

## The David Wakim Memorial lecture 5th October 2017

### Getting welfare right for a peaceful future

**Susan St John**



#### Tēnā koutou katoa.

What an honour it is to be asked to deliver the third, David Wakim memorial lecture this evening.

As many here tonight, I attended the Wakim's wonderful 150 years' celebration just before David and my dear friend Janfrie left for their last trip together to Africa 12 years ago. The 150 years was made up of 60 years of life each, and 30 years of marriage.



Malcolm Evans has captured the essence of David so well in a succession of insightful drawings.

My memories of David include his stirring speeches at the rallies in Aotea Square on the 10th December, Human Rights days. Also monthly rallies downtown, calling for justice in Palestine.

Janfrie has carried on this faithful work- doing many a stint of activism including orchestrating a warrant for the arrest of former Israeli Defence Force Chief of Staff Moshe Ya'alon for war crimes against Palestinians when he visited NZ in 2006. Sadly, that was quashed by Michael Cullen as Attorney General.

In 2010 she was infamously arrested outside the Stanley Street International Tennis tournament, protesting against the inclusion of an Israeli player. She was pictured defiant in the arms of two policemen on the front page of the New Zealand Herald (actually she had just kicked one in the shins!).

In the Youtube clip, Janfrie quotes Martin Luther King

"Injustice anywhere affects justice everywhere" This was the essence of David's life's work- and I know he would have cared greatly about the injustices of the NZ welfare system.

I was not part of the Epsom/Mt Eden play-centre as many here tonight were and I did not meet David until the mid -1990s after I met Janfrie. I was just beginning to get to know him better and to appreciate his marvellous qualities, when he died.



Optimism  
Friendliness  
Courage  
Persistence  
Exuberance  
Effectiveness  
Influence

I observe these qualities pervading the whole Wakim family: his exuberance, optimism, and passion for justice and persistence in the face of wrong doing.

It has been through the tireless work of people like David and Janfrie that I and many others have been made aware of the injustices suffered by Palestinians. Let's bear his qualities in mind as we turn to the topic tonight.

I too, like David and Janfrie, was born in 1945-a very good year. Growing up in the 1950s and 1960s, I was never conscious of poverty around me in the way I am today. A ragged waif called Ethel at school had wild eyes and no shoes. But that was uncommon, with free milk, healthcare and education. The GP used to visit if a child was sick; fresh air and good food- backyards to grow things, health camps. We used to collect for CORSO because poverty was a shocking thing- but it was other countries' problem not NZ.

I am first to acknowledge that my mono-cultural, middle-income, privileged upbringing sheltered me from the realities of life for many, especially Maori- but

employment was plentiful and unions were strong and there was freely available state housing. Of course all things were not wonderful: many of the old, sole parents and children in care had a rough time, but for middle income NZ we looked pretty egalitarian.

I want to share some thoughts on the journey of the past 3 decades. I offer this in the spirit that David would have been as horrified as we are to see what our generation is bequeathing the next.

### Indicators of social disaster

- Deprivation
- Child poverty
- Third world diseases
- Alienated youth
- Mental health crisis
- Suicide rates
- Homelessness
- Foodbanks normalized
- Private charities overwhelmed



We have all around us the indicators of social disaster. It is not my intention to document each of these as each would take the whole lecture to outline.

I am therefore assuming that everyone here tonight is familiar with shocking examples of social disintegration we hear about every day: the appalling suicide rate, third world diseases, homelessness and widespread child hunger. We are observing the results of a failed economic model shown in

depression levels of poverty and despair.

The economic costs are huge and include the serious loss of productive activity. For example here is just one from this week's stories: [Teachers are reported to be kicked and bitten by their students](#). How can teachers teach effectively in these circumstances?

My contention is that if we start with the understanding that "The fruits of justice are peace" we can see that today's social disintegration is based on an unjust set of values.

Values → policy → outcomes

Values drive policies which in turn give us outcomes. Our values have been subverted sadly, with our acquiescence or indifference. Poor values have led to poor policy producing today's unjust outcomes.

### Welfare devolving: Return to 19 century thinking

- 1846 Destitute Persons Ordinance
- 1938 Social Security Act (SSA) 1964
- 1972 Royal Commission on Social Security
- 1988 Royal Commission on Social Policy
- 1991 Budget/welfare reforms
- 1996 Child Tax Credit
- 2006 In Work tax Credit
- 2007 SSA new purposes and principles
- 2016 SSA rewrite

The adage 'Those who not understand history are doomed to repeat it' applies. So I want to review what has happened to our values, taking a bird's eye look at some key dates in our history. The contention is that our values in the post-war period are devolving to those of the 19<sup>th</sup> century.

