

IN THE HUMAN RIGHTS REVIEW TRIBUNAL

IN THE MATTER OF A CLAIM UNDER THE
HUMAN RIGHTS ACT 1993 AND ITS AMENDMENTS

BETWEEN

**CHILD POVERTY ACTION GROUP
INCORPORATED**, an incorporated society,
registration number 921414, having its
registered office at 95 Market Road, Epsom,
Auckland**Plaintiff**

AND

THE ATTORNEY-GENERAL**Defendant****STATEMENT OF CLAIM**

TAKE NOTICE THAT the Plaintiff alleges that **section KD 2(4) of the Income Tax Act 1994** and **section KD 2(4) of the Income Tax Act 2004** (the latter provision replaces the former provision from 1 April 2005) which both make provision for payment of a Child Tax Credit ("CTC") and which also exclude principal caregivers of dependent children who receive (or whose spouse receives) a "specified payment", which includes an income-tested benefit, from eligibility for payment of a CTC; **and section KD 2AAA(1)(e) of the Income Tax Act 2004** which will be inserted into the Income Tax Act 2004, to apply from 1 April 2006, by **section 14 of the Taxation (Working For Families) Act 2004** ("the Working For Families Act") and which excludes principal caregivers of financially dependent children who receive (or whose spouse receives) an income-tested benefit, from eligibility for payment of an In-Work Payment ("IWP") under section KD 2AAA of the Income Tax Act 2004, from 1 April 2006; contravene the following provisions of the Human Rights Act 1993 ("the Act"):

Section 20L which provides that an act or omission (including an enactment) is in breach of Part 1A of the Act if it is inconsistent with section 19 of the New Zealand Bill of Rights Act 1990 ("the NZBORA"), in that it limits the right to

freedom from discrimination affirmed by that section and it is not, under section 5 of the NZBORA, a justified limit on that right.

Section 21(1)(k)(ii) which provides that employment status, namely being a recipient of a benefit under the Social Security Act 1964 (which includes income-tested benefits), is a prohibited ground of discrimination for the purposes of the Act.

Section 21(2)(a) which provides that each of the prohibited grounds of discrimination is a prohibited ground of discrimination, for the purposes of the Act, if it pertains either to a person or to a relative or associate of a person. This proceeding is brought in the interests of approximately 250,000 children whose relatives or associates, namely the principal caregivers of these children or their spouses, whose employment status, namely because they are in receipt of certain types of income-tested benefits, mean that the principal caregivers of these children are ineligible to receive payment of a CTC or IWP for the support of these children.

The Plaintiff has complained to the Human Rights Commission (“the Commission”) about both the CTC and the IWP but these complaints have not been resolved.

The Plaintiff will be represented in this case by the Office of Human Rights Proceedings.

The facts upon which the Plaintiff is bringing this claim to establish a contravention of the Act are as follows:

Standing

- 1 The Plaintiff is non-profit group which was formed in 1994 to advocate for more informed social policy to support children in Aotearoa New Zealand, particularly the (approximately) one third of New Zealand children who currently live in poverty. The Plaintiff was incorporated in 1998 under the Incorporated Societies Act 1908. Its objects include: to promote awareness of the causes and consequences of child poverty and to promote better policies for children and young people with the primary focus on the right of every child and young person to security, food, shelter, education and healthcare and opportunities for development.
- 2 It has standing to bring these proceedings for a number of reasons including:
 - The Plaintiff has previously made a complaint to the Commission concerning the CTC and more recently a further complaint concerning the IWP. The complaints were received by the Commission under section 76(2)(a) of the Act. The Plaintiff is bringing these proceedings pursuant to section 92B(1)(a) of the

Act as the complainant being the maker of the complaints to the Commission; and

- There is no provision in the Act (or the NZBORA) which indicates that groups such as the Plaintiff cannot make a complaint or bring proceedings under Part 1A of the Act; or conversely that only persons who have themselves allegedly suffered discrimination are able to make a complaint or bring proceedings under Part 1A of the Act; and
- The Plaintiff is bringing these proceedings in the interests of the children referred to above who would themselves be able to bring proceedings under the Act; and
- Responsible public interest groups may be accepted as having standing in proceedings challenging the legality of government action: *Environmental Defence Society Inc v South Pacific Aluminium Ltd (No 3)* (CA) [1981] 1 NZLR 216, 220 and *Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd* (UKHL) [1981] 2 All ER 93, 104-107.

