

CHiLD POVERTY ACTION GROUP

The Social Assistance (Future Focus) Bill

Child Poverty Action Group (Inc)
Backgrounder 02/10
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Introduction

The Future Focus (Social Assistance) Bill is presently before the Social Services select committee, with submissions due 14 May 2010. This backgrounder considers:

- The Attorney-General's report, and human rights implications;
- Comments from Treasury as outlined in the cabinet papers
- An overview of the legislation.

The stated purpose of the Bill is "to create a fairer benefit system with an unrelenting focus on beneficiaries entering or returning to employment."¹

The rationale for the Bill is unclear. The Minister's initial press release cited cost to the taxpayer, the Minister's belief that families in work are better off, concerns about people getting "stuck in the system," and "breaking the cycle of welfare dependency." With respect to the first point, the cabinet papers² claim savings in the order of \$100 million over four years arising mainly from worktesting DPBs. There are difficulties in accurately estimating savings:

The Ministry of Social Development has made an initial estimate that we could see benefit savings of around \$100 million over the four years to 2013/14. These savings have not been included as a funding source for the package given the uncertainty around the behavioural changes and the state of the labour market.³

It is, however, getting people off benefits and into work that is the main objective of the Bill:

The main aim is to reinforce the expectation that people who can work should work. People on benefits, including people with health problems or disabled people, should have the expectation and the opportunity to receive the financial and social advantages of participating in the workforce. Paid work is the route to independence and well-being for most people. The welfare system should be focused on what people can do and help them to get back to work as soon as possible. In addition [sic] to the focus on work, the package of changes seeks to reinforce the importance of reciprocal obligations for people receiving welfare such as education or training, planning or budgeting.

The inclusion of budgeting flags the government's resistance to the idea that families are struggling because benefits and supplementary assistance are inadequate. As with the focus on dependency, it suggests that problems are predominantly those of individuals, not the benefit system. It also ignores the research from the Ministry of Social

¹Explanatory note, Future Focus (Social Assistance) Bill.

² Available <http://www.msd.govt.nz/about-msd-and-our-work/newsroom/media-releases/2010/pr-20100323-future-focus.html>.

³ Cabinet paper 1, Overview, p. 9.

Development (MSD)⁴ and the Families Commission⁵ reporting the superior budgeting skills observed among low income and beneficiary families.

Echoing the 1991 Budget, the Bill aims to provide support only to those “in genuine need.”⁶ Experience suggests highly targeted social assistance tends to miss the very group it aims to assist because those with the greatest need often lack the resources to deal with the tough testing regimes required for appropriate targeting.

The cost of the package (not counting the estimated \$100 million in savings) is estimated to be \$80 million over the next four years. It will be paid for by phasing out the “woman alone” benefit, reducing eligibility for childcare assistance, and “shifting priorities” within MSD. According to the cabinet papers, this will result in net savings of almost \$3.3 million. It is proposed the changes will be phased in so the most “work ready” - that is sole parents with their eldest children aged 6 or over - will be subject to worktesting first. This reshuffling will not in fact reduce the cost of the package, and any savings will result entirely from the fact that spending has been cut in other, in some cases unspecified areas. The unspecified savings are in excess of \$5 million for each of the next five years, and it is of concern that there is no indication which services will be cut to fund them.

These figures bear no resemblance to those cited by John Key some weeks earlier when pre-announcing the package. Then, cost was clearly the main issue, with Key arguing that if “just 5% of parents with a youngest child aged over six into work, there would be a saving of almost \$200 million over the next 10 years.” These figures did not withstand analysis,⁷ and it was unclear where they came from. 5% of DPBs with children over 6 is 2,150 sole parents, but the Minister has made it plain she expects 43,000 sole parents to find part-time work.⁸ Even if this happens is unlikely that the package will result in anything like the savings the PM claimed.