Changes have been so subtle or so stupid we never took them seriously-like the frog in the slowly warming

beaker of water. Were we asleep?

## The Destitute Person's Act

We kid ourselves that we led the world in welfare in colonial NZ (Thomson 1998). Little appreciated was the emphasis on self-reliance and how families and other relatives were the first port of call in times of need, followed by private charity. The Destitute Persons Act arising from an 1846 ordinance reinforced these values and the net of relatives to be called on widened with each update. The Act was not abolished until well into the 20th century. Yes, we were one of the first countries to have an Old Age Pension (1898) but it was both means and moral character-tested. Only 30% of those aged over 65 actually got one. It was grudging, but it was a beginning of an acknowledgement of the need for collective provision to address poverty, at least, among the aged.

The colonial welfare model simply did not work in the 20th century especially as the Great Depression unfolded in the 1930s. Private charity could not cope with widespread unemployment and immediate need. In a dramatic move, Labour's Michael Joseph Savage introduced **The 1938 Social Security Act**. As the MSD website itself says: "The inspiration... was the determination to end poverty in New Zealand." The preamble to the Act highlights the inclusive, protective, life enhancing, 'social insurance' intent:

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*"An Act to provide for ...Superannuation Benefits and of other Benefits designed to **safeguard** the People of New Zealand from Disabilities arising from Age, Sickness, Widowhood, Orphanhood, Unemployment, or other Exceptional Conditions; . . . and, further to provide such other Benefits as may be necessary to **maintain and promote the Health and General Welfare of the Community**"*

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This preamble is taken by commentators to reflect the intent of the post-war Social Security Act 1964, but there was no formal statement of purposes and principles. The Act outlined a comprehensive set of benefits and help for families that provided on the basis of the principle of collective responsibility. No one should be forced into poverty by an accident or sickness or unemployment.

At school in the 1960s we were reading *Brave New World* and *1984* living with the nuclear clock one minute to midnight. I never expected to live past 21 but gradually the security of the welfare state, good jobs, good conditions, almost free education and great health system enabled a more upbeat outlook. There were problems in 1950s and 1960s but unemployment was very low and the welfare state was a protective factor of immense value.

The 1972 Royal Commission on Social Security teased out the underlying principles and aims of social security in New Zealand:

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*"The aims of the system should be to ensure that everyone is able to enjoy a standard of living much like that of the rest of the community, and thus is able to feel a sense of participation in and belonging to the community."*

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They noted how the economy was in a far better position than in the immediate post war period. The welfare system also could reflect that greater prosperity:

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*...poverty does still exist here side by side with plenty, and a social security system is needed now just as much as it was in the 1930s. What has changed is that the community is better able to bear the cost, and people's needs have to be redefined in the context of a more prosperous general community. The goods, services and amenities which are needed to make a living standard adequate today are very different from those required in 1938.(p 7)*

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Tellingly, the 1972 Commission stressed that all main benefits (except universal ones) were income-tested but NOT asset tested- referring back to the Destitute Persons Act (DPA) and its wide reach:

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*...a means test relates to both income and assets. In some instances in the past this was even extended to include resources of near relatives"*

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People on benefits could maintain their assets and not have to go into debt to survive or call on relatives as under the DPA. They could recover quickly from adversity. Means tests applied only for supplementary assistance. Social welfare was social insurance- protection for life's hazards that could never be provided for everyone by private insurance and private charity.

## The Flowering of the welfare state continued in 1970s.

- Sole parent benefit (DPB 1973)
  - National Superannuation (1977)
    - No means test Poverty cured
  - ACC (1974)
    - Right to compensation and medical attention
  - Growing influence of the Human Rights movement
- International Covenant on Economic, Social and Cultural Rights : the right to an adequate standard of living



Progressive changes included the DPB for sole parents, National Super, ACC, and chance for families to capitalise the Family benefit.

NZ ratified the International Covenant on Economic, Social and Cultural Rights in 1978, and the idea that all people had a right to the basics, regardless of personal circumstances was widely accepted.



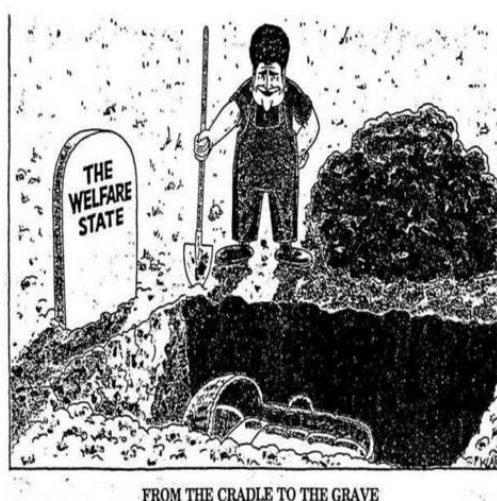
## 1988 The Royal Commission on Social Policy: Lange's counter to neoliberalism.



