

IN THE MATTER of a Claim under the Human Rights Act 1993

BETWEEN CHILD POVERTY ACTION GROUP INC.

Plaintiff

AND ATTORNEY-GENERAL

Defendant

STATEMENT OF REPLY

9 March 2005

ABBREVIATIONS

BORA	New Zealand Bill of Rights Act 1990	
CTC	Child Tax Credit	(see ITA04 sections KD2(2) and KD2(4))
FTC	Family Tax Credit	(see ITA04 sections KD3 and KD3A)
FSC	Family Support Credit	(see ITA04 sections KD2(3) and KD2(3))
FCA	Family Credit Abatement	(see ITA04 sections KD2(2) and KD2(6))
IWP	In Work Payment	(see T(WFF)A section 14 and new section KD2AAA to be inserted into the ITA04 from 1/4/06)
ITA04	Income Tax Act 2004	
ITA94	Income Tax Act 1994	
PTC	Parental Tax Credit	(see sections KD2(2) and KD2(5))
SSA	Social Security Act 1964	
T(WFF)A	Taxation (Working for Families) Act 2004	

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**MAY IT PLEASE THE TRIBUNAL**

1. The defendant in these proceedings replies to the plaintiff's statement of claim as follows:

**SUMMARY OF DEFENDANT'S POSITION***Summary of defendant's position: preliminary points*

2. The defendant says that since the plaintiff is not a "complainant" or a "person aggrieved" the Tribunal has no jurisdiction to hear this proceeding.
3. In the alternative, the defendant says that the Tribunal should decline to permit the plaintiff to proceed with the proceeding for lack of standing.
4. The defendant says that in so far as the plaintiff seeks a declaration of inconsistency in respect of the In Work Payment ("IWP"), the doctrine of ripeness applies (IWP not coming into force until 1 April 2006), and that part of the claim should be rejected.
5. The defendant says that the Child Tax Credit ("CTC") is claimable only by a principal caregiver, **not** the children to whom the principal caregiver gives care.

*CTC not discriminatory*

6. The defendant says that the CTC is not discriminatory on grounds of employment status as defined in s 21(1)(k) of the HRA because:
  - 6.1 On analysis of subpart KD of the ITA04 the basis for claiming the CTC component of the subpart KD credit is not determined by the taxpayer's employment status;
  - 6.2 The criteria for calculating the CTC cannot amount to discrimination on employment status because:

- 6.2.1 both employed and unemployed persons may receive a “specified payment” and thereby produce a nil figure for the “eligible period” part of the calculation; and
  - 6.2.2 both persons receiving a benefit under the SSA and those not receiving a benefit may not be in receipt of a “specified payment” and thereby compute a positive figure for the “eligible period” part of the calculation; and
  - 6.2.3 many persons who are not in receipt of a benefit and are not in receipt of a “specified payment” receive nothing through the CTC component due to the FCA abatement.
- 6.3 For a claim of discrimination to be made out the plaintiff must demonstrate that computing a nil balance under the CTC formula results in a disadvantage for the excluded group. That the plaintiff cannot establish here since, overall, persons who receive a “specified payment” in terms of section KD 2(4) (as defined in section OB 1) will usually receive substantially more through state assistance than those persons who benefit from the CTC component of the subpart KD credit;
- 6.4 Even if there can be said to be differential treatment on the grounds of employment status for the purposes of the HRA and the BORA, in the defendant’s view the CTC is a reasonable limit on s 19 BORA, in terms of s 5 BORA.
- 6.4.1 In particular, in the defendant’s view, a statutory scheme which encourages those who wish to become and/or have become independent of state assistance is a reasonable and justified measure which acknowledges that it is better for families and the individuals within families (especially children) to rely on, to the greatest

extent possible, income sourced through work or some other income source independent of the state;

6.4.2 Furthermore it is reasonable for the state to recognise and ameliorate the financial disincentives for beneficiaries of moving from a benefit to independent sources of income such as work if, as a result of taxation issues and the loss of income-tested benefits, the marginal benefit associated with the move to independence is minimal or even negative;

6.4.3 Indeed, bearing in mind that going back to work can often involve the incurring of extra costs particularly related to the care of children it is reasonable for the state to recognise this through the tax system;

6.5 Moreover, the reasonableness of the CTC falls within the discretionary area of judgment/margin of appreciation of the state.

