considered separately.

² Sections 452(2)(g) and (h) of the Social Security Act 2018 enable discretionary increases in rates of benefits by Order in Council.

³ Ministry of Social Development administrative data, as at 1 May 2020.

⁴ Section 43, Social Security Act 2018

⁵ Section 46, Social Security Act 2018

⁶ Sections 45 and 48 of the Social Security Act 2018 for OB and UCB respectively.

The impacts of COVID-19 are placing additional financial pressure and hardship on caregiving households

17. Caregivers around the country are facing increased pressure as a direct result of COVID-19, including increased emotional and financial stress. Issues resulting from the insufficiency of current caregiver payments have been exacerbated as a result of COVID-19. Caregivers have expressed a need for further financial support during Alert Levels 4 and 3 due to the challenges associated with COVID-19, for example purchasing medical supplies. These challenges are expected to continue as New Zealand moves into the recovery phase.
18. Increasing the rates of the OB and UCB is critical at this time to help ensure caregivers are better equipped to manage the ongoing impacts of COVID-19, and in particular to enable caregivers to continue to provide safe and stable homes for the children in their care.⁷

Timing and 28-day rule

19. It is proposed that the Order in Council will come into force on 6 July 2020, to ensure that caregivers and children can benefit from increased financial support to mitigate the impacts of COVID-19 as soon as possible. The increase will be incorporated into the next available payment of the OB and UCB following 6 July 2020.
20. To meet this implementation date, I seek agreement to waive the 28-day rule. I consider that this change meets the grounds for a waiver, as it will only confer benefits to the public.

Compliance

21. The Order in Council complies with:
 - 21.1. the principles of Te Tiriti o Waitangi (further detail below);
 - 21.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 (further detail below);
 - 21.3. the principles and guidelines set out in the Privacy Act 1993;
 - 21.4. relevant international standards and obligations;⁸
 - 21.5. the Legislation Guidelines (2018 edition).

⁷ Initiatives to improve financial support for caregivers are also supporting actions to achieve the outcome set in the Child and Youth Wellbeing Strategy, that 'Children and young people are loved, safe and nurtured', through the focus area of supporting parents, caregivers, families and whānau.

⁸ 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 8.1, 20, and 27.

Te Tiriti o Waitangi

22. 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,⁹ and a significant proportion of their caregivers are also Māori.¹⁰ These caregivers fulfil a vital role in reducing the need for children to enter or re-enter the State care system.
23. Increasing the rates of the OB and UCB will provide additional financial support to caregivers caring for children outside the State care system, better enabling 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.¹¹

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

24. The financial assistance will only benefit caregivers in receipt of the OB, UCB and FCA. These payments are not available to parents who are caring for children.
25. This positive discrimination is justified. The State has a role in ensuring children are cared for and have their wellbeing 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.
26. 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].

Regulations Review Committee

27. There are no anticipated grounds for the Regulations Review Committee to draw the Order in Council to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

28. The *Social Security (COVID-19 Increase to Rates of Orphan's Benefit and Unsupported Child's Benefit) Order 2020* has been certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

⁹ Around 57%. Source: Stats NZ Integrated Data Infrastructure (IDI), as at 30 June 2018.

¹⁰ Around 40% of OB caregivers and around 46% of UCB caregivers. Source: MSD, 30 June 2018, operational data – subject to change.

¹¹ 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.

Impact Analysis

29. The regulatory impact analysis requirements apply to this proposal. A Summary Regulatory Impact Assessment has been prepared and is attached. It sets out the impact analysis of an increase to the base rates of the OB and UCB, as well as other initiatives relating to OB and UCB payments that are part of the caregiver support package funded through the COVID-19 Response and Recovery Fund.
30. The Summary Regulatory Impact Assessment has been reviewed by two Principal Analysts from Oranga Tamariki—Ministry for Children, neither of whom was involved in the policy process, who have both independently concluded that the Summary Regulatory Impact Assessment meets the Quality Assurance Criteria.

Publicity

31. Public announcements in relation to increasing the base rates of the OB and UCB were made as part of Budget 2020 announcements. Any further publicity on the increase to base rates will be managed by the Office of the Minister for Children.

Confirmation

32. The Order in Council will be a confirmable instrument. Once the Order in Council is made, it will require confirmation by Parliament. A Subordinate Legislation Bill is being drafted that will confirm Orders made in the first six months of 2020.

Proactive release

33. To align with our commitment to the proactive release of Cabinet papers, I intend to release this paper after the Order in Council is notified in the *New Zealand Gazette*.

Consultation

34. This paper was prepared by Oranga Tamariki, in consultation with the Ministry of Social Development. The following agencies have been also been consulted: the Policy Advisory Group, Child Wellbeing Unit and Child Poverty Unit at the Department of the Prime Minister and Cabinet, Treasury, Ministry of Education, Ministry of Justice, Office of Disability Issues, Ministry for Pacific Peoples, Te Puni Kōkiri, Inland Revenue, Ministry of Health, Ministry of Youth Development, and Ministry for Women.
35. 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.

Recommendations

I recommend that the Cabinet Legislation Committee:

1. **note** that on 11 May 2020 Cabinet agreed to increase the base rates of the Orphan's Benefit (OB) and Unsupported Child's Benefit (UCB) by \$25 per week per child [CAB-19-MIN-0219.20 refers];
2. **note** that the *Social Security (COVID-19 Increase to Rates of Orphan's Benefit and Unsupported Child's Benefit) Order 2020* will give effect to the decision referred to in recommendation 1 above;
3. **authorise** the submission to the Executive Council of the *Social Security (COVID-19 Increase to Rates of Orphan's Benefit and Unsupported Child's Benefit) Order 2020*;
4. **note** that a waiver of the 28-day rule is sought:
 - 4.1. so that the Order in Council can come into force on 6 July 2020;
 - 4.2. to ensure that caregivers and children can benefit from increased financial support to help mitigate the impacts of COVID-19 as soon as possible;
 - 4.3. on the grounds that the Order in Council only confers benefits to the public;
5. **note** that the Order in Council will come into force on 6 July 2020, subject to approval by the Executive Council;
6. **agree** to waive the 28-day rule so that the Order in Council can come into force on 6 July 2020;
7. **note** that, once made by the Executive Council, the *Social Security (COVID-19 Increase to Rates of Orphan's Benefit and Unsupported Child's Benefit) Order 2020* will require confirmation by Parliament.

Authorised for lodgement

Hon Tracey Martin

Minister for Children