While these changes are being pushed through, there are also changes afoot in ACC, with claims, especially for older persons, being more likely to be declined. As it becomes more difficult to qualify for an Invalids Benefit, this will result in more people going onto a Sickness benefit, where they will be expected to work, even if they are unable to do so. At the same time, the government has established the Welfare Working Group charged with looking at how to reduce long-term benefit receipt and improve work outcomes for sole parents; how to promote opportunities and independence from benefit for disabled people and people with ill health; whether the structure of the benefit system and hardship assistance is contributing to long-term benefit dependency; and, significantly whether

⁴ See Ministry of Consumer Affairs & University of Auckland Centre for Pacific Studies, 2007, *Pacific Consumers' Behaviour and Experience in Credit Markets, with Particular Reference to the "Fringe Lending" Market: Government Response Strategy*, UniServices, available at: <http://www.consumeraffairs.govt.nz/policyresearch/research/index.html>.

⁵ “Escaping the debt trap. Experiences of New Zealand families accessing budgeting services”, 2009, available at: <http://www.nzfamilies.org.nz/research/debt/escaping-the-debt-trap>.

⁶ Minister's press release, 23 March 2010, <http://www.msd.govt.nz/about-msd-and-our-work/newsroom/media-releases/2010/pr-20100323-future-focus.html>.

⁷ See S. St John, *Govt's sums on welfare savings don't quite add up*, NZ Herald, http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10634319.

⁸ <http://www.stuff.co.nz/national/politics/3490767/Welfare-crackdown-Solo-parents-targeted>.

there are things that can be learned from the insurance industry and ACC. In sum, ACC is being put on the same footing as a private insurer, unofficially moving the long-term injured into the welfare system where possible, while at the same time the welfare system itself is being considered for restructuring along the lines of a private insurer. Where will this leave children in vulnerable families? There is no indication they have been considered.

The Attorney-General's report and human rights implications

The Attorney-General has written a section 5 report on the human rights implications of Future Focus.⁹ The A-G has found clauses 13 and 14 of the Bill limit the right to be free from discrimination, and that that limit cannot be justified under s 5 of the Bill of Rights Act.

The report finds:

- By applying the worktest only to domestic purposes benefit-sole parents (DPB-SP) the Bill discriminates on the grounds of sex, marital status and family status.
- Women who are widows caring for children can receive the widows benefit (WB), whereas men are only eligible for the DPB-SP. The application of the worktest to DPB-SP but not WB means widowers are subject to additional obligations and sanctions. This is a distinction based on sex.
- The application of the test to DPB-SP but not the WB means those who have always been single or are on their own by reason of divorce or separation rather than through the death of a spouse are subject to additional obligations and sanctions. This is a distinction based on marital status.
- The worktest for DPB-SP but not domestic purposes benefit-woman alone (DPB-WA) means the worktest applies to older, sole parents caring for children but not older single women who no longer care for children. This is a distinction based on family status.

This all suggests that the proposed worktest and sanctions for non-compliance are seen as imposing a disadvantage on DPB-SPs, as it is only this group to whom the worktest applies: "The different treatment also stigmatises this group (DPB-SP) as less worthy of support than widows and older women alone..." Disadvantage is a necessary ingredient for any claim of discrimination to be successful. However, the report then goes on to state that despite this stigma, it is not DPB-SPs who are at a disadvantage, but those who do not receive the benefit of the worktest: "...[the Bill] perpetuates a stereotype of widows and older women as less capable of being economically independent..."

Thus, one group is disadvantaged because they are subject to a worktest and stigmatised, the other is disadvantaged because they do not get the benefit of the

⁹ http://www.justice.govt.nz/policy-and-consultation/legislation/bill-of-rights/@@view_by_date#year-2010

worktest, and this reinforces a stereotype. While this confusion makes it easy for the government to deflect accusations of discrimination, it does not eliminate the possibility of a Part 1A action that could well get past the first hurdle of proving disadvantage, although it would probably fail on justification as the government would argue the disadvantage was justified by being connected to a greater societal good. The report concludes: “the Bill does not create a fairer system or encourage beneficiaries to enter or return to employment... The limit [to freedom from discrimination] is not rationally connected to the Bill’s stated objective.”

