Child Poverty Action Group
PO Box 5611
Wellesley St
Auckland 1141
www.cpag.org.nz

CHILD POVERTY ACTION GROUP

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SUBMISSION ON THE SOCIAL SECURITY LEGISLATION REWRITE BILL

To the Social Services Select Committee

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BACKGROUND

Child Poverty Action Group (CPAG) is an independent charity working to eliminate child poverty in New Zealand through research, education and advocacy. CPAG believes that New Zealand's high rate of child poverty is not the result of economic necessity, but is due to policy neglect and an ideological emphasis on flawed economic incentives. Through research, CPAG highlights the position of tens of thousands of New Zealand children, and promotes policies that address the underlying causes of the poverty they live in.

We would like the opportunity to present an oral submission.

Contact: Catriona MacLennan Email: admin@cpag.org.nz

OVERVIEW

New Zealand's original social security legislation, the Social Security Act 1938, won praise as the greatest political achievement in this country's history. It specifically and unashamedly aimed to provide the support needed by all New Zealanders in hardship, and ensure that job loss, sickness, illness and other misfortunes did not lead to permanent hardship for individuals and families. In recent decades there has been a move away from this philosophy towards a suspicious approach to those receiving benefit help, and the imposition of a large number of obligations and sanctions on them. This approach is immensely damaging to children and is preventing them from obtaining a good start in life and growing up to be fully contributing members of society. CPAG advocates a return to the philosophy of the 1938 act, with the key focus being to ensure that no New Zealander slips through the cracks and is unable to obtain the help he or she needs.

Media publicity and widespread public debate in May 2016 demonstrate clearly that there has been an ongoing, serious and comprehensive failure of New Zealand's welfare system. There has been extensive publicity about people living in cars and garages. Te Puea marae in Mangere has opened its doors, and it and members of the public are now providing accommodation, food, blankets and clothes to those in need.

In addition, repeated "Impacts" by Auckland Action Against Poverty have seen hundreds of people queue outside Work and Income offices to receive advice and assistance from AAAP volunteers: this is specifically the work that MSD is funded to do.

At AAAP's Impact in Mangere in 2014, hundreds of people came to obtain assistance. At the most recent Impact in Mangere in April 2016, there were again hundreds of desperate people seeking help. Some queued for hours and dozens had to be turned away because the more than 100 volunteers could not assist them all.

A 2014 report by Community Law Canterbury titled *Access to Justice for Beneficiaries* outlined the significant barriers faced by beneficiaries in obtaining benefit assistance and legal advice. The research detailed the humiliation many beneficiaries felt when seeking help.

In recent years, Work and Income has run public campaigns inviting people to dob in benefit fraudsters, and bonuses for staff have been tied to detecting fraud. It is CPAG's experience that those seeking benefit assistance require an advocate to ensure that they obtain all the help to which they are legally entitled. This situation is the opposite of the philosophy of the 1938 act: to provide help to those in need.

Successive Ministers of Social Development in the past few years have released figures trumpeting a reduction in the number of people receiving benefits, as though this was both a goal and an achievement in itself. CPAG does not agree with this: the most likely explanation is that people have become so discouraged by the barriers they encounter in seeking support, that they have given up trying to obtain the assistance to which they are legally entitled. As well as the stress on the individuals concerned, the ultimate outcome that can be anticipated is significant costs to the health system when seriously-ill people present themselves at hospitals with major and chronic health conditions which could have been prevented if people had been provided with assistance at the outset.

CPAG submits that the Social Security Legislation Rewrite Bill provides the opportunity for an overhaul of the philosophy, purposes and principles of the legislation, but also of the operation of MSD. MSD should return to a single focus on providing assistance to New Zealanders suffering hardship. Achievement of this goal should be the Key Performance Indicator for the chief executive. There should be regular measurement of MSD's performance in relation to this goal.

In addition, CPAG finds it remarkable that the bill does not anywhere refer to poverty or describe the reduction of poverty as a key aim of social security. CPAG believes that the purposes and principles clauses of the bill should be rewritten to reflect the 1938 act's goal of providing adequate help to those in need.