Introduction to substantive claim

- 3 The CTC and IWP are in substance the same. The legislative provisions detailed below, as well as information provided on various government websites, makes clear that the IWP will largely replace the CTC from 1 April 2006.
- 4 This claim refers to two Income Tax Acts: the Income Tax Act 1994 and the Income Tax Act 2004. By the time this proceeding is heard it is likely that the Tribunal will need to consider only the provisions of the Income Tax Act 2004.
- 5 This is because the relevant provisions of the Income Tax Act 1994 relating to the CTC will be replaced by provisions in the Income Tax Act 2004 to take effect from 1 April 2005. However, the substance of the provisions relating to the CTC remains unchanged under the Income Tax Act 2004.
- 6 The CTC will largely be replaced by the IWP from 1 April 2006. The provisions relating to the IWP were enacted in the Working For Families Act, to be inserted into the Income Tax Act 2004, to take effect from 1 April 2006.
- 7 In general terms, the CTC and IWP:
 - are both payable to the principal caregivers of dependent children;

- are targeted at families with incomes in the low to middle range, earned by way of paid employment;
 - are paid in varying amounts depending on the level of family income and the number of dependent children in each case;
 - are not payable to families who receive income by way of some types of income-tested benefits.
- 8 For the purposes of entitlement to both the CTC and IWP a “principal caregiver” is defined (in general terms) as a person who has the primary responsibility for the care of children.
- 9 The CTC and IWP are in the main payable to principal caregivers who are themselves in paid employment or have a spouse in paid employment. Despite the association of the payments with paid employment (in contrast to receiving income by way of some income-tested benefits) there is no requirement that the principal caregiver themselves be in paid employment if they have a spouse who is in paid employment.

Child Tax Credit and In-Work Payment – key provisions

- 10 **Section KD 2(4)** of the Income Tax Act 1994 and **section KD 2(4)** of the Income Tax Act 2004 (the latter will replace the former to take effect from 1 April 2005 pursuant to section A 2(1) of the Income Tax Act 2004) both provide for payment of a **CTC**.
- 11 The Plaintiff alleges that both these provisions are inconsistent with section 19 of the NZBORA and thus in breach of Part 1A of the Act pursuant to section 20L of the Act.
- 12 What will become section KD 2AAA of the Income Tax Act 2004 (enacted pursuant to section 14 of the Working For Families Act to apply from 1 April 2006 pursuant to sections 13(7) and 14(2) of that Act) provides for the payment of an **IWP**.
- 13 The particular provision relating to the IWP, alleged to be inconsistent with section 19 of the NZBORA pursuant to section 20L of the Act, is contained in **section KD 2AAA(1)(e)**.

Child Tax Credit and In-Work Payment as components of the KD Credit

- 14 The CTC is currently payable under section KD 2(4) contained in Subpart D of the Income Tax 1994 as part of a credit of tax known as the Part KD credit. The CTC will continue to be payable from 1 April 2005 under section KD 2(4) contained in subpart KD of the Income Tax Act 2004 as part of the subpart KD credit. Though the name of this credit has changed from a Part KD credit to a subpart KD credit, the substance of this tax credit remains unchanged.

- 15 The IWP will be payable from 1 April 2006, under section KD 2AAA of the Income Tax Act 2004, as part of the subpart KD credit.
- 16 For ease of reference the credit of tax (of which the CTC and IWP are component parts) will be referred to as **“the KD Credit”**.
- 17 Other payments available as part of the KD Credit which are not directly relevant to this proceeding are the Family Support Credit (“FSC”) and the Parental Tax Credit (“PTC”).
- 18 The FSC is payable to principal caregivers in respect of all dependent children, including to principal caregivers who receive income-tested benefits. No distinction is made in respect of the FSC between families in paid employment and families who receive income by way of an income-tested benefit.
- 19 The PTC is a payment available for up to 56 days following the birth of a child to replace income lost as a result of being absent from paid work to care for a new-born child. As with the CTC and the IWP, the PTC is not available to those who receive certain types of income-tested benefits. However, the Plaintiff is not seeking a remedy in respect of this component of the KD Credit.
- 20 A further payment also not directly relevant to this proceeding is the Family Tax Credit (“FTC”) which is a payment currently provided under section KD 3 of the Income Tax Act 1994. It is available separately from the KD Credit. It is a type of minimum family income guarantee available to those in paid employment who have children. It is not available to families who receive certain types of income-tested benefits. However, the Plaintiff is not seeking a remedy in respect of this tax credit.
- 21 The payments which are not available to some types of income-tested benefits, namely the CTC (or the IWP from 1 April 2006), the PTC and the FTC, are described collectively in section KD 1A of both the Income Tax Act 1994 and the Income Tax Act 2004 as “Family Plus”.

