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**February 2007**

**To: The Social Services Committee**

***Re: Social Security Amendment Bill***

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*One in five New Zealanders support someone who is frail, aged, sick, injured, disabled, or experiencing a mental illness.*

### **Executive Summary**

- Supply side welfare-to-work policies such as those proposed in this Bill will do nothing to alleviate the poverty of New Zealand's poorest families. With so many working poor the problem is, and remains, low income.
- This Bill extends the ambit of the undeserving poor to include not only Sickness and Invalids beneficiaries, but also their spouses. By refusing to address underlying issues of low abatement thresholds and the high effective marginal tax rates faced by beneficiaries this Bill will further entrench the divide between deserving and undeserving children, a surprising key feature of the Working for Families package.
- This Bill is aimed at Sickness and Invalids beneficiaries. However, little or no work has been done to explain the increase in the number of these beneficiary types. Figures suggest the issue is as much as market demand issue as a supply issue, and we submit that this needs to be better understood before this coercive Bill becomes legislation.
- We have major concerns that the proposed worktest for the spouses of Sickness and Invalids beneficiaries presumes that the beneficiary is capable of looking after themselves or, in the case of young families, the children. This concern is compounded by the proposed targets for Work and Income staff. Although the operating motto is supposedly "The right job at the right time, right from the start," given the proposed targets it is likely that in fact any job will be seen to suffice, no matter how inappropriate.
- We have grave concerns about the welfare of children whose parents or caregivers are required to work in cases where there is inadequate childcare. For back-to-work policies to be successful, support such as childcare facilities must be in place. Yet the evidence suggests that access to childcare is woefully inadequate. Poor suburbs, where most of the people who rejoin the workforce as a result of this Bill will come from, are already suffering the social fallout of the inadequately supervised children of working parents. Again, we have real concerns that nothing is being done to address this gap.

## **1. Introduction and background to the Bill**

**Child Poverty Action Group (CPAG)** advocates for better policies for children. We thank the committee for the opportunity to make a submission and **would also like to make an oral submission (in Auckland).**

This submission is on behalf of the members of Child Poverty Action Group. This Bill directly affects the wellbeing of all children, and CPAG urges the Committee to place the interests of children at the centre of their considerations. It is clear from reading the background material to this Bill that the interests of children have come a distant second to the perceived need to get their parents into the workforce. CPAG has significant concerns about this Bill. It does nothing to protect or enhance the already inadequate incomes of families who are unable to work; it further devalues the unpaid work of carers; and it fails to protect the right of children to the care they need. Indeed, the care of children does not appear to have occurred to those drafting the Bill.

This Bill further implements the Work First approach which this government has taken to social security – an approach almost indistinguishable from that of its 1990s National-led predecessor. While the Bill does contain some amendments that ameliorate some of the inequities that exist in the current welfare system, such as stand-downs and residential qualifications, these do not mitigate the Work First focus or the further removal of discretion and imposition of regulation contained in the Bill. The Bill also further complicates the already cumbersome and convoluted Social Security Act.

We are also concerned that the focus on work appears to have erased completely any commitment to income adequacy and addressing child poverty. While there may be a genuine belief that work is the way out of poverty, there is no evidence that this is the overriding concern of the drafters of this Bill, otherwise we would see greater consideration of the difficulties many beneficiaries with children face in entering the workforce. Therefore, we have significant concerns about the implications of this Bill for beneficiary families with children. This group already comprises many of New Zealand's most impoverished citizens, and we believe this Bill will marginalise them further.

## **2. Background – The context of Welfare to Work**

[1] Welfare to work policies have been an integral part of the neo-liberal economic reforms that emerged to replace the post-war consensus that, for all intents and purposes, died in the 1970s under the weight of high unemployment and high levels of inflation.

[2] Reasons for the political popularity of welfare reform are numerous and intertwined. In the US, where most welfare reform literature originated, the millions spent in the “war

on poverty” had not eliminated poverty, and the poor stubbornly – and inconveniently – remained poor. In the time-honoured manner, the blame was laid at the door of the poor themselves. Social problems around poverty – crime, alcohol and drug abuse and domestic violence – were seen to be the result of the moral failings of individuals. The concept of “welfare dependency” was introduced to describe and link benefit income and the moral laxity of the poor.

[3] The moral deficiencies of those on welfare thus established, in myth if not by any hard data, the resulting policies were self-evident. The poor had to be motivated to be independent, and, since spending money on them only hurt them, the state needed to spend less to care more. Hence, welfare reform packages almost always included cutting income support. This occurred in New Zealand, both blatantly with the 1991 benefit cuts, by stealth as payments such as Family Support were whittled away by inflation, and openly again in 2005 when Family Support increases were used to offset benefit cuts. Female sole parents with children suffered the most, particularly in the US, the UK and New Zealand. In these countries, the downward slide of this group continues still. However, the problem is not benefit dependency. The problem was, and remains, low income.