CLAUSE BY CLAUSE SUBMISSIONS ON BILL

PURPOSES AND PRINCIPLES OF THE SOCIAL SECURITY ACT

New Zealand's first Social Security Act, the Social Security Act 1938, was passed on 14 September 1938. An article on the Ministry for Culture and Heritage's website notes that the legislation has been described as "the greatest political achievement in the country's history."[1]

New Zealand in the decades prior to 1938 had been winning attention and praise as the "social laboratory of the world." Women won the vote in 1893 and pensions for the elderly were introduced in 1898. The Social Security Act 1938 laid the cornerstones for the welfare state by introducing a comprehensive benefit system. Prior to the legislation, there was only a limited system of family allowances and benefits. The act extended that to families, the unemployed and invalids. The philosophy was that every New Zealand citizen had the right to a reasonable standard of living and that the community collectively was responsible for supporting those who could not support themselves. Prime Minister Michael Joseph Savage said that a new principle had been introduced by the act –

"[C]itizens of the Dominion are insuring themselves against the economic hardships that would otherwise follow those natural misfortunes from which no one is immune."[2]

A H McLintock in *An Encyclopaedia of New Zealand* explained the rationale as follows –

"Although the Social Security Act of 1938 was built on schemes which had been evolved over a period of 40 years, it went considerably further by increasing benefits on a more uniform pattern, in making qualifying conditions less restrictive, and in creating new classes of benefits. Those responsible for the formulation of the social security scheme in New Zealand rejected the insurance concept and accepted the care and welfare of citizens as a national responsibility. Thus there was no matching of benefits with contributions; hence contribution to the Social Security Fund is not a condition for the receipt of a benefit. The restrictions which had hedged the granting of pensions had caused many people to feel that pensions were a form of charity. The term "pensions" had grown to be somewhat distasteful and was dropped in favour of "benefits."…
"A national social security consciousness had been growing steadily over the years, of which the Social Security Act 1938 can be regarded as an expression. It should be noted, however, that this growth took place at two critical periods shortly prior to 1898 and 1938 when the country was

[1] "Social Security Act passed 14 September 1938," http://www.nzhistory.net.nz/from-the-cradle-to-the-grave-parliament-passes-the-social-security-act.
[2] "The New Zealand Social Security Act," Almon F Rockwell in Bulletin, May 1939, page 3.

recovering from, and still had memories of, very severe economic crises, which resulted in real hardship in the community.
"Until 1938 New Zealand's pensions were confined to the aged, invalids, the blind, widows, and miners, with a limited system of family allowances. The Social Security Act introduced a new concept – namely, that every citizen had a right to a reasonable standard of living and that it was a community responsibility to ensure that its members were safeguarded against the economic ills from which they could not protect themselves. The inspiration of the Social Security Act was the determination to end poverty in New Zealand. A comprehensive system of benefits was thus established covering all the main economic hazards which in the past had been the cause of poverty. The Act of 1938 had three mains objects: to substitute for the existing system of non-contributory pensions a system of monetary benefits to which citizens would contribute according to their means and from which they could draw according to their need; to provide a universal superannuation; and to inaugurate a universal system of medical care benefits." [3]

The long title to the 1938 act stated that it was –

"AN ACT to provide for the Payment of Superannuation, Benefits and of other Benefits designed to safeguard the People of New Zealand from Disabilities arising from Age, Sickness, Widowhood, Orphanhood, Unemployment, or other Exceptional Conditions; to provide a System whereby Medical and Hospital Treatment will be made available to Persons requiring such Treatment; and, further, to provide such other Benefits as may be necessary to maintain and promote the Health and General Welfare of the Community. [14th September, 1938."

CPAG submits that the 1938 long title was a correct statement of the purposes and principles of the Social Security Act and there should be a return to it. In recent years, successive governments have amended the purposes and principles of the act to emphasise the importance of work and to downgrade the state and community responsibility to support and assist those who are not able to care for themselves properly – whether that is on a temporary or a permanent basis.

The principles of the current act are set out in section 1A. The purposes are set out in section 1B.

Both of these sections emphasise the need for people to obtain paid employment and to use their own financial resources to support themselves. They also place qualifications on support for people in hardship – for example, by stating that the purpose of the act is "to enable in certain circumstances the provision of financial support to people to help alleviate hardship."

[3] "Scope of Legislation of 1938," from An Encyclopaedia of New Zealand, edited by A H McLintock, originally published in 1966. Te Ara – the Encyclopaedia of New Zealand, updated 22-Apr-09 http://www.teara.govt.nz/en/1966/social-security/page-2.

Those purposes and principles are carried forward into clauses 3 and 4 of the bill.