Calculation of amount payable as a KD Credit

- 22 The formula currently contained in section KD 2 of the Income Tax Act 1994 for calculating entitlement to a KD Credit and which applies up until 31 March 2005 is:

KD 2 Calculation of Part KD credit—

- (1) A person is allowed a credit of tax (known as the “Part KD credit”) for an income year containing an eligible period of an amount calculated under the formula in subsection (2), subject to section KD 7B.

(2) The formula is:

$$\text{FSC} + \text{CTC} + \text{PTC} - \text{FCA}$$

where—

FSC is the amount of the family support credit for the eligible period calculated under subsection (3); and

CTC is the amount of the child tax credit for the eligible period calculated under subsection (4); and

PTC is the amount of the parental tax credit for the eligible period calculated under subsection (5); and

FCA is the amount of the family credit abatement for the eligible period calculated under subsection (6).

.....

23 Section KD 2 is repeated (with minor changes only) in section KD 2 of the Income Tax Act 2004 to apply between 1 April 2005 and 31 March 2006. Section KD 2 of the Income Tax Act 2004 provides:

KD 2 Calculation of *subpart* KD credit—

(1) A person is allowed a credit of tax (known as the *subpart* KD credit) for a *tax year* containing an eligible period of an amount calculated under the formula in subsection (2), subject to section *KD 7A*.

(2) The formula is—

$$\text{FSC} + \text{CTC} + \text{PTC} - \text{FCA}$$

where—

FSC is the amount of the family support credit for the eligible period calculated under subsection (3)

CTC is the amount of the child tax credit for the eligible period calculated under subsection (4)

PTC is the amount of the parental tax credit for the eligible period calculated under subsection (5)

FCA is the amount of the family credit abatement for the eligible period calculated under subsection (6).

.....

24 The text in italics above is text which has changed as between the 1994 and 2004 Acts. None of these changes have any direct relevance to this proceeding.

25 Therefore the formula for calculating entitlement to the KD Credit contained in section KD 2(2) remains the same in substance to apply until 31 March 2006 under the Income Tax Act 1994 and then the Income Tax Act 2004.

26 In any particular case eligibility for the three component payments making up the KD Credit (FSC, CTC and PTC) are separately

assessed, then added together, then a Family Credit Abatement (“FCA”) is subtracted resulting in the total amount payable as a KD Credit.

27 The FCA is discussed in detail further below. In essence it is calculated by applying three different abatement rates to specified income bands which has the effect of restricting eligibility for payment of a KD Credit to families on low and middle incomes.

28 The formula for calculating entitlement to a KD Credit, which will apply in section KD 2(2) from 1 April 2006, is amended pursuant to section 13 of the Working For Families Act as follows:

13. Calculation of subpart KD credit—

(1) The formula in section KD 2(2) is replaced by the following:

“FSC + IWP or CTC + PTC – FCA”

(2) In section KD 2(2), the definition of item “CTC” is replaced by the following:

“IWP or CTC is the amount of-

“(a) the in-work payment for the eligible period calculated under section KD 2AAA, if the person is entitled to the in-work payment for the eligible period:

“(b) the child tax credit for the eligible period calculated under subsection (4), if the person-

“(i) is not entitled to the in-work payment for the eligible period; and

“(ii) is entitled to the child tax credit for the eligible period under section KD 2AAAB.”

.....

29 The changes in the formula for calculating total entitlement to a KD Credit, which apply from 1 April 2006, make clear that from this date the IWP and CTC are alternative payments.