[4] In recent years, the profile of those on benefits in OECD countries has changed. Since the 1990s the number of people on unemployment assistance has fallen while the number of people on sickness and invalids-type benefits has risen consistently. Despite extensive research, it is not clear why the number of Sickness and Invalids beneficiaries has risen across so many different jurisdictions. Even in the US, the number of people on disability benefits has continued to climb.<sup>1</sup> For its part the OECD has preferred to stick to the mantra that for beneficiaries work is the way out of poverty. However, in doing so, it also offers some caveats. These caveats are necessary because sickness beneficiaries often have multiple problems that make re-entering the workforce problematic. These will be addressed later in our submission.

[5] The US implemented the most dramatic welfare reforms, and the results have been analysed extensively. For pro-reform conservatives, they were an unmitigated success. Others are less sure. The US approach is of full work availability with a sinking lid on childcare and other support for those returning to the workforce.<sup>2</sup> While this has been effective in reducing caseloads, there have also been some real concerns. One is that of the millions of mostly women with children who streamed off the rolls, the whereabouts

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<sup>1</sup> Stephen Ohlemacher, *Welfare state growing despite overhauls* Monday February 26 2007, Associated Press. <http://www.guardian.co.uk/>.

<sup>2</sup> The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) devolved most decisions about welfare administration to individual states so studies tend to be state-focused. The wide variability between states means the results are generally not comparable. The PRWORA also capped federal funding of benefits and supports.

of a growing number – 14% in 2002<sup>3</sup> – remains “a national mystery”.<sup>4</sup> Another is that there is no real evidence that working has improved the incomes of these women and children in the long term. Where incomes have improved, it has been a result largely of federal subsidies for low wages through the Earned Income Tax Credit as well as benefit portability packages.

[6] The US reforms are one model. Another is the European model. Here, work requirements are supported by investment in support services such as childcare. In addition, beneficiaries are often allowed to keep a part of their benefits to assist with the additional costs paid work entails. In general European countries, in particular the Nordic countries, have much higher rates of labour force participation for the disabled and sole parents than New Zealand. While many have some form of work test New Zealand policymakers have consistently overlooked the fact that these countries spend significantly more on childcare than we do.

[7] CPAG is concerned that the proposed Bill appears to have assumed that the reduction in beneficiary numbers that followed the introduction of the PRWORA in the US is sufficient evidence on its own to implement similar reforms in New Zealand. There is no sign that the downsides of the reforms – no discernible decrease in poverty levels and millions of missing women and children – have been considered and will be adequately addressed. We now turn to the New Zealand context of the Bill.

### **3. The New Zealand reforms**

[8] In June 2001, the government published *Pathways to Opportunity*. This statement set out a new agenda for overhauling New Zealand’s social security system and focused on six areas:<sup>5</sup>

- A simpler system;
- Making work pay and investing in people;
- Supporting families and children;
- Mutual responsibilities;
- Building partnerships; and
- Tackling poverty and social exclusion.

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<sup>3</sup> The Urban Institute *A decade of welfare reform: Facts and figures* June 2006, [http://www.urbaninstitute.org/UploadedPDF/900980\\_welfarereform.pdf](http://www.urbaninstitute.org/UploadedPDF/900980_welfarereform.pdf). 25 February 2007.

<sup>4</sup> Jason DeParle *American dream: Three women ten kids and a nation’s drive to end welfare* (Viking, New York, 2004).

<sup>5</sup> Much of this is from Dr Louise Humpage, *Working for New Zealand: A background paper on recent and proposed welfare reforms in New Zealand*. Forthcoming on <http://www.auckland.ac.nz/publicpolicygroup>

[9] Labour's reforms, far from making the benefit system simpler, have complicated further an already difficult system. In bundling together making work pay and supporting families, they have failed to support and invest adequately in beneficiary families with children. More than 230,000 children are completely excluded from a very significant boost to family assistance, the In-Work Payment. Cuts to the core benefit and changes to hardship provisions have also reduced the incomes of New Zealand's poorest families. Like other reforms of recent years, this Bill does not tackle poverty and exclusion. Instead, it not only more clearly demarcates the deserving from the undeserving poor, but also extends the ambit of the undeserving to the sick and invalid as well as their spouses. In essence, this Bill appears to be intended to do important ideological work in reframing the social security system around a focus on citizen obligations to work, with no corresponding responsibility on the part of the state to provide decent jobs and adequate wages, or adequate support for those unable to work.

[10] We submit that this Bill also renders invisible the unpaid work of caring, including childcare, that is undertaken by so many members of the community. One in five New Zealanders supports someone who is unable to adequately care for themselves. Under this Bill, this kind of work becomes less worthy than any paid employment if the family concerned is receiving a benefit. Ironically the In Work Payment, a so-called work incentive, may actually make it financially feasible for one parent to stay home, in the case of two-parent households.<sup>6</sup> If the government is aiming to get as many people into the workforce as possible, then this is something of an oversight. More disturbingly, it sends a signal that only children in two-parent families deserve full-time parental care. As a matter of social justice, this cannot be correct, and CPAG would like to register its strong disagreement with this premise.