## **JURISDICTION/STANDING**

7. This proceeding is brought by the Child Poverty Action Group Inc (“CPAG”), an incorporated society. It is represented by the Director of Human Rights Proceedings (“DHRP”) in this matter.

8. The defendant says that the plaintiff cannot bring these proceedings and/or has no standing to bring these proceedings:

8.1 Civil proceedings arising from complaints may be brought before the Tribunal by “the complainant, the person aggrieved (if not the complainant), or the [Human Rights] Commission” (s 92B(1)). The defendant will argue that the plaintiff is not a “complainant” or a “person aggrieved” in terms of s 92B(1). In order to be a “complainant” or an “aggrieved person” it is not sufficient for a person (natural or legal) to simply make a

complaint with the Human Rights Commission. The person must be a victim of discrimination in his or her own right or must be closely associated with such a victim.

- 8.2 Even if the Tribunal does not accept the defendant's argument in paragraph 8.1 above, the defendant says that the plaintiff in this proceeding lacks standing to bring this proceeding. The plaintiff has made no allegation that CPAG itself is directly affected by the impugned Child Tax Credit ("CTC"). For it to have standing to bring a complaint on behalf of persons who may or may not be so affected it must demonstrate that there is no practicable alternative plaintiff in the circumstances. In the defendant's view that argument cannot be sustained, especially bearing in mind the plaintiff's own allegations that there are some 250,000 children who are, on its argument (statement of claim page 2), directly and adversely affected by the CTC.

**DECLARATION OF INCONSISTENCY IN RESPECT OF IN WORK PAYMENT ("IWP"): NOT RIPE FOR DECISION**

9. The plaintiff seeks a declaration of inconsistency in respect of the In Work Payment ("IWP") which, in terms of section 12(2) of the Taxation (Working for Families) Act 2004 ("T(WFF)A"), will, as of 1 April 2006, replace the CTC for most taxpayers who currently can claim the CTC component of the subpart KD credit.
10. In the defendant's view, the IWP cannot properly be part of the plaintiff's claim:
- 10.1 The legislation introducing the IWP is of no practical effect, and cannot have had any effect on any individual, as at the date of the commencement of the proceedings.
- 10.2 Moreover, bearing in mind that a discrimination complaint essentially involves a comparative exercise, it will not be possible for the Tribunal to properly assess the claim in respect

of the IWP when it cannot be known what level of benefits and other assistance beneficiaries will be receiving at the point in time at which the IWP will take effect.

10.3 CTC and IWP are not the same (see paragraph 32 below).

10.4 Finally, the defendant acknowledges that should a declaration of inconsistency be made in relation to the CTC component of the subpart KD credit, the Crown would be expected to consider carefully the implications of that declaration on the IWP. In the defendant's view this last concession should be sufficient for the purposes of the plaintiff's proceeding.

#### **REFERENCES TO INCOME TAX ACT 2004**

11. Throughout this statement of reply, reference is made to the terms and provisions of the Income Tax Act 2004 ("ITA04"), rather than to the Income Tax Act 1994 ("ITA94"). The former comes into force on 1 April 2005 and is, in all material respects, in the same terms as the ITA94.

