

COPY ONLY

CROWN LAW OFFICE

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29 July 2003

June Crane
Mediator
Disputes Resolution Team
Human Rights Commission
PO Box 6751
Wellesley Street
AUCKLAND 1030

Dear Ms Crane

Complaint D1951: Child Poverty Action Group / Child Tax Credit
Our Ref: ATT114/1123

1. I refer to Mervin Singham's letter of 17 December 2002 to David Belchamber of the Inland Revenue Department ("the Department") concerning the above complaint and to your subsequent correspondence and telephone conversations with Ben Keith of this Office. This letter sets out the response of the Department to the Complaint.
2. We apologise for the time that it has taken to provide a substantive response to Mr Singham's letter, but note that although the complaint is directed specifically at the Child Tax Credit, the issues raised have wider policy implications because of the relationship between the Child Tax Credit and other forms of Government assistance. It has therefore been necessary to seek information from, and consult with, the Ministry of Social Development, the Treasury, the Department of Labour and this Office.

Background

3. The complaint by the Child Poverty Action Group ("the Group") which was filed with the Commission on 10 October 2002, concerns ss KD2(4) and OB1 of the Income Tax Act 1994. These sections limit payment of the Child Tax Credit to families that do not receive income-tested benefit as defined by that Act,¹ a Veteran's Pension, a student allowance, New Zealand superannuation or, if received for more than three months, weekly accident compensation payments. The Group considers that excluding families that do receive such assistance from eligibility for the Child Tax Credit amounts to discrimination on the grounds of employment and family status contrary to ss 20L, 21(1)(k) and (l) of the Human Rights Act 1993 ("the HRA").
4. The complaint also raises issues under ss 44 and 65 of the HRA and under the Convention on the Rights of the Child ("the Convention").² As Mr Singham's letter indicates, the complaint

¹ Section OB1 provides:

"income-tested means a domestic purposes benefit, invalids' benefit, independent youth benefit, unemployment benefit, sickness benefit, widows' benefit, or emergency benefit paid or payable under the Social Security Act 1964, and includes a transitional retirement benefit payable under Part 1 of the Social Welfare (Transitional Provisions) Act 1990, but does not include any supplement or benefit paid or payable under any of sections 61DB, 61DC, 61DD, 61DE, 61E, 61EA, 61FC, 61G and 61C of that Act."

² New Zealand Treaty Series 1993, No 3.

falls within the scope of Part 1A of the HRA and ss 44 and 65 are therefore not relevant here. Similarly, the Convention does not have direct relevance to a complaint under the HRA. However, the Convention is relevant to the extent that it addresses issues of differential treatment in assistance to children and families.

Whether ineligibility for the Child Tax Credit is discriminatory

5. The Child Tax Credit is one of a number of forms of government assistance to low- and middle-income families with dependent children. At present, it is set at a maximum of \$15.00 per child per week. In addition to ineligibility of families based on receiving income-tested benefits or the other assistance noted above, eligibility is also dependent upon total family income and the number and age of children.
6. The Department does not consider that the ineligibility of families that receive income-tested benefits or other assistance for the Child Tax Credit is discriminatory either on grounds of family status or employment status. While such families are treated differently from others, their ineligibility for the Child Tax Credit is the result of the payment to such families of other government assistance that is in most instances much greater than the amount provided by the Child Tax Credit. For example, a family of two adults and two children aged 9 and 11 with an annual income from other sources of \$15,000.00 will, if neither the principal caregiver nor the other adult receives an income-tested benefit, receive:

Family support of \$79.00 weekly.

Child Tax Credit of \$30.00 weekly; and

Family Tax Credit of \$43.50 weekly;

Which amounts to total government assistance of \$152.50 weekly.

7. However, if the principal caregiver or the other adult receives the unemployment benefit as part of the family income, the family will receive:

Family support of \$79.00 weekly; and

Unemployment benefit of \$140.48 weekly;

Which amounts to total government assistance of \$219.48 weekly. This is approximately half as much again, even though the family is not eligible for the Child Tax Credit. The overall amount of government assistance provided to families that are ineligible for the Child Tax Credit is, in almost all instances, still greater where such families receive other income-tested benefits or weekly accident compensation payments.

8. In almost all instances, ineligibility for the Child Tax Credit is outbalanced by the amount received through the income-tested benefit or other assistance. Where the level of income-tested benefit or other assistance is very low, for example where an income-tested benefit is largely abated due to other income, it is possible that the amount received would be less than the Child Tax Credit, but, in such instances, it would be open to the recipient to choose not to receive the benefit payment and receive the Child Tax Credit instead.
9. As a result, while families that are ineligible for the Child Tax Credit are treated differently from eligible families, the difference in treatment is beneficial and cannot, for that reason, amount to discrimination on the grounds of family or employment status. Some ineligible families will have a lower total income from all sources than some eligible families, but that difference is not the result of differential provision of government assistance.
10. Further, even if the ineligibility for the Child Tax Credit does amount to differential treatment giving rise to disadvantage, differential treatment in the provision of social assistance for children by reference to the circumstances of their family members is, in our view, plainly justified in terms of s 20L(2)(b) of the HRA.

11. The Department considers that the restriction of the Child tax Credit to low- to middle-income families that do not already receive substantial government assistance is justifiable as a form of assistance that recognises the contribution that such families make. The restriction is consistent with art. 26(2) of the Convention, which concerns the rights of children to social assistance and which states that "benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child".
12. More widely, the non-payment of the Child Tax Credit to those families that already receive substantial government assistance is also a reflection of the economic constraints upon government, which are recognised as a legitimate constraint upon social assistance in art. 27(3) of the Convention.
13. For these reasons, the Department does not consider that the Child Tax Credit gives rise to discrimination on either the ground of family status or employment status.
14. As you will appreciate, it is not open to the Department itself to vary the eligibility criteria for the Child Tax Credit, as these are set by statute. For that reason, the Department would not be able to enter into a mediated settlement to change the criteria. However, the Department is willing to discuss this matter further with the Child Poverty Action Group.
15. Please let me know if I can be of any further assistance.

Yours sincerely,

(signed)

Simon France
Crown Counsel