

# CHiLD POVERTY ACTION GROUP

**Child Poverty Action Group**

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*Social Services Select Committee*

*Parliament Buildings*

*Wellington*

## **Submission:**

### **Social Assistance (Future Focus) Bill**

Child Poverty Action Group thanks the Select Committee for the opportunity to submit on this Bill. Child Poverty Action Group (CPAG) comprises a group of academics and workers in the field dedicated to achieving better policies for children. The aims of our organisation are:

- The development and promotion of better policies for children and young people.
- Sharing information and connecting with other groups with similar concerns.
- Elimination of child poverty in Aotearoa New Zealand by 2020

Along with other children's agencies, we are very concerned about the implications of this Bill on children and young people. We urge Committee members to carefully consider the impacts of this legislation on the most vulnerable children in the community, and to act in their best interests.

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**We wish to speak to our submission.**

***Introduction***

- [1] Child Poverty Action Group has concerns about some aspects of the Bill, especially those relating to sole parents, and beneficiaries with children generally. While the policy underlying the Bill is about making it clear that those receiving support from the state are expected to meet certain obligations, it appears this Bill imposes a number of quite draconian obligations and sanctions while at the same time seeking to minimise the very support the state claims to be providing.
- [2] We outline some of those concerns up front, and then move on to the details of the Bill itself.
- [3] Overall, it appears little thought or analysis has gone into the changes introduced in this Bill. Moreover, we are concerned that the government has chosen to disregard official advice. There is no evidence this Bill will achieve any of the Ministers stated aims, and much of it is likely to cut across any future recommendations of the Welfare Working Group. Worse, the changes cut across New Zealand's domestic human rights legislation, and contravene the UN Convention on the Rights of the Child, article 2 of which states "States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members". Moreover, article 3 states: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". The welfare of children will clearly be compromised by this Bill, yet they have been given no consideration. CPAG argues that where families are already experiencing high levels of economic stress, this legislation

will make their lives more difficult. We are disturbed that once again, children have not been given the policy priority they need.

- [4] The stated purpose of the Bill is “to create a fairer benefit system with an unrelenting focus on beneficiaries entering or returning to employment.”<sup>1</sup> The rationale for the Bill is unclear. The Minister’s initial press release cited cost to the taxpayer, the Minister’s belief that families in work are better off, concerns about people getting “stuck in the system,” and “breaking the cycle of welfare dependency.” With respect to the first point, the cabinet papers<sup>2</sup> claim savings in the order of \$100 million over four years arising mainly from worktesting DPBs. There are difficulties in accurately estimating savings:

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

- [5] The Bill also contains a number of references to budgeting, seeking budgeting advice, and beneficiaries not taking sufficient steps to cut costs. This suggests the government remains resistant to the idea that families are struggling because benefits and supplementary assistance are inadequate. It implies that money problems are those of individuals, not the benefit system. It also ignores the research from the Ministry of Social Development (MSD)<sup>4</sup> and the Families Commission<sup>5</sup> reporting the superior budgeting skills observed among low income and beneficiary families.
- [6] Echoing the 1991 Budget, the Bill aims to provide support only to those “in genuine need.”<sup>6</sup> Experience suggests highly targeted social assistance tends to miss the very group it aims to assist because those with the greatest need often lack the resources to deal with the tough testing regimes required for appropriate targeting.

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<sup>1</sup>Explanatory note, Future Focus (Social Assistance) Bill.

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

<sup>3</sup> Cabinet paper 1, Overview, p. 9.

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

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

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

[7] While these changes are being pushed through, there are also changes afoot in ACC, with claims, especially for older persons, being more likely to be declined. Since the Minister has signalled that she intends to make sure the Ministry of Social Development makes it more difficult to obtain an Invalids Benefit, it is obvious this will result in more people going onto a Sickness Benefit, where they will be expected to work, even if they are unable to do so. At the same time, the government has established the Welfare Working Group which will consider, among other things, whether there are things that can be learned from the insurance industry and ACC. So, while ACC is being put on the same footing as a private insurer, unofficially moving the long-term injured into the welfare system where possible, the welfare system itself is being considered for restructuring along the lines of a private insurer. What will this mean for children in vulnerable families? There is no indication they have been considered.