30 Pursuant to a new section KD 2AAAB (to be inserted into the Income Tax Act 2004 pursuant to section 14(1) of the Working For Families Act which also applies from 1 April 2006) those who are eligible to receive the CTC for the period up to 31 March 2006 and who continue after that date to be eligible to receive the CTC, but who are not eligible to receive the IWP, will still continue to be paid the CTC. Thus, though it is clear that the IWP will largely replace the CTC, the CTC will still be available to those who meet these limited criteria.

Eligibility criteria for Child Tax Credit and In-Work Payment

- 31 It is clear from the provisions set out below that in respect of both the CTC and the IWP a key criterion for eligibility for these payments is being the principal caregiver of dependent children.
- 32 The aspect of the eligibility criteria in respect of both the CTC and the IWP which is at issue in these proceedings is that these payments are not available to principal caregivers of dependent children where either they or their spouse receive certain types of income-tested benefits. The provisions which provide for this, which the Plaintiff alleges are inconsistent with section 19 of NZBORA, are set out below.

Child Tax Credit

- 33 The formula for calculating entitlement to the CTC is currently contained in **section KD 2(4)** of the Income Tax Act 1994 which provides:

(4) The amount of the **child tax credit** for an eligible period is calculated using the formula:

$$\$780 \times \text{dependent children} \times \frac{\text{eligible period}}{365}$$

where—

dependent children is the number of dependent children for whom the person is a principal caregiver during the eligible period; and

eligible period is the number of days in the eligible period for which **the person and their spouse do not receive a specified payment** and do not have a suspended entitlement to an income-tested benefit.

- 34 Section KD 2(4) remains unchanged in the Income Tax Act 2004 which takes effect from 1 April 2005.
- 35 A “specified payment” is defined in section OB 1 of the Income Tax Act 1994 and in the Income Tax Act 2004 as including an “income-tested benefit”.
- 36 An “income-tested benefit” is defined in section OB 1 of both the Income Tax Act 1994 and the Income Tax Act 2004 as including: an unemployment benefit, a sickness benefit, a domestic purposes benefit, an emergency benefit, an independent youth benefit, an invalid's benefit, and a widow's benefit. It is these types of income-tested benefits which are the subject of this proceeding.
- 37 These benefits are provided for in the Social Security Act 1964 (“the Social Security Act”). The Social Security Act provides for some other types of income-tested benefits, for example: New Zealand superannuation and the unsupported child’s benefit. However,

because these are not included in section OB 1 these benefits are not excluded from eligibility for the CTC.

- 38 Therefore, where a person is a principal caregiver of dependent children and either they or their spouse receive any of the income-tested benefits listed in section OB 1 (see paragraph 36 above), they are not eligible under **section KD 2(4)** to receive the CTC for the support of their dependent children.

In-Work Payment

- 39 The formula for calculating entitlement to the IWP is contained in section KD 2AAA of the Income Tax Act 2004, which was enacted pursuant to section 14 of the Working For Families Act, to apply from 1 April 2006.

- 40 The relevant part of section 14 of the Working For Families Act provides:

14. New sections KD 2AAA and KD 2AAAB inserted—

(1) After section KD 2, the following is inserted:

“KD 2AAA **In-work payment**—

“(1) A principal caregiver is entitled to the in-work payment for an eligible period in relation to a child if, for the eligible period,—

“(a) the principal caregiver is aged 16 years or over; and

“(b) the principal caregiver cares for the child—

“(i) whose care is primarily the responsibility of the principal caregiver; and

“(ii) who is being maintained as a member of the principal caregiver's family; and

“(iii) who is financially dependent on the principal caregiver and includes a child for whom payments are made under section 363 of the Children, Young Persons, and Their Families Act 1989 or a child for whom a benefit is paid under section 28 or 29 of the Social Security Act 1964; and

“(c) either the principal caregiver satisfies the residence requirements of subsection (3) or the child satisfies the residence requirements of subsection (4); and

“(d) either or both of the principal caregiver and the principal caregiver's spouse is a person to whom subsection (7) refers, or—

“(i) has, from an activity, income that satisfies the requirements of subsection (5) for 1 or more periods of a week in the eligible period, subject to subsection (6) or (7) or paragraphs (c), (d), (e), (f), or (g) of the definition ‘full-time earner’; and

“(ii) is a full-time earner, or would normally be a full-time earner, engaged in employment if the income referred to in subparagraph (i) were treated as

satisfying the requirements of paragraph (d) of the definition of 'employment'; and

“(e) **neither the principal caregiver nor the principal caregiver's spouse receives an income-tested benefit**, or a payment of the kind described in paragraph (xi) of the definition of 'salary or wages', or a parent's allowance under section 32(2) of the War Pensions Act 1954.