#### **CTC ONLY CLAIMABLE BY PRINCIPAL CAREGIVER**

12. Children have no actual entitlement under subpart KD of the Income Tax Act 2004 ("ITA04"), only a principal caregiver does; the sub-part KD credit is a credit on the tax that may be otherwise payable by a taxpayer who is the principal caregiver of one or more dependent children. How that taxpayer then chooses to apply that tax credit is not controlled by any "act or omission" in or under the ITA04, with the consequence that the child has no *right* to any payment under the part of the ITA04 complained of, regardless of whether his or her principal caregiver is or is not receiving a specified payment. There is no distinction in the ITA04 subpart KD in relation to what the child of a beneficiary and the child of a non-beneficiary are entitled to receive – both are actually entitled to nothing. .

## CHILD TAX CREDIT IS NOT DISCRIMINATORY

### *No differential treatment on basis of employment status*

13. Employment status is defined in s 21(1)(k) HRA. It means:
  - “(i) Being unemployed; or
  - (ii) Being a recipient of a benefit under the Social Security Act 1964 or an entitlement under the Injury Prevention, Rehabilitation, and Compensation Act 2001:”
14. The plaintiff has invoked the second part of the meaning of employment status.
15. The plaintiff says that the CTC component of the subpart KD credit is discriminatory on the grounds of employment status. More particularly the plaintiff appears to say that:
  - 15.1 because persons who receive a “specified payment” (as defined in section OB 1 ITA04) are ineligible (the plaintiff’s word) for CTC (see the definition of “eligible period” in section KD 2(4) ITA04) and
  - 15.2 because the definition of “specified payment” *includes* “income-tested benefits” and
  - 15.3 because “income-tested benefits” means any of the seven specific benefits paid or payable under the SSA referred to in paragraph (a) of the definition of “income-tested benefits in section OB1 ITA04”, then
  - 15.4 the CTC must perforce discriminate on grounds of employment status.
16. The defendant rejects this analysis. He says:
  - 16.1 Only receipt of *certain* benefits under the SSA results in a person computing a nil balance under the CTC formula.

16.2 “Benefit” is defined in s 3 SSA as follows:

‘Benefit’–

- (a) Means a monetary benefit payable under this Part or Part 2; and
- (b) Includes–
  - (i) New Zealand superannuation payable under the New Zealand Superannuation Act 2001 and veterans’ pensions payable under Part 6 of the War Pensions Act 1954;
  - (ii) A transitional retirement benefit payable under Part 1 of the Social Welfare (Transitional Provisions) Act 1990;
  - (iii) An accommodation supplement payable under section 61EA of this Act;
  - (iv) A child disability allowance under section 39A;
  - (iva) childcare assistance payable under section 61GA;
  - (v) a disability allowance payable under section 69C of this Act but
- (c) Does not include a lump sum payable under section 61DB or section 61DC or section 61DD of this Act.”

16.3 There are a wide range of “benefits” as defined in s 3 of the SSA that do not amount to a “specified payment” in terms of section KD 2(2) and therefore do not produce a nil balance in the calculation of the CTC component. This is clearly reinforced by paragraph (c) of the definition of “income-tested benefits” in section OB 1 ITA04, which provides that an income-tested benefit “does not include a supplement or benefit paid or payable under any of sections 61DB, 61DC, 61DD, 61DE, 61EA, 61G, and 69C of the Social Security Act 1964”. These benefits include the accommodation supplement, the special benefit, the disability allowance and so on. (The



defendant notes that paragraph (c) (and (b) of the definition of “income-tested benefit” are to be deleted as of 1 April 2005, as a result of section 11(8) T(WFF)A.)