#### **4. Issues arising from this Bill**

##### ***4.1 System support for Sickness and Invalids beneficiaries***

[11] This Bill is focused predominantly on Sickness and Invalids beneficiaries. In New Zealand, as in the rest of the OECD, the number on Sickness and Invalids benefits is approximately twice the number on unemployment benefits. The cause of this increase needs to be understood before effective policies dealing with it can be developed. Several characteristics of those on Sickness and Invalids benefits are relevant. The distribution of Sickness and Invalids beneficiaries does not follow that of the general population. One third is aged 55 or over, and the percentage of Maori receiving these benefits has increased over the last several years. Interestingly, we also see this pattern

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<sup>6</sup> Nick Johnson, *Working for Families in New Zealand: Some early lessons*. Paper prepared for the Ian Axford Fellowship in Public Policy, Wellington: Fulbright New Zealand 2005. Available at: <http://www.fulbright.org.nz/voices/axford/johnsonn.html>

with the unemployed. This suggests those who remain out of the workforce are facing systematic discrimination, that is, something is amiss on the demand side of the labour market. Supply-side reforms such as this Bill will not address this.

[12] We also observe concern about benefit dependency was put forward as a justification for the reforms in this Bill in the background Cabinet paper.<sup>7</sup> To make such a link is disingenuous. Sickness and Invalids beneficiaries have been deemed unable to work. By definition they are “dependent” on benefits. Moreover, for invalids, that “dependency” is likely to last the rest of their lives.

[13] Research shows that entry onto benefit rolls is often preceded by what the Ministry of Social Development terms a life event. These include financial stress, divorce, death of a family member, loss of job, etc. For Sickness and Invalids beneficiaries, life events are also increasingly likely to include accidents. We believe this is a reflection of ACC’s policy of moving people off compensation onto benefits wherever possible. People need support to cope while they deal with the adverse events that caused their entry onto benefits in the first place. This view is reinforced by the fact that 36% of Sickness beneficiaries and 25% of Invalids beneficiaries have psychiatric conditions. It is reasonable to assume that in such cases adequate support and treatment would facilitate a return to the workforce better than a work test. It may take longer, but also carries with it a higher probability of better-paid and more sustained employment. For families with children this is, we believe, an infinitely better outcome. We also note that research from Europe provides no evidence for the “benefit dependency” theory that appears to be a driver for this Bill. Generous levels of assistance and support for the sick and disabled do not result in a permanent poverty trap and extended stays on welfare. On the contrary, the shortest stays on welfare are found in the most generous welfare regimes.<sup>8</sup>

[14] We also note that according to the Ministry of Social Development<sup>9</sup> 46% of all mothers have been sole parents by age 50. We consider this a useful reminder of the widespread need for support during stressful transitions in people’s lives.

[15] We accept that many beneficiaries, especially the disabled, would like to work. CPAG agrees people who want to work should be able to do so. We are, however, concerned that caregivers will be allocated jobs without due care being taken to ensure adequate childcare is in place, especially since they are likely to be unskilled jobs with little flexibility and unsociable work hours.

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<sup>7</sup> David Benson-Pope, *David Working New Zealand Phase One: Work-Focused Support*. Paper to the Cabinet Policy Committee from Office of the Minister for Social Development and Employment, 27 April 2006.

<sup>8</sup> Thomas Lorentzen “Income dynamics in Norwegian families on social assistance: A panel data study of a social assistance cohort” [2006] *European Journal of Social Security*, 8(3) September 2006 279.

<sup>9</sup> Ministry of Social Development, *Patterns of Family Formation and Change* Ministry of Social Development, Wellington, 2004.

[16] The OECD<sup>10</sup> is careful to point out that getting the sick and disabled into the workforce requires careful implementation, starting with groups that have reasonably good employment prospects then continuing to the more difficult groups. They note that unsuccessful transfers may even increase “benefit dependency” rates, something which needs to be considered when designing services. Again, evidence from the US, where worktests were implemented as part of their reforms, suggests that what happens is not an orderly transition, but a scattergun approach that leaves genuinely needy people with little. Our concern is that the arbitrary case management that appears to characterise some of WINZ’s client dealings will lead to this second outcome for families with children.

[17] To be effective at getting people off benefits and into truly sustainable employment (that is, longer than a few months) services such as WINZ need to be well resourced and coordinate with other service providers. In Wisconsin, contractors were required to have no more than 55 files per case manager as this was deemed the maximum load if clients were to receive the attention they needed to make a successful transition into the workforce. CPAG hopes that WINZ is similarly resourced to deal sensitively and appropriately with clients who are likely to have difficulty re-entering the job market.

#### **4.2 Income and poverty**

[18] Where policies in both Europe and the US to get people off benefits and into work have been relatively successful in the sense of improving incomes (rather than having clients disengaging from both the labour market and the welfare system) an important aspect of has often been the ability of the client to take part of their benefit with them to supplement what is usually a low income.<sup>11</sup> The Minnesota Family investment Programme (MFIP)<sup>12</sup> allowed recipients to keep benefits up to 140% of the poverty line. Earnings for the most disadvantaged recipients improved, although the effects dissipated after four years. (This is consistent with other studies showing earnings improvements fade over time.) The MFIP also found, consistent with evidence from Europe, that more generous earnings disregards improved employment rates as well as incomes.