“(2) The amount of the in-work payment for a principal caregiver for an eligible period is calculated using the formula:

$$(\text{amount A} + (\text{amount B}) \times (\text{children} - 3)) \times \frac{\text{weeks}}{52}$$

“where—

“amount A” is \$3,120 or such greater amount as may be prescribed by the Governor-General by Order in Council under section KD 5C

“amount B” is \$780 or such greater amount as may be prescribed by the Governor-General by Order in Council under section KD 5C

“weeks” is the number of 1 week periods in the eligible period for which the principal caregiver or the principal caregiver's spouse has, from the activity, income to which subsection (1)(d)(i) and (ii) refers

“children” is the greater of—

“(a) 3:

“(b) the number of children in relation to whom the principal caregiver is entitled to the in-work payment.”

.....

41 Therefore, principal caregivers who receive an income-tested benefit (as defined in section OB 1), or whose spouse does so, are not eligible pursuant to **section KD 2AAA(1)(e)** for the IWP for the support of their financially dependent children.

Family Credit Abatement as a means to restrict eligibility to those on low and middle incomes

42 The KD Credit (made up of the FSC, CTC or in future from 1 April 2006 the IWP, and the FTC) is targeted at those on low and middle incomes.

43 Restricting eligibility to those on low and middle incomes is achieved by way of the component within the formula for calculating overall entitlement to the Part KD credit: the FCA (Family Credit Abatement – see paragraphs 22, 23 and 28 above).

44 The FCA is subtracted from the total of what would otherwise be payable following calculation of entitlement to each of the FSC, CTC or from 1 April 2006 the IWP, and the PTC.

- 45 The FCA is calculated using three different abatement rates which apply to three specified income levels. The abatement rates which currently apply are contained in section KD 2(6) of the Income Tax Act 1994. The effect of the application of the abatement rates is:
- (1) annual family income which is not more than \$20,356 is subject to a nil abatement;
 - (2) annual family income between \$20,356 and \$27,481 is subject to an abatement of 18 cents for each complete dollar of income over \$20,356; and
 - (3) annual family income which is more than \$27,481 is subject to an abatement of \$1,282.50, increased by 30 cents for each complete dollar of the excess.
- 46 These rates are unchanged in section KD 2(6) of the Income Tax Act 2004.
- 47 Information from the website of the Department of Inland Revenue indicates that the CTC is and will be payable up to a gross annual family income of \$66,000; and from 1 April 2006 the IWP will be payable up to a gross annual family income of \$66,500. However, the CTC and IWP are only payable at these income levels where there are multiple dependent children in a family (currently in respect of the CTC where there are five or more children, from 1 April 2005 in respect of the CTC where there are four or more children, and in respect of the IWP from 1 April 2006 where there are three or more children).

Different treatment arising from a prohibited ground of discrimination

- 48 The relevant prohibited ground of discrimination in this proceeding is employment status pursuant to section 21(1)(k) of the Act, namely being in the receipt of a benefit under the Social Security Act (which includes the types of income-tested benefits listed in section OB 1 of both the Income Tax Act 1994 and the Income Tax Act 2004).
- 49 In respect of the approximately 250,000 children (Ministry of Social Development *New Zealand Families Today* 2004) in families who receive income by way of certain types of income-tested benefits (as defined in section OB 1), section 21(2) of the Act provides that the prohibited grounds of discrimination apply to these children in respect of the employment status of their relatives or associates, namely their principal caregivers or their principal caregiver's spouse.
- 50 As discussed further below the types of income-tested benefits excluded from eligibility for the CTC or the IWP are within the low income range. For example, an unemployment benefit is currently paid to a couple with children at a gross annual rate of \$17,785; and a

domestic purposes benefit is currently paid at a gross annual rate of \$16,163.