- 16.4 Moreover, the term “specified payment” extends to a number of state assistance measures that are not “a benefit under” the SSA nor entitlements under the IPRCA. In addition to income-tested benefits, the term “specified payment” includes the veteran’s pension (payable under the War Pensions Act 1954), New Zealand Superannuation (payable under the New Zealand Superannuation Act 2001), and the basic grant and independent circumstances student allowances payable under the Education Acts (see paragraphs (b) – (d) of the definition of “specified payment”).
- 16.5 Next, in substance while many principal caregivers who are not in receipt of a “specified payment” can calculate a positive balance under the CTC calculation, many will actually receive no tax credit under subpart KD because, due to the operation of the FCA abatement mechanism, they will ultimately compute a total nil credit.
17. In sum, then, the defendant says that the plaintiff cannot establish discrimination “on the grounds of” employment status because:
- 17.1 The CTC *is* available to persons who receive a benefit under the SSA, just not *all* persons who receive a benefit under the SSA;
- 17.2 The CTC calculation will not be positive for all persons who do not receive a benefit under the SSA, since persons who receive the veteran’s pension, New Zealand Superannuation or certain student allowances are also in receipt of a “specified payment” and hence will compute a nil balance for the CTC component;
- 17.3 In short, the formula for CTC cannot amount to discrimination on grounds of employment status since some persons receiving a

benefit will compute a positive balance and some will compute a nil balance *and* equally some people who do not receive a benefit will compute a nil balance while others will compute a positive balance.

17.4 In any event many persons who are not in receipt of a “specified payment” will receive no tangible benefit from computing a positive balance for the CTC because of the effect of the FCA abatement mechanism. To the extent that this group of persons constitutes a large proportion of the group of persons who are not beneficiaries then it must mean that employment status is not the operative ground of differentiation between the two comparator groups chosen by the plaintiff;

17.5 As a result it cannot be said that the CTC formula differentiates on the grounds of employment status.

***No disadvantage***

18. Even if the CTC formula can (contrary to the defendant’s view) be characterised as creating a distinction on grounds of employment status the defendant says that persons in receipt of a “specified payment” will receive in almost all instances greater government assistance than they would receive if they were not in receipt of that “specified payment” and hence able to compute a positive balance under the CTC.

19. Where the level of the specified payment is very low (because, for example an income-tested benefit is largely abated due to other income), it is possible that the amount received would be less than that computed under the CTC formula. However, in such instances, it would be open to the recipient of the specified payment to choose not to receive that payment and claim a tax credit through the subpart KD credit (including the CTC) instead.

20. Accordingly, the defendant says that if in legal terms the CTC formula treats people differently on grounds of employment status, the difference

in treatment is advantageous to those in receipt of an income-tested benefit and cannot, for that reason, amount to discrimination on the grounds of employment status. So while some of those people not in receipt of a specified payment may well have a higher total income from all sources than those people in receipt of a specified payment that difference is not the result of the higher provision of *government* assistance to the former.

***Any differential treatment is justified***

21. Further, even if the CTC formula does treat persons differently on grounds of employment status giving rise to disadvantage, that differential treatment is plainly justified in terms of s 5 BORA (as referred to in s 20L(2)(b) of the HRA).
22. The restriction of the CTC to low- to middle-income families that do not already receive substantial government assistance is justifiable in that it encourages independence from the state, increases work incentives and recognises the additional costs associated with work where the worker is a person who also is the principal caregiver for dependent children.

**MATTERS OF AGREEMENT AND DISAGREEMENT IN RELATION TO THE INTERPRETATION OF THE LEGISLATION CONCERNING THE CHILD TAX CREDIT/IN WORK PAYMENT**

23. In this section of the reply, the defendant sets out its observations on the plaintiff's allegations in respect of the CTC and IWP as follows:
  - 23.1 General observations as to the proper characterisation of the CTC. The defendant says that:
    - 23.1.1 Beneficiaries can qualify for the subpart KD credit.
    - 23.1.2 The CTC is only one component of the subpart KD credit.
    - 23.1.3 The subpart KD credit is not a payment as such.