[19] We submit, therefore, that in moving Sickness and Invalids beneficiaries and/or their spouses into work, consideration needs to be given to making it financially worthwhile to do so. Sickness beneficiaries can earn up to \$80 per week before their earnings get

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<sup>10</sup> Stéphane Carcillo and David Grubb *From inactivity to work: The role of active labour market policies* (OECD Social, Employment and Migration working paper (2006)5, 2006).

<sup>11</sup> In the U.S. only 1-2% of welfare recipients move into jobs that do not require a state or federal wage support.

<sup>12</sup> Lisa A. Gennetian, Cynthia Miller and Jared Smith *Turning welfare into work support: Six year impacts on parents and children from the Minnesota Family Investment Programme*, July 2005, Report for the Manpower Demonstration Research Corporation, [www.mdrc.org](http://www.mdrc.org).

clawed back at 70c in the dollar thereafter. The \$80 threshold has been in place since the early eighties. If it had been indexed, it would now be worth about \$130. This means part-time workers face an effective marginal tax rate (EMTR) of about 92.3c in the dollar from a very low level of additional earnings. This is also the case if spouses work part-time, and the \$80 threshold is the same for a couple as for a single person. Invalids beneficiaries fare better, with earnings between \$81-\$180 abated at 30c in the dollar, and the 70c rate applicable to earnings over \$180. But this is still a big disincentive with a marginal tax rate of 51%. Under these conditions parents who take up part-time work receive minimal financial payoff for earning above \$80 per week. In addition, they may also have to find someone to do their caring duties for them while they are at work.

[20] We note that Treasury has stated: “potential proposals to soften existing conditions, e.g. raising abatement thresholds, or extending transitional protection beyond the time period required to ensure that no-one is financially disadvantaged at the point of change, would significantly increase costs [of the reforms]”. We submit that this concern is misguided, and that as part of any legislation to move beneficiaries into part-time work, abatement thresholds be raised significantly, and that at very least the abatement rates for all beneficiaries be at the rate that applies to Invalids benefits. Otherwise the part-time worktest proposed in this Bill makes no economic sense.

[21] We also note that in some circumstances Sickness and Invalids beneficiaries are able to work 15 hours or more a week for an agreed period of up to six months without losing their benefit entitlement (although it might be reduced, depending on the amount they earn while working). We submit that this earnings disregard needs to be extended until the beneficiary reaches a given level of income. This would provide those capable of holding down part-time work and/or their spouses with an incentive to do so. Unfortunately, the all-or-nothing nature of the In Work Payment (IWP), available for those with children, offers no incentive to obtain or keep the part-time work this Bill is demanding from Sickness and Invalids beneficiaries and their spouses.<sup>13</sup>

[22] We also submit that Sickness and Invalids beneficiaries should have the choice of a single rate of benefit and an individual income test, reflecting the treatment of ACC claimants who get their compensation in their own right. This would moderate the financial penalty for ACC claimants who are moved onto Sickness and Invalids benefits, and would give a greater incentive to spouses to work as additional earnings would not abate the beneficiary’s benefit income. It would also provide parity with the treatment of married superannuitants who have an underage spouse, who are eligible for one half the married rate of NZ Superannuation in their own right. It is a great pity that the opportunity afforded by this Bill to move welfare benefits into the modern world has not been grasped.

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<sup>13</sup> We note Nick Johnson, note 5 above, recommends a sliding scale for the In-Work Payment so that it can operate as an incentive for part-time work.

[23] We submit that child poverty needs to be given a higher priority than is evident from this Bill. Indeed, the focus of this Bill, and the reforms generally, leaves us with grave concerns about income adequacy provisions for those unable to work. Other ways to motivate people to move back into the workforce include a greater focus on changing employers' attitudes, mandated family-friendly policies for working parents and easy access to subsidised childcare for working parents. Social exclusion, a term barely mentioned in the background papers, results from poverty, not the lack of paid work. Moreover, it serves to disguise the fact that many of the socially-excluded include the working poor. Families working long hours are unlikely to participate in their communities or have a real voice in its governance. Children are most likely to experience poverty and social exclusion so we are concerned that these reforms will simply exacerbate the exclusion of those whose parents are unable to enter the workforce, or whose working parents do not have time to give them the care and attention they need.

[24] If in fact the purpose of the reforms is poverty reduction, in particular child poverty, then our submission is that these measures on their own will not be sufficient. While we are aware that the IWP is available for some families with children, there is no equivalent for single people, those who make up the vast majority of our growing population of homeless, or beneficiary families with children. According to OECD researchers, successfully combating child poverty requires a mix of policies including some combination of higher benefit rates than New Zealand, and better financial and in-kind support for sole parents and disabled persons who return to the workforce as well as – and this is an important point – effective redistribution to those out of work.<sup>14</sup>

### **4.3 Childcare**

[25] Childcare is the cornerstone upon which the success of back-to-work policies depend. This is because such a large proportion of those on benefits have children. But New Zealand is still lagging behind other OECD countries in respect of childcare. A 2003 OECD report found New Zealand spends 0.1% on formal daycare, as compared to Denmark (1.7%), Sweden (1.3%), Finland (1.2%), and Norway and Iceland (0.8%).<sup>15</sup> Of these countries, Denmark, Finland, Sweden and Iceland have the highest labour force participation rates for women aged 25 – 54. However, there is nothing in any of the cabinet papers or this Bill that suggests that childcare concerns have been adequately considered. With work flexibility for unskilled beneficiaries who re-enter the workforce likely to be poor to non-existent, we have grave concerns for children who become sick, particularly seriously ill children who require lengthy medical attention. There are also

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<sup>14</sup> Peter Whiteford and Willem Adema “Combating child poverty in OECD countries: Is work the answer?” [2006] *European Journal of Social Security*, 8(3) September 2006 235.