Unkindly the massive 5 Vol that resulted from the vast exercise was referred to by some as doorstep. Its usefulness was to again articulate core community values, to stress the importance of meeting immediate need and introduce the idea that we should prioritise children:

1. Access to sufficient share of income and resources to allow all to **participate** in society, have a genuine **opportunity** to **achieve potential and live fulfilling lives**,
2. Relief of need,
3. Ensure the wellbeing and healthy development of **all children**.

Running alongside the Royal Commission and with opposite values, was the darkness of Rogernomics. In 1988 Roger's flat tax package, welfare top ups for the deserving, (working) poor, and benefits only for the needy, removed any notion of principles of participation and belonging. Lange did reject much of this, but Labour had paved the way for worse to come.

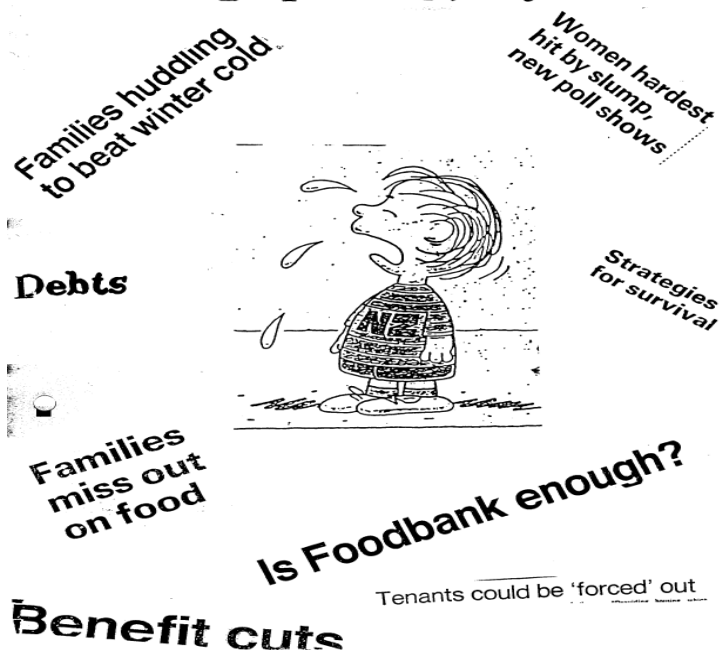


In December 1990, the newly-elected Ruth Richardson and Jenny Shipley (National), announced draconian measures to cut back the welfare state by cutting benefits. We knew families were already hurting so this was a shock. Universal benefits were to be given the chop and social provision tightly focused on the poor.

The cradle was placed 'in' the grave. This was later reinforced by the misery of the 1991 budget in which the last vestiges of the welfare state being about preventing poverty, providing security and allowing participation and belonging were obliterated.

“Fairness: People with **genuine** needs should have adequate access to state assistance- those who can look after themselves should be encouraged to do” (*Shipley 1991*)

## Children getting seriously ill through poverty, say doctors



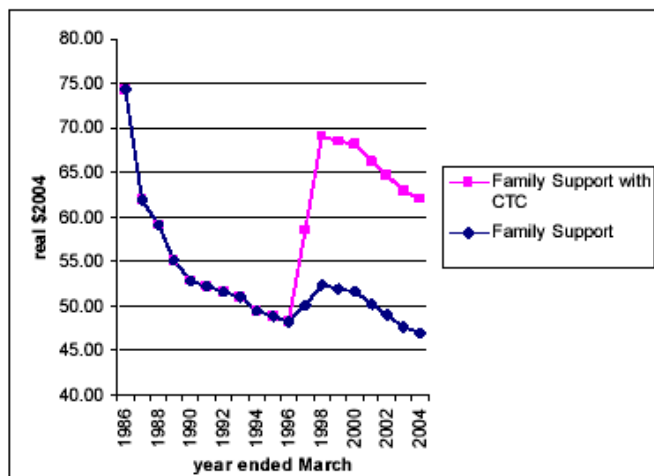
The graphic shows some headlines from the media of the day. The immediate misery was shocking.

Janfrie and I with Julie Timmins and others and set up CPAG in 1994 out of deep outrage at what was happening. We thought it would be a short term thing - now 26 years from the 1991 budget on things are worse.

Jenny and Ruth went after our hearts and minds with a new philosophy of self-reliance and minimal state. 25 years on they could be judged to be our most successful politicians.

## 1996: A new dark twist The Child Tax Credit

Figure 1: Maximum real family assistance (1-child family) 1986-2004 (\$2004)



The reality by the mid-1990s was that family support payments had fallen well behind. Child poverty had skyrocketed.