23.2 Specific comments on paragraphs 3 - 71 of the plaintiff's statement of claim.

***CTC is a component of a tax credit***

24. The subpart KD credit entitlement arises under section KD 2(1) ITA 04, and is calculated in accordance with the formula in KD 2(2), which incorporates KD 2(4) by reference.
25. The CTC is only one *component* of the subpart KD credit, which is a credit of tax that is allowable for a particular tax year, not a benefit for which entitlement accrues on a weekly or fortnightly basis. CTC is not “payable”, as such: it is only a component of the single entitlement subpart KD credit claimable under section KD 2(1), and is always liable to abatement by the FCA.
26. Tax credits are integrated into the income tax system. See, for example, section KD 4(4), which makes it clear that the credit of tax is usually a *set off or refund* of the tax paid or payable, which is usually collected by deductions such as PAYE income tax on a regular basis.
27. Section KD 5 allows a person to apply for payment of the tax credit by way of interim instalments. However, the resulting weekly or fortnightly amount is only an estimate. Under section KD 4(4), any amount in excess of the proper amount of the actual entitlement under section KD 2 or KD 3 may be recovered as if it were income tax payable, and the over-refunded person and their spouse are jointly and severally liable for the excess to be recovered. Section KD 4(4) only covers set-off or amounts refunded in excess, and section KD 4(2) covers excess interim payments.
28. Thus, the subpart KD credit is *not*, as such, a benefit that is paid by Inland Revenue; it is a credit of tax, and is different from a benefit. It is not always “payable” either, since the operation of the FCA abatement mechanism can result in the abatement of a positive combination of FSC, CTC and PTC to nil, meaning that the eligible person will actually be paid no money as a consequence.

***Beneficiaries can qualify for the subpart KD credit***

29. A beneficiary<sup>1</sup> is still entitled to the FSC component of the subpart KD credit, which may be paid by the chief executive in accordance with section KD 6. The FCA still applies, whether or not a person receives a benefit, although most beneficiaries may not receive enough income for the FCA to have any effect.

***Beneficiaries can compute a positive CTC balance***

30. As explained in paragraph 16 above while not all beneficiaries compute a positive balance under the CTC formula, many can.

***Neither a subpart KD credit nor the CTC component may be “payable” at all***

31. Because the subpart KD credit is a credit of tax, if the credit is sought on a lump sum basis the payment of the credit of tax is only made if there is a balance in excess of the income tax payable by that person for that tax year. In most cases interim payments will be made during the year, representing instalments of the expected credit. If, at the end of the year, the calculation is found to be incorrect and the credit overestimated, the payments can be recovered as if they were tax payable.

**Specific comments on the substantive part of the plaintiff’s statement of claim: paragraphs 3 – 71 of the statement of claim**

***Paragraph 3***

32. The defendant denies that CTC and IWP are in substance the same. In particular:

32.1 The IWP has a “work” requirement (see new section KD 2AAA(1)(d) and KD 2AAA(5) ITA04 to be inserted into the ITA04 as from 1 April 2006 by s 12 T(WFF)A), that the CTC

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<sup>1</sup> “Beneficiary” is defined in s 3 SSA as meaning “a person who has been granted a benefit”. “Benefit”, in turn, is defined in s 3 SSA. That definition is set out at para 16.2 above.

does not have (see s KD2(4) which only computes a nil balance if the person receives a “specified payment” – defined in s OB1 ITA04); and

- 32.2 Due to an amendment to section KD 2AAA(1)(b)(iii) (with effect from 1 April 2006), under the IWP system taxpayers will be able to claim a tax credit in respect of children currently excluded by the definition of “dependent child”.

***Paragraphs 4 - 5***

33. The defendant is prepared to proceed with the plaintiff’s claim on the basis that the properly impugned statutory provisions are those in the ITA04 as they will be on 1 April 2005 (refer paragraph 11 above). References hereafter are to the ITA04 unless otherwise stated.

