CHiLD POVERTY ACTION GROUP

# Court of Appeal Hearing 28-29 May 2013

## Opening Statement by CPAG's Senior Counsel, Frances Joychild (QC)

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Members of the Court,

The Appellant, the Child Poverty Action Group, takes this appeal on behalf of 227,000 children of income tested beneficiaries – New Zealand's poorest children.

They are excluded from the benefits of the In Work Tax Credit, a generous child related income assistance payment, that is paid to parents in full time work so as to help with the costs of raising children for the purpose of alleviating child poverty.

The reason for the exclusion of beneficiary parents is said to be because the payment is a work incentive – it is there to maintain a gap between those on benefit and those in paid work and to encourage those in low paid work to stay there and not go back on benefit.

The appellant does not take issue with the Government's objective of incentivising work by making sure work pays more than benefit. However it does take issue with the means the Government has used to achieve this objective. It says the High Court has wrongly relied upon a government produced table to conclude that the means chosen was proportionate and minimally impaired the right.

In fact the table which showed not enough of a gap in incomes between paid work and benefit income covered only very small proportions of beneficiary and low income working parents. Only 1267 beneficiary parents out of 165,000 had incomes that were similar to the lowest earning working parents who numbered only around 2800 parents out of 180,000 who received the IWTC.

The Government claims that, to solve the gap problem, it needed to give around 180,000 working parents a substantial payment (worth up to $60 a week for the first 3 children and $15 a week for each subsequent child) and exclude 165,000 families on benefit from it. At the same time those children excluded are disproportionately represented in poverty statistics. Further, it did this knowing, on independent professional advice, that of those 165,000 parents it was intending to incentivise into work, only 1.8 % would be able to be incentivised into work by the promise of the extra payment. It spent $590m on the IWTC to

achieve these extremely modest gains at the expense of 227,000 children in beneficiary families. Put another way it spent $84,600 per beneficiary to have them moved off a benefit worth about $15,000 pa into paid work. Even then, many of those moved into work at this cost would have been relying on considerable extra government support to "make work pay." The IWTC remains 7 years on – unaltered despite 2 elections – helping to deepen the poverty and inequity that children of parents on benefits experience.

The appellant says the IWTC intrudes to a very high degree on the right of these children and their caregivers to be free from discrimination and the government has not and cannot justify it. This was not a reasonable solution to the problem. There were many other reasonable ways to incentivise work. The off benefit rule impairs the right more than is reasonably necessary to achieve its objectives. Further, the exclusion of so many children from a desperately needed income adequacy payment is not in proportion to the very modest to nil employment gains achieved by the IWTC. The IWTC is not demonstrably justified in a free and democratic society.

This case, as other Part 1A cases, bring this court into a new arena – of hearing and adjudicating on issues raising economic and social rights. Parliament has legislated for this by enacting Part 1A HRA and in this case the prohibition of discrimination on the grounds of employment status. The Court decision, if it were to uphold the appeal, will arm the Appellant with a Declaration of Inconsistency whereby it may press its case for a remedy in the public arena. Further, the Minister would be required to advise the House within 3 months of the Government response to the Declaration.