**A catch up of at least \$20 per child was needed to make up for inflation.**

In 1996 an inflation catch-up of \$20 per week per child was announced. But \$15 of this was carved off and given

to only to the 'deserving' children. Those were children in low income families 'independent from the state'.

In line with market thinking, parents needed an incentive to be independent from the state, so children were to get less in the weekly amount paid to their caregiver for their needs when their parents were on benefits. Children in 'undeserving' families missed out on the \$15, named the 'Child Tax Credit and got only \$5 per child, not even an inflation catch up. These families fell further, and further behind.

Other policies echoed the new work philosophy, such policies around support of newborns (paid parental leave (PPL) and the parental tax credit (PTC)). PPL has

a complex set of requirements such as being employed for the past 6 months with one employer and the PTC is accessible only where there is no social welfare benefit being paid, that is, if the family is worthy because of the work history. Consequentially, few of the newborns in low income households get any additional support.

## What Labour said in 1996

To divide children into those whose parents are good parents because they work and children who are bad because their parents do not is absolutely disgusting.

Annette King MP



Labour in Opposition however vowed to remove the discrimination and join the CTC to the rest of the payment to the mother, so all low income children would be treated the same.

Hansard 1996 reveals the bitterness felt by Labour at the new deserving and undeserving distinction



“a simplistic tangle of bigotry and ignorance ... barely disguised attack on beneficiaries ... mean spirited, ill thought through and punitive ... unholy product of National's deeply held view that everyone on a benefit is a bludger and Treasury's new right agenda ... based on highly questionable incentive arguments” Michael Cullen

With respect to the Child Tax Credit, CPAG first complained to the Human Rights Commission in 1996, but Government was not itself subject to the HRA legislation until 2002. When Labour was elected in 1999, despite promises to eliminate child poverty, nothing much happened for five years.

## 2006 The In Work Tax Credit

Then, in 2006 much to our surprise, Labour forgot its promise about the Child Tax Credit and turned it into the far more generous and exclusionary In Work Tax Credit. To get this, families had to be “off benefit” **and** working a minimum number of hours per week: 20 for a sole parent, 30 for a couple.

### **Paid work at the centre of policy:**

Labour adopted a Calvinistic enabling role of the state of Third Way politics, enshrining the principle that social inclusion is only through paid work. Paid work is the only way out of poverty. When work does not pay because free-markets drive down wages then work must be subsidised to make work pay. ‘Any kind of work is good so long as it is paid.’ And caring for one’s own children is definitely not work unless it is done by strangers for money.





With paid work at the centre, children themselves, and the unpaid work of caring for them was rendered invisible as the diagram illustrates. Policies like Paid Parental Leave, KiwiSaver, childcare subsidies, and the In Work Tax Credit reflect the view that social inclusion is to be only through paid work. It is a very short step to exclusion and marginalisation of those not in paid work- and their children.

When families got the Working for Families package 2005-2007 it looked like a big expensive boost—

but a lot of it was simply an overdue inflation catch up. As discussed, Labour took the CTC \$15 and changed it into the IWTC, now worth \$72.50 a week with more for larger families. Thus the weekly Working for Families payments for children are doubly targeted, first by income and then by work status of the parents. Just as in the depression there were two classes of children.

Working for Families did reduce the Child Poverty rate significantly. We know more money matters, but the poorest children were actually no better off.

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*"Working for Families had little if any impact on the poverty rates for children in workless households" MSD 2012*

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**How more precise can that be- but was anybody listening? This was the great thrust of Labour to tackle child poverty, and it failed the poorest children.** Today about 205,000 children fall below the lowest after housing costs 50% poverty line. The buoyant early 2000s period shows us that people move off benefits into work, not because of sticks and carrots but because in general people will want to work if suitable work is there. But the 'work is the way out of

poverty' mantra paved the way for National in 2008 to complete the circle back to the 1930s just as the economy was tanking.

**"And the wolf ate all children but it didn't matter because they were the children of beneficiaries"**



## Creation of the other

The cartoon shows children themselves appalled at the smug adult prejudices. Are we good people sufficiently

appalled? I suggest we have seen **the enemy** and it is us. We allowed the creation of 'the other'.

## 2007 The Social Security Act new purpose and principles

Were we asleep in 2007 when Labour changed our values? Labour inserted some new purposes and principles arguing "the Act has never had overarching purpose or principle provisions". As if in hindsight, the Bill does provide some social security "to help alleviate hardship". But this phrase is far more limiting than the goals of eliminating poverty and ensuring participation and belonging for all citizens.