34. On the assumption that the ITA04 Act provisions are the proper focus, the defendant notes that in a number of respects, the Taxation (Working for Families) Act 2004 (“T(WFF)A”) amends the ITA04 with effect from 1 April 2005. In particular:

- 34.1 “Ring-fencing” will be introduced by amendments to KD 2(6): see section 4(2) T(WFF)A. This is a special mechanism that effectively only applies *in favour* of a person who receives an income-tested benefit. It ensures that a person in receipt of income that amounted to less in that month than the specified amount will not be subject to abatement in that month.

- 34.2 In addition, section KD 2AA(3) currently abates CTC in proportion to the amount of time a dependent child spends in the exclusive care of another qualifying person during the eligible period; this is changing (section 15 T(WFF)A with the effect that shared separated care should not abate CTC or IWP (new section KD 2AA(3A)). This should mean that from 1 April 2006 more people will be able to claim the full amount of the CTC component or IWP under the ITA04.

***Paragraph 6***

35. As regards the first sentence of paragraph 6, the defendant denies, for the reasons set out in paragraph 32 above, that IWP will largely replace CTC. The defendant agrees with the second sentence of paragraph 6.

***Paragraph 7***

36. The defendant says that CTC is:

36.1 “payable” to a person (section KD 2(1));

36.2 *not* targeted at families who earn money by way of paid employment, but rather at families who receive income from any source *other than* certain “specified payments” (section KD 2(4) and see the definition of “specified payments” in section OB 1);

36.3 *not* paid in varying amounts depending on the level of family income. Indeed, CTC is not “paid” at all – only the subpart KD credit is “paid”. And, of course, even the subpart KD credit will not be paid if it has not been abated to nil by the Family Credit Abatement (“FCA”) (which in turn depends on the level of family income).

***Paragraph 8***

37. For the sake of accuracy, it should be noted that the definition of principal caregiver in section KD 2AA(2) requires the person to have “exclusive care” of the child not just “responsibility” for the care of the child. In general terms a “principal caregiver” is the person who actually cares for the child for the relevant required time period. In situations where the care of a child is divided between persons who live apart from one another, there may be more than one “principal caregiver”.

***Paragraph 9***

38. The defendant does not accept paragraph 9 of the plaintiff’s claim.

- 38.1 There is *no* requirement for the taxpayer to be in paid employment in order to be eligible for CTC. Rather, if a person receives a “specified payment” (or has a suspended entitlement to an income-tested benefit) (see section KD 2(4) (“eligible period”) the CTC formula will compute a nil balance.
- 38.2 In the case of the IWP (see T(WFF)A, section 14, inserting new sections KD 2AAA and KD 2AAAB, and see in particular new section KD 2AAA(1)(d) and KD 2AAA(5)), there is a requirement that the principal caregiver or his or her spouse must earn income from salary or wages, income from business, or income as a shareholder/employee of a company. In addition, the person or the spouse needs to be actively involved in that activity for a minimum number of hours: for a sole parent at least 20 hours a week and for couples at least 30 hours a week between them. The qualifying person or his or her spouse may not receive an income-tested benefit, student allowance or a parent’s allowance under section 39(2) of the War Pensions Act 1954.

***Paragraph 10***

39. Contrary to the plaintiff’s assertion, section KD 2(4) does not “provide for a payment of a CTC”. CTC is not a separately payable entitlement. Both the ITA94 and the ITA04 provide for the payment of a single credit of tax under subpart KD, which may in appropriate circumstances include a CTC component.

***Paragraph 11***

40. The defendant denies paragraph 11. For the reasons outlined at paragraphs 13 - 22 above KD 2(4) ITA04 is not inconsistent with ss 19 and 5 BORA.



***Paragraph 12***

41. The defendant makes no particular comment on paragraph 12, except to observe that the impugned provision has not yet entered into force. It repeats the comments made at paragraphs 9 - 10 above.