CPAG submits that this approach is flawed. It is based on a philosophy that work is the way out of poverty. That is no longer true. There are many New Zealand families in which both parents are working, but are unable to earn enough to pay the family's basic expenses. This is a result of very low wages, including a low minimum wage which is around 30 per cent beneath a living wage, as well as the casualisation of jobs and a high degree of insecurity of work. An example of this is zero hours' contracts. The most recent incomes report from the MSD shows that slightly more than one-third of those children living below the income poverty line are in households receiving their income from paid work.[4]

The Quarterly Labour Market Report for the March 2016 quarter was released by the Ministry of Business, Innovation & Employment in May 2016. It recorded that 144,000 people, or 5.7 per cent, were unemployed, up 10,000 on the previous quarter.

The unemployment figures do not accurately reflect how many people have very insecure work, do not earn enough to live on, and have varying hours of work and of income each week. In addition, they do not include people who have given up looking for work, or who are for other reasons not recorded in official statistics. The demand for more work in New Zealand is plain from the very large numbers of people applying for low-paid and unskilled work – such as the large queues of people seeking work when new supermarkets open.

Globally, millions of jobs are disappearing as a result of technological advances and there is no comprehensive effort to create new jobs. Emphasising paid work as a the solution to poverty and making life difficult for those who cannot obtain enough paid work to support themselves financially, is punishing people for problems which are not of their own making.

Extremely high rents, particularly in Auckland, are another major contribution to financial hardship for families. There has been a large amount of publicity recently about Auckland families sleeping in cars and garages, or with large numbers of people crammed into one house.

[4] Perry, B. 2015 Household Incomes in New Zealand, Trends in indicators of Inequality and Hardship – Table H 8.

In addition, nowhere in either the purposes or the principles of the current legislation or of the bill is there any statement about the value of parenting and the importance of parents being able to spend large amounts of time with their children. CPAG does not agree that working in paid employment for parents of young children results in the best outcomes for the children. CPAG submits that the welfare and best interests of the children should be given priority. This would mean financially supporting parents to be able to care properly for their children – particularly when the children are very young and when only one parent has primary care of the children.

New Zealand, like many other countries, has an ageing population. This is requiring children to accept increasing responsibility for the care of ageing and often ill parents. It is far cheaper for the state if elderly people remain living in their own homes, with support from their families and perhaps from paid support workers. The purposes and principles in the bill give no acknowledgement to the value of this unpaid work, and do not recognise the time it occupies. If the ultimate outcome of making paid work the top priority and forcing as many people as possible into paid work is that children can no longer care for their parents, the state will be required to pick up a massive bill for providing that care itself.

CPAG does not support the purposes and principles set out in the bill. Instead, CPAG submits that they should be rewritten to provide for a return to the philosophy of the 1938 act. CPAG submits that the primary focus of the Social Security Act should be on supporting all New Zealanders in hardship, and on ensuring that no-one falls through the cracks. It is children who are the worst affected when families' incomes are inadequate. This flows through into long-term impacts including poor health, lack of education and inadequate work skills. In turn, this leads to expenses for the health and benefit systems and reduces the ability of those children when they reach adulthood to work and to contribute to the economy.

CPAG is particularly concerned about the principles set out in section 1B of the current act and carried into the bill with the addition of one more clause at the end. The principles in the bill require every person exercising or performing a function, duty or power under the act to have regard to five principles.

The first of these is that "work in paid employment offers the best opportunity for people to achieve social and economic well-being." CPAG does not agree that is the case for sole parents of young children. It is far more important that

the parent is supported financially and in other ways to care properly for the children and to give them the best possible start in life. Investment in children results in long-term savings to the economy.

"Long-term welfare dependency"

The new, fifth principle in clause 4 of the bill requires those exercising functions under the legislation to have regard to the principle that "to help achieve the best possible outcome for people at risk of long-term welfare dependency…MSD may identify appropriate assistance, support and services, under this Act, for those people." Schedule 2 defines the risk of long-term welfare dependency, in relation to a person, and for the purposes of clauses 4(e), 150, 153 and clause 16 of Schedule 6, as the risk that the person –

(a) will, for an indefinite period, not be able to obtain full-time employment; and
(b) will be likely to remain wholly or largely dependent for the person's financial support on all or part of a main benefit under this Act."

CPAG opposes the inclusion in the legislation of the phrase "long-term welfare dependency." This makes welfare a burden, rather than the responsibility of a compassionate community. Those with chronic illnesses, who have suffered severe accidents or injuries, or who are bringing up children, should not be financially punished for the situations in which they find themselves. Such a philosophy was absent from the Social Security Act 1938 and its inclusion in the bill is a severely retrograde step. Use of such a phrase also implies that it is economic contributions to a community which are the most important. That is not the case – there are many different ways in which people can make valuable contributions to society.