### Purpose of the Social Security Act (2007)

- to help people to support themselves and their dependants while not in **paid employment**;
- to help people to find or retain **paid employment**;
- to help people for whom **work** may not currently be appropriate because of sickness, injury, disability, or caring responsibilities, to support themselves and their dependants.
- to enable in certain circumstances the provision of financial support to people to **help alleviate hardship**;
- to ensure that the financial support takes into account—that **where appropriate they should use the resources available to them before seeking financial support under this Act**;
- to impose **administrative** and, where appropriate, **work-related requirements** on people seeking or receiving financial support under this Act.

### The principles:

- Work in **paid** employment offers the best opportunity for people to achieve social and economic well-being;
- the priority for people of working age should be to find and retain **work**;
- people for whom **work** may not currently be an appropriate outcome should be assisted to plan for **work** in the future and develop employment-focused skills; and
- people for whom **work** is not appropriate should be supported in accordance with this Act.

The new purpose and principles sections [of the Act] effectively dispensed with the true nature of social security and removed the meeting of need as the legislation's primary concern. Assistance was only to 'help' relieve hardship somewhat reminiscent of the phrase 'genuine need' used in the 1991 budget. National could not believe its luck:



Anne Tolley ecstatically proclaimed:

"National is supporting this bill going to the Social Services Committee. Why on earth would we not? We have been arguing for this for 7 years. We want to tighten up the provisions in this bill. This is basically just a wet dishrag of a bill, designed to make the Government look as if it is doing something, but it is not actually doing very much at all." **Hansard: 2007**

Thus, just as in the 1980s, Labour paved the way for an incoming National government to make even more extreme reforms. Labour's changes to the Act allowed National to further emphasize the primacy of work and to downplay any social insurance aspects of social security or community responsibility.

### 2008-2017 A 'Relentless focus on work'

Under National being sick or disabled was no longer be an excuse not to work. Beneficiaries were subjected to new 'planning and activity' requirements which meant that if they didn't start for planning for work, they could risk having their benefit suspended or reduced. Spouses were also expected to get paid work even though they may be caring for their sick spouse and/or have young children.

The further unravelling of the welfare state saw ever tighter targeting of welfare assistance with severe sanctions for non-compliance. Poverty was used as a weapon to get desired behaviour and an ugly culture developed in WINZ. Their powers, for example, to decide what is a relationship, when it starts, what is income, and then impose dire penalties for infringements of the rule book grew alongside an appeal process stacked in their favour and without oversight by an outside body.

### 2016 The social security rewrite

In 2016 a new guiding principle was inserted into the Act to support an investment approach "to help achieve the best possible outcome for people at risk of long-term welfare dependency".

Now 'long-term welfare dependency' means the risk that the person— (i) will, for an indefinite period, not be able to obtain full-time employment; and (ii) will be likely to remain wholly or largely dependent for the person's financial support on all or part of a main benefit under this Act.

The best possible outcome appears to be the minimisation of the long-term fiscal cost by getting people off benefits. The aim was to reduce the numbers of benefits "by 25 per cent from 295,000 in June 2014 to 220,000 in June 2018." Any social costs are ignored and success counted by the crude measure of fewer people on benefits. The techniques to dissuade people from accessing benefits include harsh sanctions whereby even families with children can lose 50% of benefit for minor infringements.

## Sanctions: where are the children?

Who oversees the sanctions? Who asks, who feeds the children? Who is accountable? What are the appeal processes, if any? What are the mental health consequences of this system? Where is the proof this does any good at all?

One third are families with children– about 20,000 families maybe 40,000 children are affected during the year. Professor Innes Asher has horror stories

### Annual comparison – all sanctions (flow data)

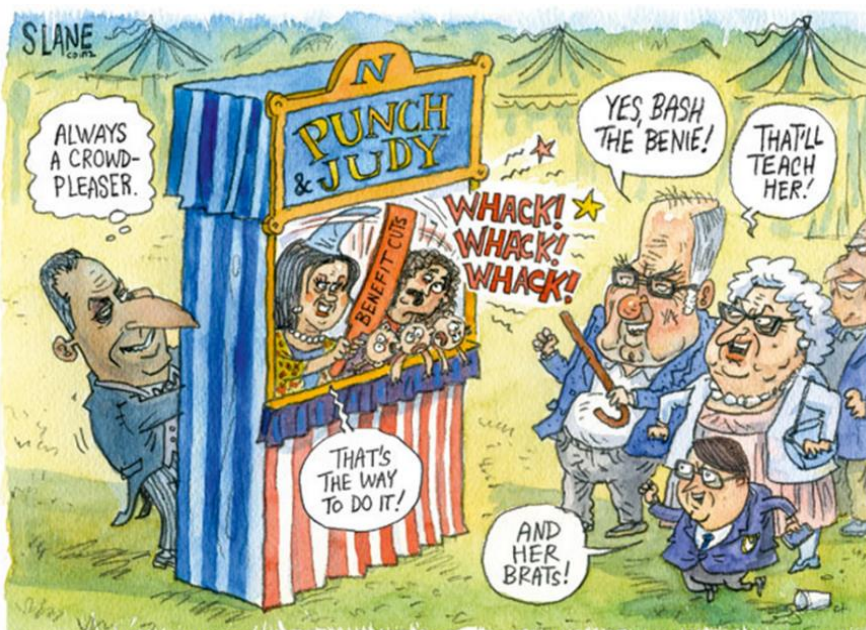
	Jun-16 quarter	Jun-17 quarter	Annual change
Total number of sanctions	14,438	15,619	8.2 percent increase
Number of sanctions imposed on Jobseeker Support recipients	10,772	12,076	12.1 percent increase
Number of sanctions imposed on Sole Parent Support recipients	3,579	3,414	4.6 percent decrease
Number of graduated sanctions	11,728	12,865	9.7 percent increase
Number of suspended/cancelled sanctions	2,710	2,754	1.6 percent increase