<sup>15</sup> F. Jaumotte, *Female labour force participation: Past trends and main determinants in OECD countries* OECD Economics Department Working Paper No. 376 (2003).

issues of physical access. The government has systematically excluded local community-based childcare from childcare subsidies, and for-profits are not usually located in the low-income suburbs inhabited by most of the new workforce recruits. Again, our concern is for flexible, accessible and sustainable childcare arrangements, particularly before and after school, and for children with special needs if we are aiming for greater workforce participation of existing beneficiaries with children. We are similarly concerned that where inadequate childcare is in place, older siblings will be left to look after younger siblings and disabled parents, with potentially detrimental effects on those children's own education and development.

[26] One reason often given for favouring back-to-work policies is the favourable effect they are believed to have on children. Indeed, conservatives often present this intuitively appealing theory as fact. However, there is no unequivocal evidence that pushing parents into work is good for children. Some studies have shown improved educational outcomes for very young children,<sup>16</sup> however for older children and teenagers back-to-work policies have consistently shown negative effects. These include low school activity, lack of participation in extra-curricular activities, emotional and behavioural problems, and poor health.<sup>17</sup>

[27] Poor access to childcare is a key issue, and we are already witnessing the results of latchkey kids on our streets. The children of working parents are at greater risk of being unsupervised. As Mark Gosche observed recently (RNZ Nine to Noon interview) "We now have a 24/7 workplace environment with low pay and insecure jobs and many of the families that these young people come from Mum and Dad are working 'round the clock...The families that don't even see each other because of working life is going to lead to the sort of disastrous consequences that have seen young people killed on our streets."

[28] We are aware that only a small proportion of those eligible for childcare subsidies get them, and we understand anecdotally that many parents do not apply because the process is onerous, mistakes made by either party can result in payments not coming through, and people just don't like dealing with WINZ. The Ministry of Social Development's *Opportunity for All* stresses that where possible people should be looked after by their families, yet we would submit that in its drive to get people into jobs, no matter how low-paid and inappropriate, families are becoming less and less capable of looking after their own. Indeed, this Bill sends a signal that unpaid caring work is not valued.<sup>18</sup>

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<sup>16</sup> See note 9 above.

<sup>17</sup> M Zaslou, K A Moore, K Tout, J P Scarpa and S Vandivere, How are children faring under welfare reform? In A Weil and K Feingold (eds), *Welfare reform: The next act* (Urban Institute Press, Washington, 2002).

<sup>18</sup> We note that the upcoming *Carers New Zealand* conference (12-13 April) will feature talks from District Health Boards on supporting carers. The implications for DHBs of carers moving into work

[29] According to the latest UNICEF report<sup>19</sup> 35% of New Zealand 15 year-olds do not sit down and have a meal with their families several times per week. Of OECD countries only Finland scored worse on this than New Zealand. Thus while work-first welfare reform as a family-friendly mechanism is the fondly-held belief of supporters, this is not supported by evidence. Indeed the concerns expressed by Mr Gosche appear to accurately reflect community concerns about children having inadequate contact with their parents, a concern backed up by the UNICEF report.

### **4.3 Benefits and costs**

[30] Given the above, CPAG questions the purpose of this Bill. The Cabinet papers refer to saving money, yet fiscal savings will be minimal if beneficiaries work low-paid jobs and meet the hours required for the IWP, Family Tax Credit (FTC), and Parental Tax Credit (PTC). Treasury has acknowledged that many people who will move from benefits into paid work will be unskilled hence their wages are likely to be low. A sole parent working 20 hours at the minimum wage, would end up moving onto the FTC giving a nett income of \$ \$17,680 plus Family Support, the In Work Payment and any relevant accommodation supplement. While this may lift the family above the 60%-of-median-income poverty line, it is only because of extra supplements paid by the state

[31] This Bill has significant costs for children. Again, we note Mr Gosche's comments, where he drew the link between rising levels of gang violence and delinquency, and overworked parents. This legislation will further open the gap between the children of beneficiaries and workers. As CPAG has repeatedly argued, support for children ought not to be contingent on the work status of their parents. Children's needs do not change according to whether their parents are in the paid workforce or not. We believe the government should take this opportunity to recognise the IWP as a payment for children, and convert it to a per-child Family Support payment, so that those in the greatest need get the benefit. This will also help reduce the gap opening between what John Key has described as an underclass, and those whose attachment to the workforce privileges the support their children receive.