Investment approach

Clause 4(e) provides that those performing functions under the legislation must have regard to the principle that MSD may "identify appropriate assistance, support and services, under this Act, for those people." CPAG supports people receiving assistance and services. However, in the context of these principles and the reference to the risk of "long-term welfare dependency," it appears that initiatives are likely to be heavily-focused on pushing people into paid work, when they might not be in a position to perform it, or the job might be unsuited to their medical condition and skills.

Clause 4 (e) effectively writes into the act the Government's "investment" approach to social security. While CPAG in principle supports an investment approach which provides those in hardship with the support and resources

required to sustain themselves and their families and to improve their futures, CPAG is concerned that this is not in fact what the investment approach involves.

Then-Minister for Social Development Paula Bennett on 12 September 2012 announced further details of the investment approach. At the same time, she released figures claiming that the lifetime cost of the current beneficiary population had "been put at $78 billion by experts."[5] CPAG does not support this figure or the way it was calculated. When the report from which the figure was taken was released in 2012, details supposed to be included at the end of the report were missing. The author of this submission requested these details from the Ministers office, and was never provided with them. The figure is based on flawed assumptions and appears designed to be a statistic the Government can use to assert that beneficiaries are a drain on the public purse.

CPAG endorses the views expressed by CTU Policy Director/Economist Dr Bill Rosenberg in a September 2015 paper titled "The Investment Approach is not an investment approach."[6] Dr Rosenberg stated that, rather than being a balanced investment view, the so-called investment approach was better viewed as a one-dimensional performance indicator.

"Far from being an investment approach to social welfare, it focuses on costs to the government, fails to incorporate either benefits or full costs, and makes invalid assumptions about outcomes for beneficiaries which are central to its logic. In its current form it is a recipe for reducing government expenditure. This narrow, uni-dimensional approach has implications for MSD clients and the impact of its services on wider society but it also has much wider significance because of the plans to expand its use."[7]

Dr Rosenberg went on to state that the "future welfare liability" of beneficiaries was portrayed solely as a fiscal liability.

"The reduction in size of that estimated fiscal liability is then used as an objective for policy purposes to prioritise interventions such as stricter employment requirements for single parents and intensive supervision for young people.

"The fundamental flaw with this procedure is that it looks only at costs to the government and at nothing else. This problem is acknowledged by the Productivity Commission in its final report on commissioning of Social Services (New Zealand Productivity Commission, 2015,pp 224-237), which draws a distinction between the MSD's Investment Approach (calling it "MIA") and an "investment approach" with the qualities it desires. It says that the MIA is "not a cost-benefit analysis," and

[5] "Investment approach refocuses entire welfare system," Paula Bennett, Media Release, 12 September 2012.
[6] "The Investment Approach is not an investment approach," Dr Bill Rosenberg, Paper, 16 September 2015.
[7] Ibid, page 1.

recommends that "it should be further refined to better reflect the wider costs and benefits of interventions" having noted that "slavish application of an investment approach based purely on costs and benefits to government [like the FWL] might lead to perverse outcomes" giving as an example that early deaths from obesity would reduce future fiscal liability."[8]

CPAG does not support the investment approach being written into the Social Security Act and submits that it should be deleted from the bill.

CLAUSE 7

Clause 7 provides that the Minister of Social Development may give MSD general or special written directions "about MSD's performing or exercising any duties, functions or powers of MSD under enactments in, or made under, either of both of this Act and the New Zealand Superannuation and Retirement Income Act 2001."

CPAG submits that this clause should be rewritten to include a specific provision relating to debt recovery – see submission on clause 341, page 30.

CLAUSE 8

Clause 8(2) provides that MSD may make a determination to regard as single, for the purposes of the decision, an applicant or beneficiary who is married or in a civil union but is living apart from a spouse or partner, and is not in a de facto relationship.

CPAG believes that benefit entitlements should be individual entitlements. They should not be dependent on, or related to, marital or de facto status. The assessment as to need for – and entitlement to - a benefit should be made on the basis of the individual's own circumstances.

The current situation of basing entitlement on relationship status causes confusion and has resulted in MSD incorrectly applying the law for decades. The legal test for "relationship in the nature of marriage" is difficult to understand and apply.

The Court of Appeal decision in *Ruka v Department of Social Welfare* [1997] 1 NZLR 154 held that then- Department of Social Welfare had been incorrectly applying the law in relation to relationships in the nature of marriage. When the Court of Appeal decision was released, the Government's immediate reaction was to draft a bill to overturn the judgment. The general election then intervened, halting progress of the bill.