from the health front of mothers in hospital with sick children being sanctioned for missing an appointment.

When a mother faces impossible hurdles of transport costs, childcare access, illness, it may be perfectly rational to decline that temporary job at minimum pay on the

other side of town, or an unsafe job cold calling or worse. In a twilight labyrinth of welfare speak rules she must be reformed and sanctioned and corralled in work and demonised for any indiscretion. How can that be good for her children?

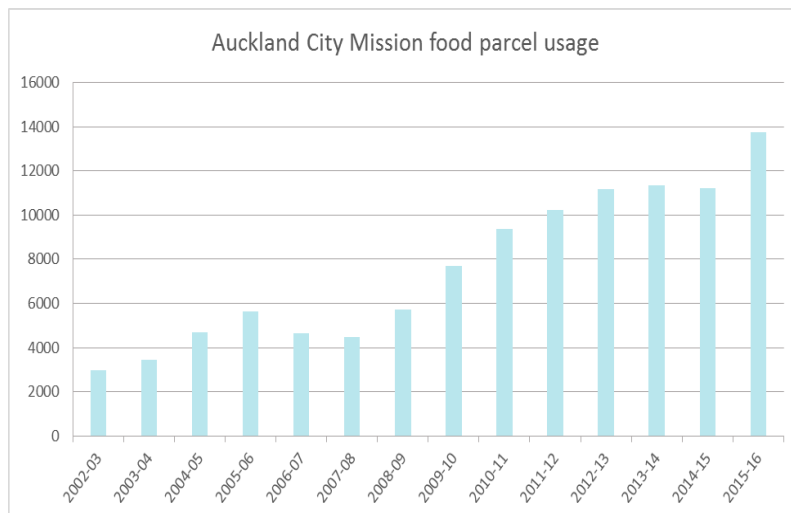
Each year the Auckland Action Against Poverty holds a 3 day event in Clendon to help beneficiaries. The sheer numbers of desperate families queuing for this service shows the extent of failure. Advocates report dire poverty? Surely Michael J Savage would be turning in his grave. Children are not at the centre of this thinking.



**One injustice  
unchallenged  
leads to another  
and another.**

**Chris Slane**





A new goal was '**Target efficiency**' and meant an approach of making assistance ever more limited and 'for the poor only'. One result has been that even 'working' families have too little disposable income and are increasingly in the queues at overstretched foodbanks.

**Gross income \$35,000**  
**....An extra \$10,000 means**

Tax	1750
acc	140
wff	2500
student loan	1200
Kiwisaver	300
accommodation supplement	2500
<b>total effective tax</b>	<b>8,390</b>
<b>disposable income</b>	<b>\$1,610</b>

The Iron law is that the more social assistance is targeted the worse the poverty trap. It is the Achilles heel of Rogernomics.

The suffocating effects of aggressive targeting are shown here for a family with a gross income \$35,000. An extra \$10,000 can mean as a little as \$1610 in the hand. In addition there may be a possible loss of childcare subsidy up to \$60 a week and/or a payment of child support 18-30%.

Every family is affected differently and most wont understand why

they are no better off even when they have taken on overtime to earn extra.

## The ugly culture of WINZ

### Endless persecution even prosecution

#### Let's take the case of Jill and Jack

- Jill is a sole a parent she gets SPS \$325
- Jack is her boarder. He gets JS \$210

But oops, WINZ warns sternly: "relationships could develop quickly and some people might not be aware of their obligation to tell Work and Income." Minister Tolley.