- 51 As discussed above, despite the use of the FCA to target the three components of the KD Credit at families with dependent children on low and middle incomes, both the CTC and the IWP are payable to principal caregivers of dependent children for the support of their children, only where the principal caregiver or their spouse does not receive the types of income-tested benefits listed in section OB 1.
- 52 The point of differentiation in respect of this particular aspect of eligibility is not income level or need; it is employment status as this is defined in the Act.
- 53 Therefore, this particular aspect of eligibility for the CTC or the IWP, meets the first limb of the definition of discrimination provided by the United Nations Human Rights Committee (General Comment 1989), in that a distinction is made, or an exclusion or restriction operates, in respect of dependent children in families who receive income by way of certain types of income-tested benefits (as defined in section OB 1), on the basis of the employment status of relatives or associates of those children, namely their principal caregiver or their principal caregiver's spouse. Correspondingly, a preference is given to low and middle income families, including the children in those families, who do not receive income-tested benefits.

Disadvantage

- 54 Distinctions, or exclusions, or restrictions, or corresponding preferences, arising from a prohibited ground of discrimination do not in themselves amount to discrimination. The second limb of the definition of discrimination provided by The United Nations Human Rights Committee (General Comment 1989) provides that discrimination also requires that these have: "the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms". There needs therefore to be some disadvantage (in general terms) which results from the differentiation between the complainant group and others.
- 55 Families who receive the income-tested benefits listed in section OB 1 and who are thus not entitled to receive payment of a CTC, or from 1 April 2006 an IWP, by reason of the employment status of the principal caregiver, or the principal caregiver's spouse, are disadvantaged in terms of their household income by the amounts which would otherwise be payable to them in each case on the basis of the family's low income.
- 56 The rates currently payable as a CTC are a maximum of \$15 per dependent child per week.

- 57 The rates payable for the IWP (from 1 April 2006) are a maximum of \$60 per week for one to three children and \$15 per week for every extra child.
- 58 Examples of entitlement to the FSC and the CTC or IWP for the 2005/2006 and 2006/2007 years for families with an annual income of \$17,785 gross (the current rate of unemployment benefit for a couple with children) depending on source of income (and thus employment status) and numbers of children are set out below:

	Family Support (FSC) 2005/2006 per week	CTC 2005/2006 per week	Total KD Credit payable 2005/2006 per week (if no eligibility for PTC)	Family Support (FSC) 2006/2007 per week	IWP 2006/2007 per week	Total KD Credit payable 2006/2007 per week (if no eligibility for PTC)
Family on a income-tested benefit with 1 child with annual income of \$17,785 gross	\$72	n/a	\$72	\$72	n/a	\$72
Family on earned income with 1 child with annual income of \$17,785 gross	\$72	\$15	\$87	\$72	\$60	\$132
Family on a income-tested benefit with 6 children with annual income of \$17,785 gross	\$307	n/a	\$307	\$307	n/a	\$307
Family on earned income with 6 children with annual income of \$17,785 gross	\$307	\$90	\$397	\$307	\$105	\$412

- 59 These figures are sourced from the website of the Inland Revenue Department and are described on that website as estimates of “what you may receive”. The website also specifies that these rates apply where all the children in a family are under 13 years old.
- 60 The table excludes consideration of eligibility for a PTC which is payable (as part of a KD Credit) for up to 56 days following the birth of a child only where a family is not in receipt of the types of income-tested benefits listed in section OB 1. Where a PTC is payable the difference as between those receiving these types of income-tested benefits and others will increase by the amount of the PTC payable for the period in which the family is eligible to receive the PTC.
- 61 These figures also do not include consideration of eligibility for an FTC which is payable separately from the KD Credit. This payment, which ensures a minimum family income to families in paid employment, will from 1 April 2006 increase the differences in the examples in the above table by a further \$22.50 per week. For example, taking into account the FSC and the IWP only, the difference for a family with six children receiving a gross income of \$17,785, as between those receiving these types of income-tested benefits and others, will from 1 April 2006, be \$105 per week. This difference occurs simply because of the employment status of the principal caregivers in those families (or their spouses) to the disadvantage of those families receiving these types of income-tested benefits. When entitlement to FTC is included the difference will be \$127.50 per week.
- 62 The above figures which have been provided by way of example, do not include eligibility for additional benefits such as the accommodation supplement and the special benefit because these are available to low income families whatever their source of income or the employment status of the principal caregivers (or their spouse).
- 63 Further by way of comparison, the figures below which are also provided on the website of the Inland Revenue Department show that for example, families with three children earning \$40,000 from paid work will receive only \$63.50 less for the 2005/2006 year, and \$18 less for the 2006/2007 year, from the FSC and CTC or IWP combined, than families with three children receiving under half that annual income by way of certain types of income-tested benefits.