[8] Ibid, page 3.

Ever after the Court of Appeal decision, the department continued to misapply the law, disregarding the judgment and dealing with such cases on the basis of policies and an interpretation of the law rejected by the Court of Appeal. Barrister Frances Joychild was appointed to review the department's actions. The 2001 Joychild Report found "strong evidence" that an incorrect test for entitlement to the Domestic Purposes Benefit had been applied, and recommended that all 15,600 cases be reviewed by the department.

Schedule 2 of the bill provides that "**de facto partner** and **de facto relationship**" have the same meanings in sections 29 and 29A of the Interpretation Act 1999. Schedule 2 further provides that -

"**in a relationship,** for a person, means that the person is –
(a) married; or
(b) in a civil union; or
(c) in a de facto relationship."

The meaning of "relationship" continues to be a difficult concept. CPAG submits that moving to a system in which entitlement to benefits was determined on the basis of individual circumstances would remove these problems.

CPAG notes that clause 8 omits the phrase "relationship in the nature of marriage" which is contained in section 63(b) of the current act and which has caused so much confusion and misapplication of the law over decades. While CPAG welcomes the abandonment of the phrase, CPAG is concerned that, if its submission that benefits should in future be individual entitlements is not accepted, there will be a new period of confusion as the meaning of the clause 8 provisions is defined, both by MSD and, later, by the courts. This will cause considerable uncertainty and has the potential to cause hardship to beneficiaries. There is no detailed explanation of how MSD proposes to define "in a de facto relationship."

CLAUSE 26

Clause 26 provides that a person is not entitled to or eligible to be granted jobseeker support if the person is a full-time student or MSD reasonably believes that the person became unemployed to took leave with or without pay from employment for the purpose of undertaking employment-related training.

CPAG believes that education is crucial to ensuring that both parents and children can prosper and obtain permanent, well-paid work. CPAG submits that the emphasis in the bill should be on supporting as many people as possible to continue education and training, rather than reducing financial support for those who are seeking to improve their qualifications and skills.

CLAUSES 29 – 31

At present, only one of the separated parents of children who share the care of the children can receive sole parent support. The bill proposes abolition of the prohibition on both parents receiving the benefit. CPAG supports better financial support for parents as this benefits children. However, CPAG is concerned that the introduction of this provision could place parents under financial pressure to separate children as this would be financially advantageous to the family.

The separation of parents is extremely traumatic for children. CPAG believes it is important for children to be kept living together so they can support each other at this very stressful time in their lives.

CLAUSE 32

CPAG does not support the general policy outlined in this clause of ending payment of sole parent support when the youngest dependent child in a beneficiary's care turns 14.

Children in New Zealand are required to attend school until at least the age of 16. Teenage children are exposed to many risks and sole parents seeking to care for teenagers as well as work face many stresses and are likely to have only limited time to spend with their children. Evidence from the United States Workfare Programme indicates that many of the most damaging effects of the welfare reforms there were experienced by teenage children.

Education past the age of 16 is increasingly important for young people in an era of shrinking jobs and growing needs for a high degree of technological competence. CPAG is of the view that money should be invested in helping sole parents to support teenagers as much as possible, rather than trying to force those parents into any available paid work at the earliest opportunity.

CPAG submits that clause 32 should be deleted from the bill.

CLAUSE 59

Clause 59 provides that an exceptional circumstances benefit may be granted on the grounds of hardship. The exceptional circumstances benefit is a new benefit introduced by the bill, and replaces the current emergency benefit.

The bill, for the first time, in clause 59(5) gives MSD a discretion to make the grant of the exceptional circumstances benefit subject to any conditions imposed by MSD; and to impose work-test or work-preparation obligations and associated sanctions. CPAG submits that this clause should be deleted. Emergency or exceptional circumstances are by definition unexpected and urgent. CPAG submits that the ministry's core concern should be to ensure that people in such situations speedily receive the support they require and can be assisted to achieve permanent and satisfactory solutions to their problems as soon as possible, rather than assessing whether obligations and sanctions should be imposed on them.

At present, a majority of people receiving the emergency benefit are aged over 65. Age discrimination means it is extremely difficult for older people to obtain jobs. CPAG does not support adding to the stress of their circumstances by imposing work-test or work-preparation obligations on them, when there is a low chance of them being able to obtain employment.