To help distinguish the nature of a de facto relationship, Work and Income (2014) suggests that the beneficiary 'thinks about these issues':

- "You live together at the same address most of the time.
- You live separately but stay overnight at each other's place a few nights a week.
- You share responsibilities, for example bringing up children (if any).
- You socialise and holiday together.
- You share money, bank accounts or credit cards.
- You share household bills.
- You have a sexual relationship.
- People think of you as a couple.
- You give each other emotional support and companionship.
- Your partner would be willing to support you financially if you couldn't support yourself."



There can be very serious repercussions if Jill gets it wrong. Coupled they get only \$187.50 each or a joint \$160 less per week **and** have a joint income test of 70% on earned income over \$80. WINZ can assess them for overpayment even though the guidelines are so vague.

CPAG has been following many sad cases; women told to plead guilty and show remorse to get a lighter sentence.

The recent tragic suspected suicide of a sole parent accused of relationship fraud<sup>1</sup> exposed how investigators are under pressure to get prosecutions and are supposed to recover \$36,000 a month.

### **Dobbing in instructions**

Informants are requested to supply detailed information as detailed on the Work and Income website (2014):

"Information that helps us when you report a suspected fraud. This includes:

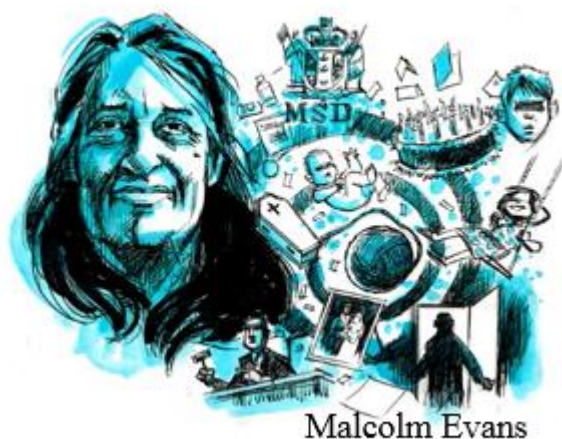
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<sup>1</sup> <http://www.stuff.co.nz/national/87347930/aggressive-prosecution-focus-at-msd-preceded-womans-death-inquest-told>

- Do they live with a partner but say they're living alone?
- If you think they do then we'd like to know:
- the full name of their partner and any other names they're known by
- their partner's age and date of birth
- their partner's address
- whether their partner works and who employs them
- why you think that they're a couple
- how long they've been in a relationship
- whether they have had children together
- the names and ages of any children they have."

It doesn't matter if the person who does the dobbing in is a vindictive ex-partner. Once an investigation is triggered all gloves are off. WINZ has the power to go back many years and power to establish when the relationship started.

### Kathryn's story: CPAG 2014



Malcolm Evans

Kathryn was accused of relationship fraud and dobbed in by an ex-partner who was angry because she had reported him for molesting her daughters<sup>2</sup>.

She had the courage to appeal—and did not plead guilty, and has exposed the one-sided rigged appeal system

She had a four-year old and other children, but even so, was jailed for 6 months...and even that was not enough.

MSD have spent hundreds of thousands of dollars on not only her imprisonment and the care of her children, but on fighting her in the courts for repayment out of her meagre benefit. This has gone on for the last 17 years for repayment of over \$100,000 debt. They might recover \$5000 if they are lucky. CPAG salutes [Frances Joychild QC who has argued her case in court.](#) And it is not over yet.

### **What is income?**

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*"When I use a **word**," Humpty Dumpty said in rather a scornful tone, "it **means** just what I choose it to **mean** — neither more nor less." "The question is," said Alice, "whether you can make **words mean** so many different things."*

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<sup>2</sup> <http://www.cpag.org.nz/assets/Publications/3-0%20Kathryn%27s%20Story-web.pdf>

Chief executive's power to determine what is income arises from the circular and vague definition in the Act that says income is any money used for income-related purposes.

### Have we come full circle?

The implication that if the beneficiary can borrow, they should have had less benefit in the first place is a short step to saying 'you should have borrowed before asking for a benefit'. 'Sell your house and car- cash in your KiwiSaver, exhaust all resources, even go to relatives first. This heralds a return the Destitute Persons Act of the 19th century. The problem is that the Act is vague and is left open to the narrowest of interpretations.

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*'...people should call on the resources that are available to them before turning to the state.' MSD 'in the matter of The Social Security Act 1964: against a decision by the Benefits Review Committee, Nov 2013.*

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In establishing the debt MSD looks at a beneficiary's expenditure and subtracts known income to give a figure for undeclared income. If you borrow because you cannot make ends meet by loans from loan sharks, credit cards, or family, MSD count that as income and claim overpayments of benefits. Most sole parents are unable to fight these decisions but MSD is being challenged in the High Court this year for using this flawed methodology. They had gone back to review 5 years of expenditure to allege a sole parent owes them \$127,000. We await the decision of the High Court.