[8] We note from the Regulatory Impact Statement<sup>7</sup> that there is no evidence that the legislation will actually work to move sole parents back into work, or improve outcomes for the children (which should be the policy goal). Paragraph 3 says: “The key assumption underpinning this analysis is that work will become available for people...” It then goes on:

“There is no research currently available which accurately quantifies the size of the behavioural response from these changes in policies. This prevents estimates, with the degree of accuracy required, from being made of the number of people who will move from benefit to work over a year, as a result of the proposed changes. The inability to determine firm numbers of people shifting from benefit to work as a result of these changes is due to the difficulty of separating out the effect of the policy changes from the effect of changes in other influences such as economic and labour market settings (e.g. employment growth, minimum wage increases). Some broad estimates of magnitude can be made based on previous experiences of similar policy changes.”

[9] The “previous experience” referred to was the work-testing of DPBs introduced by National in 1998. The evaluation of this reads:<sup>8</sup>

“Analysis of administrative data of multiple cohorts of recipients revealed that following the policy changes, there were large changes in the propensity of recipients to either declare their earnings or in their likelihood of being off the benefit. These changes were consistent with the expected impacts of the policy change on participation in part-time and full-time employment. However, there was also an increase in the likelihood of being off the benefit for recipients with a youngest child aged 6-13 who were

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<sup>7</sup> The link to this is on the same webpage as the cabinet papers.

<sup>8</sup> Department of Labour and Ministry of Social Development (2004), *Evidence to date on the working and effectiveness of ALMPs in New Zealand*, p. 63. Available <http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/evaluation/evidence-effectiveness-almeps-nz-report.doc>.

subject to a part-time work test. This makes it difficult to attribute the results to the policy changes. It is possible that the policy changes had a 'signalling effect', leading to wider changes in full time employment propensities than expected, or, there may have been general improvements in employment conditions and other policy changes, leading to some of the shift..."

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

[10] We submit that this is an inadequate basis upon which to threaten effectively the income and wellbeing of thousands of sole parents and their children.

### ***Human rights implications***

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

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

[12] The proposed worktest and sanctions for non-compliance imposes a disadvantage on DPB-SPs, as it is only this group to whom the worktest applies: "The different treatment also stigmatises this group (DPB-SP) as less worthy of

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<sup>9</sup>[http://www.justice.govt.nz/policy-and-consultation/legislation/bill-of-rights/@@view\\_by\\_date#year-2010](http://www.justice.govt.nz/policy-and-consultation/legislation/bill-of-rights/@@view_by_date#year-2010)

support than widows and older women alone...” On the other hand, the report then goes on to state that despite this stigma, it is not DPB-SPs who are at a disadvantage, but those who do not receive the benefit of the worktest: “...[the Bill] perpetuates a stereotype of widows and older women as less capable of being economically independent...” The report concludes: “the Bill does not create a fairer system or encourage beneficiaries to enter or return to employment...The limit [to freedom from discrimination] is not rationally connected to the Bill’s stated objective.”

[13] That is, the Bill can be seen to confer a disadvantage on two different groups, and, in the process, “does not create a fairer system or encourage beneficiaries to enter or return to employment”.

[14] We submit the issue of discrimination needs to be considered seriously by the Committee. A disadvantage that cannot be justified because it is not rationally connected to the stated purpose of the Bill, and signals that the government does not feel bound by its own human rights legislation.

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

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

[16] CPAG submits that it is not “reasonable” to expect sole parents whose eldest child is aged six or over when there are no provisions contained in the Bill to

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<sup>10</sup> Contrary to a pre-election promise.

promote the protection of parents and children in cases where children or their parents are sick, disabled, reside in areas of high unemployment, or have other barriers to work that reduce the capacity to find *and keep* employment.

- [17] Where disadvantage has been identified, MSD proposes dealing with it by reducing support. Widowers have no equivalent to the DPB-WA, and must either work or apply for an unemployment benefit. They note: “There is no reason to treat women over 50 who are no longer married or caring for others any differently from the way we treat men over 50 in the same circumstances.”
- [18] CPAG is disappointed that, despite the talk of support, there is a suggestion that eliminating discrimination will be achieved by cutting support for those already disadvantaged in the employment market.