Cabinet paper 1 (Overview, pp.12-13) also addresses the human rights issues arising from the Bill:

- The discrimination identified by the A-G (above) is acknowledged, but “it is, on balance, reasonable to expect their [children aged six years or over] parents to work part time.”
- The Bill proposes scholarships for sole parents with young children as an incentive to train. The scholarships will not be open to “parents with older children or to other beneficiaries. This could lead to a complaint to the Human Rights Review Tribunal... The Ministry of Social Development views this as justifiable as this group will become worktested on their child turning six.”
- “The abatement-free threshold will be increased for DPB, Widow’s Benefit, Invalids Benefit... The threshold will not be increased for Unemployment Benefit, Independent Youth Benefit or Sickness Benefit,¹⁰ who are expected to work full-time. There are some Sickness Benefit recipients, however, who will not ever be able to work full time but who do not qualify for Invalids Benefit.” For sickness beneficiaries who will not ever be able to work full time, keeping the existing \$80 threshold is a material disadvantage, and could be the basis of a claim of discrimination under the Human Rights Act. Whether this can be justified by reason of being connected to the greater good of moving people into work is uncertain.

Where disadvantage has been identified, MSD proposes dealing with it by reducing support. Widowers have no equivalent to the DPB-WA, and must either work or apply for an unemployment benefit. They note: “There is no reason to treat women over 50 who are no longer married or caring for others any differently from the way we treat men over 50 in the same circumstances.”

Treasury comments

Treasury “raised concerns over the introduction of a part-time work test for people on Sickness Benefit”. They recommended that the worktesting of those on health and disability-related benefits be considered by the Welfare Working Group “in the context of other changes to the benefit system.” They note the SB is not appropriate for a part-time work test as it is a stop-gap for people who will return to full-time work (which, they note,

¹⁰ Contrary to a pre-election promise.

most do). They also note the minimal financial gain (about \$1 per hour for someone on the minimum wage) for each hour worked beyond the abatement threshold. Moreover:¹¹

“There is an opportunity through the Welfare Working Group to design a system that can better identify those for whom part-time work is the best option, so that they can be financially incentivised to work part-time, without creating the wrong incentives for those who should be looking for full-time work. This is more likely to achieve the desired outcome of moving people into work and enable more time for the Ministry of Social Development to learn from the roll out of DPB part-time work testing. Introducing SB work-testing into legislation now, for a May implementation would pre-empt the working group process, and risks worsening the current system.”

It is proposed to introduce a \$500 loan for course-related costs to assist sole parents to study. According to the Minister: “It is important that DPB sole parents are able to attain higher-level qualifications because these qualifications allow sole parents to get better-paying jobs.” The loan is preferred because people who wish to study “should be prepared to invest in themselves”. But: “Treasury does not support the loan proposal, as it considers that a \$500 loan is unlikely to have a significant impact on an individual’s decision to study. The proposal therefore carries a deadweight cost by providing funding to those who will already study.”

When the Minister scrapped the Training Incentive Allowance (a benefit she herself had enjoyed), the loan scheme was proposed to offset this. There appears to have been little or no analysis of the respective merits of the two systems, and the loan proposed in the Bill is unlikely to improve many sole parents’ ability to study.

The cabinet papers¹² also note that long-term, full-time study (eg for a degree) does *not* qualify as work: “Work will be the primary focus.” This stance seems at odds with the Minister’s reported comments on the value of education and training, especially in the light of the evident rewards of her own education, and recent acceptance of a scholarship to study overseas while retaining her cabinet post.

Regulatory Impact Statement

Prepared by the Ministry of Social Development,¹³ this outlines specific policy changes that would be required to implement the changes. Paragraph 3 says: “The key assumption underpinning this analysis is that work will become available for people...” It then goes on:

“There is no research currently available which accurately quantifies the size of the behavioural response from these changes in policies. This prevents estimates, with the degree of accuracy required, from being made of the number of people who will move from benefit to work over a year, as a result of the

¹¹ Cabinet paper “Obligations and sanctions”, p. 11.