### Can children look to the law to protect them from income poverty?

Certainly they can't look to the Social Security Act- but we have signed up to various HR conventions. Can they save our children? UNCROC, ratified 1993, says children have specific human rights that recognise their special need for

Article 26 of the UNCROC, recognising the **right of children to social security** and the corresponding obligation of the government to **implement measures necessary to achieve full realisation of that right.**

Article 3.1 of the UNCROC, recognising the **best interests of the child to be given primary consideration.**

protection. The rights include the right to an adequate standard of living, free education, adequate health resources, and legal and social services.

Isn't this a good enough starting point? Every policy should be subject to scrutiny as to whether it infringes these precious rights of childhood. We would make policy as if children mattered. In all sorts of ways, at the local

level, in the workplace, in access to resources, we would prioritize children as matter of course.

But if our Human Rights legislation is ignored, can we rely on the Courts protect our children and to draw attention to these rights? New Zealand has few checks and balances, and so as a last resort it is not unreasonable to expect the courts to adjudicate and uphold the rights we have agreed to.

It is instructive to examine the CPAG v the Attorney General case 2002-2013 and ponder what can be learned. This case has produced libraries of submission, transcripts and judgements. In total there have been ten hearings and decisions, some minor around things like standing and others major decisions involving tens of thousands of written pages, submissions and transcripts.



When the government itself became subject to the Human Rights Act in 2002 CPAG put in a formal complaint written by Larissa Wakim about the Child Tax Credit (CTC). By the time we finally established the right to take the case and got a hearing in the Human Right Review Tribunal (HRRT) in 2008, the CTC had morphed into the In Work Tax Credit (IWTC).

There was a fascinating hearing of two weeks of detailed cross examination of experts and policy makers. The HRRT said two very important things

1. The IWTC is a payment for children
2. It is discriminatory- causing serious harm

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We are satisfied that the WFF package as a whole, and the eligibility rules for the IWTC in particular, treats families in receipt of an income-tested benefit less favourably than it does families in work, and that as a result families that were and are dependent on the receipt of an income-tested benefit were and are disadvantaged in a real and substantive way. (Human Rights Tribunal 2008: para 192)

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But they also then said government can do anything it likes in a free and democratic society. We thought this was not good enough for the 230,000 affected children we represented. We appealed to the High Court and were heard in 2011. The judgment there was very unsatisfactory with children all but invisible. The court used some highly technical arguments to say there may have been some limited discrimination for about 1200 sole-parents.

An appeal in High Court 2011 was followed by an appeal in the Court of Appeal 2013,

Like the HHRT, They also found the IWTC part of Working for Families paid to the mother in a so called 'working' family was discriminatory and caused material harm to the beneficiary families who were excluded.

This means they agreed there was significant harm to 230,000 children who are already New Zealand's most disadvantaged. This of course disproportionately affects Maori and Pasifika children and is thus indirectly discriminatory.

**The court had to weigh up that harm against the intention of the IWTC to incentivise paid work.**

In the end in a controversial decision the Court decided that the possibility that some tiny numbers of sole mothers who might have initially been incentivised to do at least 20 hours paid work justified this harm. They did not understand that making a work incentive out of a payment to ADDRESS CHILD POVERTY was contradictory.

This perfectly illustrates that paid work not children is at the centre as far as the courts are concerned and that the courts are not yet ready or equipped to make these moral decisions.

What has been the cost to 'non-deserving' families of the discrimination? Since 1996 each year there has been a cumulative loss from poor families' balance sheets:

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*\$2.25B due the CTC 1996-2006*

*\$6 B due to IWTC 2006-2018*

***Total of \$8 Billion and rising***

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## **Getting welfare right for a peaceful future.**

The Social Security Act must be reframed with Human Rights not paid work as the foundation. Children should be prioritised. Perhaps we need an urgent 2018 Royal Commission on Social Security.

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*Without families and communities, the economy means nothing. It has no life of its own. Its only purpose is to enable us to live, to care for one another and to raise our children to take our place. If we lose the power to do that, no matter how fast the GDP rises or how much the budget surplus grows, we will have no future worth working for. Anne Else, False Economy 1996.*

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Some practical solutions for what we can do everyday include going after hearts and minds; encourage debates over the dinner table; small acts of courage and resistance; direct giving, not charity, in ways that do not trigger danger for the beneficiary; protest; target politicians; write articles and letters; use twitter and face-book.



Remembering David's example: be guided by love; be kind be strong, be persistent. Don't support evil by being apathetic. But above all don't give up.



Thanks to Malcom Evans.

Shipley, J. (1991). Social assistance: welfare that works. Wellington, Government Printer.

Thomson, D. (1998). A world without welfare. New Zealand's colonial experiment. Auckland, Auckland University Press.