CLAUSE 81

Clause 81 provides for temporary additional support, which is not required to be repaid by beneficiaries. CPAG does not support beneficiaries being required to repay temporary additional support, benefit advances or any other additional, limited or temporary help. If beneficiaries were not unable to make ends meets they would not be seeking extra help. Requiring them to repay additional assistance simply drives them deeper into financial difficulty. The immense hardship caused by requiring repayments is currently illustrated by the plight of homeless people in Auckland who are racking up debts of thousands of dollars of debt to MSD for temporary accommodation in motels.

CLAUSE 89

CPAG supports clause 89, which provides that MSD may continue to pay a supported child's payment to a child aged over 18 who is still in education. However, CPAG submits that this clause should be amended to permit the payment to be paid until the end of the year in which the child turns 21.

PART 3 – OBLIGATIONS

Earlier in this submission, CPAG stated its belief that the purposes and principles both of the current Social Security Act and of the bill contain an undesirable focus on work and fail to articulate the importance of supporting every New Zealander in need and hardship, and ensuring that no-one falls through the cracks.

CPAG is of the view that this flawed philosophy is epitomised by the fact that clauses 15 to 89 of the bill deal with assistance to beneficiaries. However, clauses 90 to 167 deal with obligations. This means that 74 clauses deal with assistance but a larger number of clauses – 77 – deal with obligations. Further, only three clauses deal with MSD's obligations, while 74 clauses are devoted to the obligations of beneficiaries. There should be an obligation on MSD to ensure that beneficiaries are receiving all the assistance to which they are entitled. There is extensive evidence from social services agencies that beneficiaries accompanied by an advocate receive assistance which they had previously been denied.

In addition, clauses 168 to 213 deal with factors affecting benefits – largely matters that may punish a beneficiary by reducing a benefit. Clauses 214 to 276 deal with sanctions and offences. Accordingly, a large proportion of the legislation is now devoted to provisions which punish, check up on, or sanction beneficiaries.

This demonstrates an attitude far removed from the philosophy of the original 1938 act, which was to ensure that all New Zealanders in hardship received the assistance they required.

CLAUSE 99

CPAG is concerned about this provision. This submission discusses elsewhere the ongoing problems with the meaning and interpretation of the phrase "relationship in the nature of marriage." Relationships are not fixed but rather develop and change over time. The exact point at which a relationship becomes a "relationship in the nature of marriage" or "de facto relationship" is extremely difficult to determine.

CPAG submits that the emphasis should be on ensuring that families at all times have adequate financial support, rather than on seeking to cut off benefits at the earliest time that a new relationship can be said to have developed into a "relationship in the nature of marriage" or "de facto

relationship." There is no precise means of determining exactly when that occurs and it is unacceptable for beneficiaries to be punished because they do not fully understand this complex law, or because their interpretation of it differs from the MSD interpretation.

When violence is involved, the women and children have virtually no control over the living circumstances. The violent partner comes and goes as he pleases, and the beneficiary is unable to predict his movements. In *Ruka v Department of Social Welfare,* the Court of Appeal held that such relationships were not relationships in the nature of marriage for the purposes of the Social Security Act. However, MSD has continued to focus on denying benefits to women rather than on giving priority to the safety of women and children and to ensuring they are financially supported.

A recent example of this occurred on 13 August 2014, when a Balclutha woman was sentenced to two years' jail after being convicted of benefit fraud. She was also ordered to pay $132,000 reparation. The woman's lawyer told the court that she had been in an abusive relationship and had asked her husband to leave. It was at that point she signed up for a benefit.

But the Ministry for Social Development prosecutor said that there was a lack of evidence "beyond written submissions from her children, of the alleged abuse of her late husband."

This displays a complete lack of understanding of domestic violence. Obviously, abusers do not generally assault their partners in front of independent witnesses. The role of MSD should have been to provide support to this woman and her children, not to prosecute her and then press the judge to impose a jail sentence on the woman. This separated the children from their mother, leaving them with no parent to care for them as their father had by then passed away.

An approach focused on the best interests of the children would have been to ensure the woman had adequate income to support herself and her children, and to assist her in keeping the family together. Instead of doing that, the MSD prosecutor argued that a jail term should be imposed, telling the judge –

"What would the man on the street think to hear that such serious offending received home ~~detention ?~~ detention? My submission is that he would be surprised."[9]

[9] "Jailed for 2 years for $130k benefit fraud," Otago Daily Times, 14 August 2014, http://www.odt.co.nz/regions/south-otago/312525/jailed-2-years-130k-benefit-fraud.

As discussed earlier, women subjected to domestic violence cannot force the abuser to leave the home. This beneficiary asked her violent husband to leave, and it was at that point that she applied for a benefit.