### ***Treasury’s comments on the Bill***

- [19] The cabinet papers note Treasury “raised concerns over the introduction of a part-time work test for people on Sickness Benefit”. They recommended that the worktesting of those on health and disability-related benefits be considered by the Welfare Working Group “in the context of other changes to the benefit system.” They note the SB is not appropriate for a part-time work test as it is a stop-gap for people who will return to full-time work (which, they note, most do). They also note the minimal financial gain (about \$1 per hour for someone on the minimum wage) for each hour worked beyond the abatement threshold. Moreover:<sup>11</sup>

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

- [20] We submit that Treasury’s advice be followed, and that the changes this Bill seeks to implement be put to one side until such times as the Welfare Working Group has had a chance to consider some of the issues in depth, and reported back. It is difficult to see what the justification for this Bill is when these very issues are up for public discussion, unless it is to cut across any recommendations that may be contrary to the government’s preferred ideological stance.

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<sup>11</sup> Cabinet paper “Obligations and sanctions”, p. 11.

- [21] It is proposed to introduce a \$500 loan for course-related costs to assist sole parents to study. According to the Minister: “It is important that DPB sole parents are able to attain higher-level qualifications because these qualifications allow sole parents to get better-paying jobs.” The loan is preferred because people who wish to study “should be prepared to invest in themselves”. But: “Treasury does not support the loan proposal, as it considers that a \$500 loan is unlikely to have a significant impact on an individual’s decision to study. The proposal therefore carries a deadweight cost by providing funding to those who will already study.”
- [22] When the Minister scrapped the Training Incentive Allowance, the loan scheme was proposed to offset this. There appears to have been no analysis of the respective merits of the two systems, and the loan proposed in the Bill is unlikely to improve many sole parents’ ability to study.
- [23] The cabinet papers<sup>12</sup> also note that long-term, full-time study (eg for a degree) does *not* qualify as work: “Work will be the primary focus.” This stance seems at odds with the Minister’s reported comments on the value of education and training, especially in the light of the evident rewards of her own education, and recent acceptance of a scholarship to study overseas while retaining her cabinet post.
- [24] We also raise the possibility that by allowing those with children under 6 to study, but not those with older children, the government is ignoring its own human rights obligations. Moreover, the evidence clearly shows that the route to long-term, well paid work is better skills and training, and it is puzzling that the Minister has moved to shut this option off for others.

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- [25] The Bill introduces a worktest for DPB-SP when their youngest child turns six. They will “be required to look for and accept” suitable part-time work of at least 15 hours per week.
- [26] There are no obvious protections in the legislation to protect women with violent ex-partners or parents with chronically sick or disabled children, or parents taken on a 90-day trial then laid off. The only concession appears to be a provision “to provide a work test structure applying to all work-tested beneficiaries that is sufficiently flexible to take account of an individual beneficiary’s circumstances” (clause 26).
- [27] We submit this is insufficient protection, and the Bill must include a clause that specifically exempts parents in situations where they and their children would be at a disadvantage from the requirements of the worktest. While this might provide a loophole for some, we submit that there is ample evidence that sole

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<sup>12</sup> Paper B: Obligations and sanctions

parents do work when work is available, and will often go out of their way to do so. We submit that the greater evil of imposing an unworkable regime on vulnerable parents outweighs the possibility that some small percentage of parents might use such a clause as an opportunity to avoid work.

[28] Clause 13: This raises the income abatement threshold from \$80 to \$100 for DPBs.

[29] We submit that in order for this to be contribute to the relief of child poverty and make work pay, rather than serve as mere window dressing, this threshold be raised to around \$160, which is closer to what it would be had the amount been indexed since it was set in 1986.

[30] We also submit that (1) given the increased likelihood that those with long-term disabilities will be forced onto a Sickness benefit, and (2) because Sickness Beneficiaries will be subject to a worktest, that this increased threshold also applies to them.

[31] We note Treasury's observation that the returns to Sickness Beneficiaries from working will be in the order of \$1 per hour. We submit that if the threshold is not raised, an alternative would be to lower the earnings abatement rate from its current 70c in the \$ to 30c in the \$, which is the rate faced by DPBs and invalids beneficiaries for incomes between \$100-180.

[32] We note the changes outlined in Clause 18, that changes the definition of 'personal development and employment plan' for recipients of the Independent Youth Benefit. The Bill seeks to omit references to economic and social participation, and capabilities other than employment capabilities.