¹² Paper B: Obligations and sanctions

¹³ The link to this is on the same webpage as the cabinet papers.

proposed changes. The inability to determine firm numbers of people shifting from benefit to work as a result of these changes is due to the difficulty of separating out the effect of the policy changes from the effect of changes in other influences such as economic and labour market settings (e.g. employment growth, minimum wage increases). Some broad estimates of magnitude can be made based on previous experiences of similar policy changes.”

The “previous experience” referred to was the work-testing of DPBs introduced by National in 1998. The evaluation of this reads:¹⁴

“Analysis of administrative data of multiple cohorts of recipients revealed that following the policy changes, there were large changes in the propensity of recipients to either declare their earnings or in their likelihood of being off the benefit. These changes were consistent with the expected impacts of the policy change on participation in part-time and full-time employment. However, there was also an increase in the likelihood of being off the benefit for recipients with a youngest child aged 6-13 who were subject to a part-time work test. This makes it difficult to attribute the results to the policy changes. It is possible that the policy changes had a ‘signalling effect’, leading to wider changes in full time employment propensities than expected, or, there may have been general improvements in employment conditions and other policy changes, leading to some of the shift...”

So worktesting may have worked, or the increase in employment may have been due to labour market conditions, or that fact this group is more likely to be in work anyway, or an intangible ‘signalling effect’.

The evaluation noted problems with the administration of the policy, including:

- The main method of advising DPB and WB recipients about their work test obligations was an annual letter. Problems with this method were that Pacific respondents largely ignored these letters due to language problems, while Māori respondents found them difficult to understand and apply to their particular circumstances;
- Case managers focused mainly on the full time work tested group (DPB recipients whose youngest child was aged 14 years or over) because their compliance requirement was the greatest and because they faced the fewest barriers to employment;
- Case managers seldom enforced the worktest requirement, not wanting to impose financial difficulties on the family.

The Bill

This Bill is all about “an unrelenting focus on work,” implying beneficiaries need some tough love to stop them shirking. It ignores the caveats put forward by MSD about *local*

¹⁴ Department of Labour and Ministry of Social Development (2004), *Evidence to date on the working and effectiveness of ALMPs in New Zealand*, p. 63. Available <http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/evaluation/evidence-effectiveness-almeps-nz-report.doc>.

work availability,¹⁵ has proceeded against Treasury advice to wait for the outcome of the Welfare Working Group, and seems blind to the fact that there are about 141,000 underemployed persons in the workforce who would like to increase their hours. The number underemployed has increased from 82,000 since the end of 2007.¹⁶

The Bill introduces a worktest for DPB-SP when their youngest child turns six. They will “be required to look for and accept” suitable part-time work of at least 15 hours per week. There are no obvious protections in the legislation to protect women with violent ex-partners or parents with chronically sick or disabled children, or parents taken on a 90-day trial then laid off. The only concession appears to be a provision “to provide a work test structure applying to all work-tested beneficiaries that is sufficiently flexible to take account of an individual beneficiary’s circumstances” (clause 26).

The abatement threshold for DPBs is raised from \$80 to \$100 – about 8 hours work on the minimum wage. According to the overview (Appendix 1), raising the threshold will make DPBs about \$6 per week better off if they are earning over \$100 per week. This means the other 7 hours is worth less than \$1 per hour. Given this, it is difficult to see why the Minister thinks being in work will make people better off. Rather, with work-related expenses such as transport, they could conceivably be worse off. Then there are income-related allowances such as the Accommodation Supplement that reduce as income increases, and income-related rents for state house tenants which rise as income increases. Whatever else this legislation hopes to achieve, it will not reduce child poverty.

Sickness beneficiaries are also to be subject to a worktest without the benefit of the earnings threshold being raised. SB earnings are abated at 70c in the dollar for earnings over \$80. So after 6.5 hours work the effective marginal tax rate is over 90c in the dollar – consistent with Treasury’s estimate of a net gain of about \$1 per hour. The Minister notes the government might come in for some criticism on account of this clear inequity. The defense, she states, is that retaining the \$80 limit signals the longer-term expectation of full-time work for this group, and maintains a strong incentive to leave the benefit for full-time work – something Treasury points out they already do.