[32] Also, we query the savings referred to in the Cabinet paper given that, at a cost of almost \$100 million, Treasury was concerned that the package did not offer "value for money".<sup>20</sup> Importantly, for a reform supposedly based on "evidence", Treasury also noted "it may not be possible to clearly link changes in labour market participation to the effect of the package as a whole or specific components of it". In fact, we are puzzled that this legislation is needed when work assistance for Sickness and Invalids

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are significant, and we are curious as to how these conflicting interests will be recognised and dealt with.

<sup>19</sup> UNICEF *Child Poverty in Perspective: An overview of child well-being in rich countries* (Innocenti Research Centre, Report Card 7, 2007).

<sup>20</sup> David Benson-Pope, note 7 above.

beneficiaries can be made available under the existing legislation, and, further, we note that from a total roll of about 122,000 Sickness and Invalids beneficiaries, MSD forecasts that “the reforms **could** lead to around 7,000 fewer beneficiaries than would otherwise have been the case, once their full impact stabilises after around **five years**.” (Emphasis added).<sup>21</sup> If this figure is correct, it suggests an expenditure of about \$14,000 per beneficiary.

#### **4.4 Administration**

[33] Our concerns are heightened by the reference to targets in the Cabinet paper. These are referred to as Work and Income’s “high-level sustainable employment measures,” and include:

- the proportion of jobseekers receiving benefit who exit into employment - 35%
- the proportion of jobseekers who have been receiving benefit for six months or more who exit into employment - 36%
- the average cumulative time that jobseekers who exit to work spend in employment over a year - 36.5 weeks
- the proportion of jobseekers who exited into employment and achieved six months continuous employment - 58%.<sup>22</sup>

If there is one thing we should have learned in New Zealand after two decades of outcomes and key performance indicators, it is that staff will cut corners and manipulate data to meet their performance measures, even if this is not in the best interests of their organisation or, in the case of WINZ, their clients. There is no reason that the proposed indicators will not have the same effect. Again, our concern is that children will suffer if people are shunted off benefits onto inappropriate employment in order for caseworkers to meet their targets. We are also concerned that these targets will not be adjusted in the event of changing labour market conditions. The idea that New Zealand will never experience high rates of unemployment at some time in the future is a unrealistic, and one that is likely to impact most harshly on children, as it has in every recession since 1987.

[34] We also submit that since the obligations on beneficiaries will be strengthened, we would expect to see greater access to independent appeal and review procedures. We note that there is no such strengthening. This is of particular concern given that beneficiaries have no right to appeal what constitutes a “job seeker development activity”. These are at the discretion of the Chief Executive, subject to any direction by

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<sup>21</sup> Treasury Report T2006/1340, *Working New Zealand*. Report obtained under the OIA.

<sup>22</sup> With respect, we submit that 36.5 weeks of employment in a year, and/or six months continuous employment cannot reasonably be considered “sustained” employment.

the Minister.<sup>23</sup> In other words, this can be anything a case worker says, with no right of appeal.

[35] Overall, this legislation looks more like a labour market tool than any real attempt to deal effectively with poverty, or get the disabled into long-term, well-remunerated employment.

## 5. Analysis of the Bill

The Bill introduces, through Clause 23, Purpose and Principles sections 1A and 1B to the Social Security Act. These read as follows:

"1A Purpose

The purpose of this Act is---

"(a) to enable the provision of financial and other support as appropriate---

"(i) to help people to support themselves and their dependants while not in paid employment; and

"(ii) to help people to find or retain paid employment; and

"(iii) to help people for whom work may not currently be appropriate because of sickness, injury, disability, or caring responsibilities, to support themselves and their dependants:

"(b) to enable in certain circumstances the provision of financial support to people to help alleviate hardship:

"(c) to ensure that the financial support referred to in paragraphs (a) and (b) is provided to people taking into account---

"(i) that where appropriate they should use the resources available to them before seeking financial support under this Act; and

"(ii) any financial support that they are eligible for or already receive, otherwise than under this Act, from publicly funded sources:

"(d) to impose administrative and, where appropriate, work-related requirements on people seeking or receiving financial support under this Act.

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<sup>23</sup> Section 110 Social Security Act 1964.

## "1B Principles

Every person exercising or performing a function, duty or power under this Act must have regard to the following general principles:

"(a) work in paid employment offers the best opportunity for people to achieve social and economic well-being:

"(b) the priority for people of working age should be to find and retain work:

"(c) people for whom work may not currently be an appropriate outcome should be assisted to plan for work in the future and develop employment-focused skills:

"(d) people for whom work is not appropriate should be supported in accordance with this Act."

These Purpose and Principles sections provide no certainty that New Zealanders will be able to enjoy a standard of living that enables them to participate in and feel part of their communities, or have sufficient income for them and their family's wellbeing. At most, it enables the alleviation of hardship "in certain circumstances". There is no commitment to eliminating child poverty, as outlined in the 2002 Agenda for Children.

The emphasis of the Purpose and Principles sections in the Bill is on the "alleviation" of hardship "to the extent provided by the Act", rather than people having a standard of living that enables them to participate in, and feel part of, their community. The Purpose and Principles emphasis on limited alleviation of hardship is reinforced by several further impositions of regulation at the expense of discretion contained in the Bill that build on the abolition of the discretionary Special Benefit and its replacement with regulated Temporary Additional Support enacted by the Social Security (Working for Families) Amendment Act.