***Paragraph 13***

42. The defendant denies paragraph 13.

***Paragraph 14***

43. The defendant denies that CTC is “currently payable” under section KD 2(4). In particular focusing on section KD 2(4) fails to take account of the fact that the FCA may reduce the amount of the subpart KD credit to nil. By focusing on section KD 2(4), the plaintiff avoids linking CTC to the other parts of section KD 2, under which people in receipt of a “specified payment” and who do not have a “suspended entitlement to an income-tested benefit” are *not* the only people who do not produce a positive balance under the CTC formula. In short, under the KD subpart, both unemployed *and* employed people can (and do) compute a nil balance. In other words, looking at the subpart KD credit for what it is, a single credit of tax, both persons who are and, significantly, persons who are not, in receipt of a benefit under the Social Security Act 1964 (“SSA”) will compute a nil balance under these provisions.

***Paragraph 15***

44. The defendant does not accept paragraph 15 of the plaintiff’s claim. In the defendant’s view it would be more accurate to say that, from 1 April 2006, a component of the subpart KD credit which may be payable to a person may be the IWP.

***Paragraph 16***

45. The defendant notes that the Family Tax Credit (“FTC”), the calculation of which is described in section KD 3 ITA04, is also “a KD credit”, but is

not a component of the “subpart KD credit” which appears to be the tax credit put in issue here by the plaintiff. For the avoidance of confusion, the defendant suggests that the term “subpart KD credit” (see section KD 2(1) which defines that term) be used to describe the tax credit formula of which CTC is a component, since it is the CTC calculation that is issue in the proceeding.

***Paragraph 17***

46. The defendant denies that PTC and FSC are irrelevant and reiterates that there are not separate payments of each component of the subpart KD credit. Rather, there is a single tax credit formula that comprises FSC, PTC, CTC and FCA (see section KD 2(2)).

***Paragraph 18***

47. For the reasons explained earlier, the defendant says that the FSC is not “payable” separately apart from the subpart KD credit.

***Paragraph 19***

48. As regards paragraph 19, the defendant notes that entitlement to the PTC component is also lost by entitlement to statutory paid parental leave payments (section KD 2AB(1)(b)).

***Paragraph 20***

49. As regards paragraph 19 the defendant notes that FTC will continue to exist under the 2004 Act (see section KD 3 ITA04).

***Paragraphs 21-26***

50. The defendant has no particular comments to make on these paragraphs.

***Paragraph 27***

51. The defendant accepts that in general terms the effect of the FCA is to limit the entitlement to the subpart KD credit to families on low and

middle incomes. However, it should be noted that where there are a significant number of children in a family the principal caregiver may actually have a relatively high income and still compute a positive balance through the subpart KD credit (including the CTC component).

***Paragraphs 28 - 30***

52. The defendant has no particular comments to make on these paragraphs.

***Paragraph 31***

53. The defendant agrees that in a loose sense a key criterion for eligibility for CTC and IWP is being the principal caregiver of a dependent child. However, the defendant notes that under the IWP the concept of dependent child will be changed and a taxpayer will be able to claim a tax credit in respect of a wider range of children (see paragraph 32.2 above). The defendant also says that there are also *other* key criteria for eligibility to these *components* (not “payments”).

***Paragraph 32***

54. As this paragraph sets out aspects of the legal analysis of the plaintiff’s claim it will not be commented upon here, except to note that, again, being *components* of the subpart KD credit, the CTC and the IWP are not separately payable entitlements and they may, in any case, be abated to nil by the FCA or offset against current-year income tax liability.

***Paragraphs 33 – 34***

55. The defendant has no particular comments to make on these paragraphs.

***Paragraph 35***

56. As regards paragraph 35, the defendant says that this paragraph is correct in so far as it goes, but it omits to refer to the other four elements of the definition of “specified payment” in section OB 1 ITA04 which are significantly broader than just receiving an income-tested benefit.

***Paragraph 36***

57. The defendant offers no comment on this paragraph.

***Paragraph 37***

58. As regards paragraph 37, the defendant says that contrary to the plaintiff's claim, receipt of New Zealand Superannuation *does* amount to a "specified payment" for the purposes of section KD 2(4): see, in particular, section OB 1, ITA04 "specified payment", paragraph (c).