About 30% of sickness beneficiaries are on a benefit for psychological reasons – stress, depression. Treasury notes most SBs come off the benefit in a reasonably short time. Perhaps a more cost-effective strategy would be to improve mental health services, and allow people to recover and return to work in their own good time.

The effect of the changes will be to throw a lot of disadvantaged people into the same job market, at a time when part-time work compatible with children or illness is hard to find. It also puts them in competition with under-25s who have very high unemployment rates. Alistair Thompson from the Employers and Manufacturers Association has come out in support of the changes, reasoning that it will give employers a wider pool of people to

¹⁵ This is an important point. Unemployment is not evenly distributed either socially or spatially. People in areas with high unemployment are likely to have a difficult time finding any sort of employment, and beneficiaries in low-decile suburbs with high concentrations of state housing and beneficiary tenants may also find it difficult to comply with some of the new requirements.

¹⁶ Data from Statistics New Zealand Household Labour Force Survey, http://www.stats.govt.nz/methods_and_services/information-releases.aspx.

choose from. But how many employers want to be swamped with CVs from desperate sole parents and sickness beneficiaries every time they advertise for warehouse staff?

The Bill also introduces a strengthened sanctions regime. For first failure to comply, benefits will be reduced by 50%. Parents will still get all supplementary assistance (AS etc). For 2nd and 3rd failures they lose their benefit and all supplementary assistance (suspension of benefit for 2nd failure, and cancellation for the 3rd). There is a 50% protection for sole parents with children so they get half the benefit and all supplementary assistance, but will not receive 3rd tier assistance (Temporary Additional Support).

On the bright side, the Bill formalises what has until now been a convention increasing benefits by the CPI every year. But the government giveth, and taketh away. Current provisions to index childcare assistance thresholds are being removed, and income thresholds for childcare assistance are also being lowered.

Changes are being made to hardship assistance giving the Minister greater power over how advance benefit payments can be applied for, and authorising the Ministry to require applicants to undertake "budgeting activities". The Bill authorises MSD to pay part or all of a benefit advance directly to suppliers, but does not state under what circumstances this would occur. It also authorises MSD to refuse to make an advance payment if the beneficiary (or the beneficiary's spouse or partner) has failed to take reasonable steps to reduce costs or increase income, better manage finances or failed to undertake budgeting activity. This is very broad, and risks punishing beneficiaries for the sins of their partners, over whom they may have no control, for example violent or controlling spouses, or spouses with drug and/or alcohol addictions. In addition, the legislation presumes benefit levels are sufficient and that problems arise because of people's inability to budget. This shifts the burden of proof to the beneficiary, and how does one prove one has taken reasonable steps to reduce costs?

The Bill also changes AS calculations, in a move that overrides a High Court decision. Under the current legislation, rent is what a person is required to pay to live in the property, for example \$120 per week to stay in a boarding house, which amount usually includes electricity. The Bill changes this so that AS is not allowed to include the electricity component of rent or board into account as an accommodation expense. The amounts involved must be woefully small, but MSD has seen fit to write it into the Bill regardless.

The Minister has made much of the fact it will be more difficult to get an Invalids benefit. In fact, the legislation contains no provisions tightening the criteria, but: "I propose that Work and Income apply the existing eligibility criteria vigorously, without changes to legislation. IB should only be available to those with an ongoing restriction in their capacity for work, not simply a continuing disability or diagnosis. Many people with chronic health conditions or permanent disabilities do work, and for many, work has benefits for health and well-being. This approach will focus on new applicants, to address the continuing growth in IB numbers."

So it will be more difficult to get an IB, which means more people who are possibly unable to work will be put on a SB, where they will be expected to work.

It appears little thought or analysis has gone into these changes, and advice from officials has been disregarded. There is no evidence they will achieve any of the Ministers stated

aims, and they may well cut across the recommendations of the Welfare Working Group. Worse, they appear to cut across our domestic human rights legislation, and possibly contravene the UN Convention on the Rights of the Child. For groups already experiencing high levels of unemployment, this legislation will make their lives more difficult, especially if they have children. Once again, children have not been given the policy priority they need.

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