CLAUSES 101 – 112

These clauses impose obligations on beneficiaries relating to undergoing work ability assessments and fulfilling work-preparation obligations.

CPAG does not support beneficiaries being subjected to these requirements without MSD first finding and recording jobs suitable for a beneficiary in the place in which the beneficiary lives. This submission earlier discussed New Zealand's unemployment rate and the large number of people seeking more hours of work and more secure employment. If work is not available, it is a pointless waste both of MSD's and the beneficiary's time to require the beneficiary to complete a work assessment and work-preparation obligations. It would be a far better use of the beneficiary's time for the time to be spent on caring for children.

CPAG opposes the recently-introduced requirement that parents receiving sole parent support should have to seek part-time work when their youngest child is three years old. It is far more important that beneficiaries should be able to spend time with their children and give them the care they require. Caring for children as a single parent is stressful and relentless and CPAG believes that supporting these parents should be MSD's primary concern.

CPAG does not support the sanctions set out in clause 105 and submits that this clause should be deleted from the bill.

CLAUSES 124 - 140

These clauses set out the work-test obligations the Government imposes on beneficiaries. Clause 125 sets out the purposes of the clauses, including "to ensure that work-tested beneficiaries maintain an unrelenting focus on entering, retaining, or returning to employment." CPAG does not support these purposes. CPAG submits that the key focus of parents receiving benefits should be to ensure that they and their children are properly cared for and have access to the basic necessities of life, including shelter and nutritious food.

Benefit rates are lower than the minimum required for parents and children to live on. The most important thing a beneficiary can do is to ensure that his or her children are healthy, safe and well-cared for. This is a major challenge when benefits in New Zealand are so low.

The key focus for those on jobseeker or exceptional circumstances benefits should be to ensure that they are properly housed and receiving the necessities of life. People who do not have adequate housing and access to food and heating are not able to function effectively in the workforce.

CPAG submits that clause 126(2) should be deleted.

CPAG does not support clause 140(b) and (c). There are many reasons for leaving jobs, including sexual harassment. It can take many months for employment disputes to be resolved through the legal process. CPAG is also concerned about the position of parents on benefits, who find they simply cannot fulfil work obligations and parent their children properly – particularly in the case of sole parents, who are required to do the jobs of both parents. Both parents and children in beneficiary households, due to poor and cold, damp housing and inadequate diets, are subject to more illness and a greater range of health conditions than those on higher incomes. This has a major impact on their ability to work and fulfil their parenting roles.

CPAG submits that the emphasis of the legislation should be on supporting families and children, rather than on sanctioning beneficiaries if they fail to comply with every one of what has become a very large range of requirements.

CLAUSE 144

CPAG submits that sole parents with children under 20 should be exempted from work preparation, work test and associated obligations. Benefits levels in New Zealand are set at a low and unliveable level. If beneficiary parents are able to fulfil their parenting obligations satisfactorily and find paid work in the areas in which they live, they will certainly obtain paid work to improve their families' financial situations. They do not need to be harassed into doing so.

CLAUSE 146

CPAG does not support this clause and submits that it should be deleted from the bill. There are many reasons why beneficiaries might not be able to attend interviews. MSD's extremely inflexible procedures and the difficulty of contacting specific people in the ministry mean that it is very difficult for

beneficiaries to arrange to arrive at a time later than that specified, or to explain the reasons for their non-attendance and reschedule the appointment.

CLAUSE 148
CPAG does not support this clause and submits that it should be deleted from the legislation. The most important work a young parent can do is to parent very young children well. It is far too early to be imposing such obligations on young parents when their children are only six or 12 months old.

CLAUSE 156
CPAG does not support this clause and submits that it should be deleted from the bill.

CLAUSE 169
CPAG does not support this clause and submits that it should be deleted from the bill. When New Zealanders contact the ministry for support, the ministry's sole concern should be to provide that assistance as speedily as possible.

CLAUSE 170
CPAG submits that MSD should be required to establish conclusively that the specified communications have reached the beneficiary, if these are to be used as a basis for imposing sanctions.

CLAUSES 176-178
Clauses 176-178 replace section 70A in the current act. Section 70A imposes a financial penalty on parents on benefits who are unable to identify in law the other parents of their children. The reductions in benefit are between $22 and $28 a week – a very significant amount for single parents trying to raise children on benefits. It is children who are the worst-affected by this provision, as they are deprived of the necessities of life for indefinite periods.

As at the end of March 2016, 13,303 women had their benefits reduced under section 70A. Only 313 men were sanctioned under the policy. This means that 97.7 per cent of beneficiaries affected by the policy are women.