***Paragraph 38***

59. The defendant offers no comment on this paragraph.

***Paragraphs 39-40***

60. The defendant has no particular comments on these paragraphs.

***Paragraph 41***

61. As regards paragraph 41, the defendant:

61.1 Notes that in relation to the term "financially dependent children" financial dependence is one element out of the five requirements in the section OB 1 ITA04 definition of "dependent child".

61.2 Says that the IWP in new section KD 2AAA (inserted by section 12(1) T(WFF)A) no longer uses the defined term "dependent child" at all. Rather eligibility for IWP is in relation to "a child" in accordance with new section KD 2AAA(1): see OB 1 ITA04 for a definition of "child".

***Paragraph 42***

62. The description of the subpart KD credit is inaccurate in that the subpart KD credit is also "made up" of the FCA as well. The defendant repeats

its response in paragraph 51 above in respect of paragraph 27 of the plaintiff's claim.

***Paragraph 43***

63. The defendant does not accept the plaintiff's claim in paragraph 43, in that there is no "overall" entitlement – there is only a single entitlement under section KD 2(1) to the subpart KD credit.

***Paragraph 44***

64. The defendant agrees with the general point made except that, as noted above (see paragraph 26), due to set-off there may not actually be anything "payable" to the person.

***Paragraph 45***

65. The defendant accepts paragraph 45 of the plaintiff's claim.

***Paragraphs 46 - 47***

66. The defendant has no particular comments to make on these paragraphs.

***Paragraph 48, 51, 52***

67. For the reasons developed above (see paragraphs 13 - 22) the defendant denies the claims in these paragraphs.

***Paragraph 49, 53***

68. For the reasons stated at paragraphs 13 - 22 above, the defendant does not accept the claims in these paragraphs. The CTC and IWP give assistance to the taxpayers who claim the credits of tax. Children of the relevant taxpayers have no actual entitlement under the impugned provisions.

***Paragraphs 54 - 55***

69. The defendant makes no particular comment on this legal submission, but repeats the analysis set out in paragraphs 18 - 20 of this statement of reply.

***Paragraphs 56-59***

70. The defendant has no particular comments to make of these paragraphs.

***Paragraph 60***

71. Other than repeating its response to paragraphs 17 and 19 of the plaintiff's statement of claim, the defendant has no particular comment on paragraph 60, since paragraph 19 of the plaintiff's statement of claim says that the PTC is not being put in issue.

***Paragraph 61***

72. Other than repeating its response to paragraphs 17 and 20 of the plaintiff's statement of claim, the defendant does not respond to this paragraph since paragraph 20 of the plaintiff's statement of claim says that the FTC is not being put in issue.

***Paragraphs 62, 63***

73. The defendant offers no particular comment on these paragraphs.

***Paragraph 64***

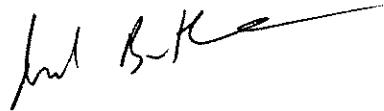
74. The defendant offers no particular comment on this paragraph, except to note that its defence to the claim of discrimination is set out at paragraphs 13 - 22 above.

***Paragraphs 65 – 69***

75. The defendant offers no particular comment on these paragraphs other than to note that its defence to the claim of discrimination is set out in paragraphs 13 - 22 above.

***Paragraph 70 – 71***

76. The defendant offers no particular comment on paragraphs 70 – 71.



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A S Butler  
Counsel for the defendant

Dated 9 March 2005

This statement of reply is filed by **ANDREW STEPHEN BUTLER** of the Crown Law Office Date on behalf of the abovenamed defendant whose address for service is Crown Law Office, PO Box 2858, DX SP20208, Wellington Central and whose day time telephone number is (04) 472-1719 and whose fax number is (04) 494-5677.