The Purpose and Principles "work first" approach reinforces the concept that any paid work at all (however undignified and under whatever employment conditions) is better than no paid work. Indeed, we note that unpaid work for community organisations no longer qualifies as a work activity under the Bill.

The "work first" approach in this Bill further entrenches the distinction made between deserving and undeserving children initiated with National's Child Tax Credit and continued by the IWP. We submit that **all** children deserve equal support regardless of the age or their parents' circumstances.

**Submission:** CPAG opposes the "work first" thrust of the Purpose and Principles sections proposed by the Bill. We suggest that these be replaced by a commitment to:

- a standard of living that enables all citizens to participate in, and feel part of, their local community; and
- sufficient income for all citizens and their whanau/family's well-being; and
- sufficient income for all citizens to be actively involved in meeting their potential and creating a fulfilling life; and
- protection for all children be prioritised.

### **5.1 Definition of Income**

CPAG does not support the provisions allowing income to be defined by the Minister of the day. What is, and is not, income for the purpose of the Social Security Act is fundamental to the Act and should be clear and transparent from the legislation itself. Nor should differ significantly from what is income for the purpose of the Income Tax Act, as this clause appears to propose. This is also a constitutional issue: decisions that affect the wellbeing of a significant section of the community ought to be subject to public scrutiny and debate through the Parliamentary process. An Order in Council sidesteps this debate. CPAG submits that, contrary to the implication of the Bill, what constitutes “income” is not a technical matter that can be left to officials and the Minister.

The reference to the extent to which a person has used assets of a business or trade for no consideration or inadequate consideration in the proposed section 132H appears to permit a de facto asset test to be applied by treating assets on the basis of their income-earning potential. This is a new and dangerous development, that serves to punish those who have built assets up, perhaps over many years, by making it harder to re-enter the workforce if and when circumstances allow.

**Submission:** The definition of “income” for social security purposes should be clearly defined in legislation, and closely aligned with that contained in the Income Tax Act 2004, rather than subject to rules made by Order in Council. CPAG does not support the proposed section 132H. Families should not have to use all the assets available to them before they become eligible for assistance.

### **5.2 DPB and Widow's Benefit – qualifying child**

**Submission:** CPAG suggest that the term “exceptional” be replaced with “extenuating”. We submit that the term “exceptional” is too restrictive, and risks excluding deserving recipients.

### **5.3 Caregiver's DPB**

**Submission:** CPAG opposes Clause 7 as this appears to allow the state to meddle in a family's affairs to an unacceptable degree. It is for families to decide what is best for them and their children.

#### ***5.4 Deprivation of Income or Property***

**Submission:** CPAG strongly opposes Clause 9. As with Clause 4, we do not believe that issues around benefit administration should be decided by the Minister of the day for the reasons outlined above. Rather, they should be open, transparent and constant.

#### ***5.5 Residential Qualifications***

**Submission:** CPAG supports Clause 10.

#### ***5.6 Commencement of Benefits***

Submission below.

#### ***5.7 Stand down***

**Submission:** CPAG supports Clause 16 but suggests that in the interests of minimising hardship stand downs be eliminated altogether.

#### ***5.8 Applications for Benefits***

**Submission:** CPAG does not support Clause 24. We further submit that section 81(3) of the Act be amended to permit the retrospective substitution of another benefit where the Ministry considers a person has been receiving the wrong benefit. We further submit that if the Committee supports Clause 24, the criteria for backdating a benefit should be at the Ministry's discretion, rather than subject to the narrow criteria permitted to the Minister under Clause 12.

#### ***5.9 Work-testing and PDE requirements of Partners of Invalids, Sickness Emergency, and Unemployment Beneficiaries***

**Submission:** CPAG submits that the part-time work-test for beneficiaries' partners who have childcare responsibilities should be abolished. Whether the beneficiary's partner works or not in these circumstances should be a matter of choice for the family as to what they consider best for their children, and the needs of the beneficiary.

#### ***5.10 Independent Youth Benefit***

**Submission:** CPAG supports Clause 27.

### **5.11 Personal Development and Employment Plans**

**Submission:** CPAG considers it is appropriate to support sole parents, Sickness and Invalids beneficiaries who may be capable of work and want to work. Personal development plans are a part of that process. However, we believe this must be an agreement negotiated between the beneficiary and the Ministry. We submit, therefore, that the Ministry should not be permitted to require a beneficiary to undertake any particular activity through the PDE Plan process. Moreover, there should be some restriction on the frequency with which PDE Plans can be reviewed in order to avoid harassment of beneficiaries – a particular concern where there are children. CPAG also believes the option of voluntary work should be available as this has the potential to lead to paid work and may give beneficiaries the opportunity to acquire skills they may not otherwise obtain. We would also like to see improved appeal processes accompany this provision.

### **5.11 Ending of Benefits**

**Submission:** CPAG supports Clause 35.

### **5.12 Pre-Benefit Activities**

Clause 36 provides for applicants (and those contacting MSD prior to a formal application) for Unemployment Benefit to be required to undertake pre-benefit activities. We note that the pre-assessment process is not “new”. It appears to build on a work capacity assessment trial that was conducted in early 1999 for those with sickness, disability or injury. This was abandoned by the Labour-coalition government upon its election, however has re-emerged as part of this Bill. Among pre-benefit activities we note with concern:

- Any other activity specified in regulations under the proposed new section 132J.