[33] Often, through no fault of their own, many young people in receipt of the IYB do not have the social or work skills necessary to move into the workforce, and remain there.

[34] We submit that this clause be deleted, and that the PDEPs remain as is, so as to give young people an opportunity to gain the skills to participate in the workforce in the manner most appropriate for their needs.

[35] Clause 21 seeks to overturn a recent High Court decision upholding the existing legislation, which states that rent is the cost of staying in a property. This can include non-rent expenses such as water and electricity.

[36] We submit that this clause be deleted and that accommodation cost remain as set out by the High Court. In the event that this clause proceeds, we submit that there be a formal mechanism set out for determining how costs are decided, for example a note from a landlord.

[37] Clause 23, new Section 6A. This authorises the chief executive to pay the whole or part of a benefit advance to the supplier of goods and services to the beneficiary.

[38] CPAG is surprised that a Bill aiming to reduce dependency has taken this paternalistic approach. We submit that in order to protect beneficiaries and the

taxpayer from torts, that this clause includes a provision that payments to suppliers are to be made only with the express written consent of the beneficiary.

- [39] New sections 6B and 6C provide that a benefit advance can be refused if the beneficiary *or the beneficiary's spouse or partner* has failed to take reasonable steps to reduce costs, etc.
- [40] CPAG is concerned that this clause is punitive for invalids or sickness beneficiaries and their families who have reduced capacity for work to improve their circumstances. They already have compromised health and needs that require extra assistance as the benefit does not and never will fully or adequately meet their needs under current regime. There is little room for reduced costs under these circumstances.
- [41] We submit that this is open to abuse by both the Ministry of Social Development (what is a 'reasonable' step?), and puts people with violent or abusive partners, or partners who have drug/alcohol/gambling addictions in a very vulnerable position. Where the advance is required for families with children (the most frequent scenario), there is a real risk that the children will be vulnerable to the behaviour of the adults around them.
- [42] We submit that this clause be removed.
- [43] Clause 27, new section 102. This requires a beneficiary to "accept any offer of suitable employment, including temporary employment or employment that is seasonal or subsidised". This clause is completely unsuitable for parents, and places an unreasonable obligation on them, especially given that it is so difficult to get back on a benefit. The goal must be for children to have a stable and adequate income. This clause completely undermines this goal.
- [44] We submit this the phrase "including temporary employment or employment that is seasonal or subsidised" be deleted.
- [45] More generally, CPAG is concerned that there is no clear definition of the terms used in the Bill, such as work activity, other activity, certain activity, suitable job etc and what these activities exactly entail. We submit there needs to be a great deal more clarity around these terms prior to the Bill passing into law, especially given the consequences for children of this legislative inexactitude.
- [46] CPAG is concerned that sanctions will continue to apply to sole parents who do not comply with their worktest obligations. Obviously, this places children at considerable economic and social risk. We submit that sanctions be repealed altogether, or scaled back significantly at least until some of the vague drafting of the Bill is improved, and until the meaning of the terms related to work testing is clarified.
- [47] We note Clause 46-48 relate to childcare assistance, and intend to restrict access to childcare subsidies.

- [48] We submit that the provision repealing the CPI adjustment of the income threshold be removed. Restricting access to childcare subsidies at the same time as imposing an obligation on sole parents to work is ill conceived and is likely to be self-defeating.
- [49] CPAG is concerned that the quality of childcare will be adversely affected by these changes. In a world of increasing violence and antisocial behaviour exhibited by young children, New Zealand can ill afford reduced standards of childcare.
- [50] We also submit that the present childcare income thresholds remain in place and are indexed. We acknowledge that not many beneficiaries working part time are likely to be affected by these changes, but many thousands of other families will. Research is clear that the single biggest barrier to women to sole parents re-attaching to the labour market is the lack of affordable childcare. In New Zealand this holds true across all income and social strata.
- [51] New Zealand spends less on caring for the very young than any other comparable OECD country.<sup>13</sup> The clauses in this Bill seeking to further reduce childcare assistance are a retrograde step, and CPAG submits these clauses be removed.

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<sup>13</sup> OECD (2009) Doing Better for Children. Paris: OECD.