	Family Support (FSC) 2005/2006 per week	CTC 2005/2006 per week	Total KD Credit payable 2005/2006 per week (if no eligibility for PTC)	Family Support (FSC) 2006/2007 per week	IWP 2006/2007 per week	Total KD Credit payable 2006/2007 per week (if no eligibility for PTC)
Family on income-tested benefit with 3 children with annual income of <u>\$17,785</u> gross	\$166	n/a	\$166	\$166	n/a	\$166
Family on earned income with 3 children with annual income of <u>\$40,000</u> gross	\$57.50	\$45	\$102.50	\$88	\$60	\$148

- 64 The figures in both tables above appear to reflect the policy behind differentiating between those who receive the types of income-tested benefits listed in section OB 1 and others, of making work pay. (Refer for example to the commentary on the Working For Families package on the Ministry of Social Development website.) This may form part of any justification defence pleaded by the Defendant.
- 65 However, for the purposes of the disadvantage issue, the Plaintiff says that the children in families in receipt of these income-tested benefits suffer the consequences of this policy along with the adults this policy is aimed at.
- 66 The persistence and severity of poverty for children in New Zealand whose families receive benefits has been highlighted by the Ministry of Social Development (*Children in Poor Families: Does the Source of Family Income Change the Picture* 2002).
- 67 The poor children in families primarily reliant upon government transfers [which include the types of income-tested benefits which mean these families are excluded from eligibility for the CTC or the IWP] are a particularly vulnerable group (Ministry of Social Development *Children in Poor Families: Does the Source of Family Income Change the Picture* 2002).

- 68 These children have lower living standards and have a greater risk of negative outcomes (Ministry of Social Development *Children in Poor Families: Does the Source of Family Income Change the Picture* 2002).
- 69 The exclusion of families who receive the types of income-tested benefits listed in section OB 1, from access to the CTC or the IWP, may perpetuate adverse consequences for these vulnerable children across a range of social indicators. These will be further particularised in the statements of evidence to be filed by the Plaintiff through the evidence of expert witnesses.

Justification

- 70 The Plaintiff notes that a defence is available to the Defendant, in that there is no breach of Part 1A of the Act if, even though the legislative provisions which are the subject of this proceeding are found to limit the right to be free from discrimination affirmed in section 19 of the New Zealand Bill of Rights Act 1990, they are under section 5 of that Act a justified limitation on that right.
- 71 The Plaintiff also notes that the onus of proving that any limit on the right to be free from discrimination is a justified limit on that right lies with the Defendant pursuant to section 92F(1) of the Act.

AND TAKE FURTHER NOTICE THAT at a date and time to be fixed by the Chairperson of the Human Rights Review Tribunal the Plaintiff will ask the Tribunal to make the following orders:

- 1 **A DECLARATION** pursuant to section 92J(2) of the Act, that section KD2(4) and section KD 2AAA(1)(e) (the latter being contained in sections 13 and 14 of the Taxation (Working for Families) Act 2004) of the Income Tax Act 2004 are inconsistent with the right to freedom from discrimination affirmed by section 19 of the New Zealand Bill of Rights Act 1990.
- 2 **AN ORDER** for the Defendant to pay the Plaintiff's costs pursuant to section 92L of the Act.
- 3 **SUCH** further relief as the Tribunal thinks fit pursuant to section 92I(3)(h) of the Act including, but not limited to, an **ORDER** for the Defendant to pay interest on any judgment debt in the plaintiff's favour, from the date of judgment, at the rate for the time being prescribed by section 87 of the Judicature Act 1908

Catherine Rodgers-Smith

Assistant Director of Human Rights Proceedings
Kaiawhina Tumuaki Whakatau Take Tika Tangata

Date: 23 November 2004

This Statement of Claim is filed by The Office of Human Rights Proceedings on behalf of the above-named Plaintiff. The address for service of documents on the Plaintiff is:

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