Another serious concern about the pre-benefit activity regime is that the Bill provides that the requirement to submit to it may be “oral or written” (proposed section 96A(3)). This is likely to lead to confusion as to what actually is required by MSD, and consequent possibility of hardship due to sanctions being imposed or benefit not being granted as a result of misunderstanding.

A further concern in this regard is that the Bill specifically provides that there is no obligation on MSD to investigate a claim for an Unemployment Benefit (even if a written application has been made) until the pre-benefit activity has been completed.

In the event of an applicant whose deemed date of cessation of employment (as defined in section 3(1)) has not been deferred on account of holiday pay or similar payments, the date of entitlement to Unemployment Benefit will be either one week (for persons on low incomes) or two weeks after their actual cessation of employment. If such a person were

to make first contact with MSD on the day after their employment ceased, they could therefore become eligible for UB as soon as 7 days from that date.

The new subsection 96A(4) requires that a pre-benefit activity must be available for the person to undertake not later than 10 working days after the first contact with MSD. If MSD were to provide the pre-benefit activity on the 10th working day, this will be the fourteenth day after the date of first contact.

The new subsection 96A(5) provides that there is no obligation on MSD to investigate an application (including taking a formal application) for UB until the pre-benefit activity is completed.

So for such a person who would receive a one-week stand-down, the commencement of the investigation of their claim for a benefit can be deferred for a week after they become entitled to receive the benefit merely through Work and Income's administration of the pre-benefit activity regime, rather than through any fault of their own. It should also be noted that investigations of benefit claims themselves take some time – details of income received from previous employers in the last 12 months have to be obtained to assess the stand-down - not always an easy task for the beneficiary. Investigations of claims for benefit, once they commence, can often take one or two weeks before all the verifying information is provided by the beneficiary and the benefit is actually granted.

There will, of course, be those who have their date of entitlement to UB extended as a result of the deemed date of cessation of employment due to receipt of holiday pay and related payments from their employer. For those who have received any significant amount of holiday pay and related payments, the requirement to undertake a pre-benefit activity and MSD's not investigating their claim until that activity is completed is likely to have little, if any, impact on when they actually receive the benefit.

However, it is those who are already in the most significant hardship, due to having been on a low income and having received no or minimal holiday pay and likely to have no savings who will be most severely impacted by the pre-benefit activity provisions. The imposition of these provisions, together with the time taken to investigate the benefit claim, could well result in the benefit not being actually paid until two or three weeks after people become entitled to it.

This is also the group who are least likely to have access to cheap credit facilities. Although the benefit will be backdated, the short-term impact could be severe – unpaid rent can lead to termination of a tenancy at three weeks of arrears – and likely to find themselves at the mercy of loan sharks.

The other very significant concern with the pre-benefit activity requirements is that the Bill as it stands contains a provision that permits MSD to advise orally, rather than in writing, of the requirement to undertake a pre-benefit activity. This is likely to lead to confusion and misunderstandings as to what is required, which could result in even lengthier periods before benefit is even granted, or the application lapsing (this occurs if

the activity has not been completed within 20 days of the first contact) and the beneficiary having to start over again, with consequent further hardship.

These problems are not inherent in the concept of pre-benefit activity, and it is probably reasonable that an applicant for a work-tested benefit who has not yet become entitled to receive it should be required to undertake similar efforts to obtain employment to those who are actually receiving it.

**Submission:** CPAG is concerned that pre-benefit activities will act as proxy gate-keeping measures to people who are in need. All of these concerns are greatly magnified in the case of beneficiaries with children. While we applaud the proposed reduction in the stand down, we believe there is a real possibility that pre-benefit activities will act against the interests of families with children, and we submit that MSD be obligated to ensure that interviews and planning are conducted in a timely manner. CPAG submits that the ability to specify additional categories of pre-benefit activity by regulation be removed. There is no indication of what the proposed regulations are likely to contain, and as this is a matter that affects the well-being of many in the community it should be open to public scrutiny. We also have concerns about requirements to attend interviews with MSD staff. If this section is passed, there needs to be some protection for beneficiaries to ensure they get the interviews and planning they require in a timely manner.

The Ministry should be required to specify **in writing** the requirement for an Unemployment Benefit beneficiary to undertake a pre-benefit activity, and the Ministry should be required to process an Unemployment Benefit application as soon as it has all the available information required to do so, rather than wait until a pre-benefit activity has been completed. The difficulties lie with MSD being not required to investigate the claim for benefit until the pre-benefit activity has been completed, and not being required to detail in writing what pre-benefit activity is required.

If these issues are addressed at Select Committee, the provision could be acceptable.

### **5.13 Job-seeker agreements**

**Submission:** CPAG does not support Clauses 38 and 39. Like Personal Development and Employment Plans, Job Seeker Agreements will work best if their contents are genuinely negotiated between the Ministry and the beneficiary according to what they consider appropriate in the individual circumstances.