17,087 children are affected by a reduction in their family income.

If the parent does not identify in law the other parent of a child, a weekly reduction of $22 in the benefit is imposed. This figure is increased to $28 a week after 13 weeks. A significant number of women have benefit reductions

imposed in relation to more than one child, meaning this policy has a very large impact on their weekly incomes.

As at the end of March 2016, 2189 beneficiaries were having two deductions made from their weekly benefits due to their inability to identify in law the other parent. This means those beneficiaries were having between $44 and $58 a week deducted from their benefits. 476 parents were having three deductions made; 82 were having four deductions made; and 21 were having five or more deductions made.

The weekly deductions made from benefits in cases involving two or more children comprise an extremely significant proportion of the beneficiary's income and illustrate how punitive this policy is. If there were not extremely pressing reasons for the inability to identify in law the other parent, obviously beneficiaries struggling to survive on extremely low incomes would do so.

This policy also disproportionately affects Maori. As at the end of March 2016, 52.8 per cent of the parents having money deducted were Maori.

Section 70A (3) provides that the deduction shall not be made if the Chief Executive of the Ministry of Social Development is satisfied that –

- there is insufficient evidence to establish in law who the other parent is
- the beneficiary is taking active steps to identify in law the other parent
- the beneficiary or his or her children would be at risk of violence as a result of identifying the other parent
- there are other compelling reasons for the beneficiary's inability to identify the other parent; or
- the child was conceived as a result of incest or sexual violation.

In order to invoke the first exception, a beneficiary is required to obtain a certificate from a lawyer confirming that the beneficiary is unable to identify the other parent in law. There are very few lawyers who provide these certificates, and beneficiaries do not have money to pay lawyers to complete the certificates.

The author of this submission worked as a lawyer in a Community Law Centre and completed many of these certificates free for mothers on benefits. However, few beneficiaries in New Zealand would be able to obtain the certificates on this basis.

The third exception in section 70A(3) relates to violence. Many women are threatened by the fathers of their children with violence against themselves, their children or their pets if they provide the father's name to the ministry. The fear of the threats by the father is a far stronger imperative for these women than the sanction. Women are often not believed when they disclose domestic violence, and – with good reason – have little confidence they and their children will be protected if they reveal threats and earlier violence.

In one case in which the author of this submission acted, a father kicked a mother in the stomach while she was pregnant, killing her baby. He was subsequently violent to her on other occasions and also threatened further violence to her and her children, including by kicking her in the stomach again. After those threats, he was able to control her behaviour simply by saying to her in a quiet voice "Remember what I said to you." He also took her to the bank each benefit day and stood over her while she withdrew her benefit, and then took it from her.

Women subjected to such violence and terror are simply not in a position either to identify in law the father of their children, or to disclose the violence and threats to which they are subject.

Deductions of $28 a week in perpetuity from benefits have a significant impact on children growing up in already impoverished households. They are likely to mean there is less money to ensure the children have nutritious food, and may mean the family cannot purchase adequate warm clothing for the children.

It is assumed that the purpose of the policy in the current section 70A and the proposed clauses 176 to 178 is to assist the Government in recouping the cost of benefits paid to parents by recovering child support from the non-custodial parent. When one parent is on a benefit, the child support paid by the other parent goes to the Crown, not to the parent with whom the children live.

However, the punitive policy of section 70A is in marked contrast to other government policies. For example, in the 2015 Budget, the Government announced that it would write off up to $1.7 billion in child support penalties. Inland Revenue confirmed in June 2015 that, in each of the six years to 2015, 83 to 84 per cent of the parents owing child support debts were men. The Government's willingness to write off up to $1.7 billion while reducing the benefits of those on the lowest incomes in our community by $22 to $28 a week, seems inconsistent.

In addition, between 2008 and 2015, Inland Revenue wrote off $5 billion in tax debt. On top of that, between $1 billion and $6 billion is lost every year through tax evasion. $591 million in unpaid fines and reparation was clocked up in three years in New Zealand, and $68 million was clawed back from property speculators when Inland Revenue targeted this activity.

If the reason for section 70A is concern about the Crown accounts, there are far better ways for the Government to collect additional income.

CPAG submits that clauses 176 to 178 should be deleted from the Social Security Legislation Rewrite Bill and the policy of sanctioning parents for being unable to identify in law the other parent should be ended. This policy primarily harms the most vulnerable children in our communities.

CLAUSE 186

CPAG does not support this clause and submits it should be deleted from the bill. It is very rare now for maintenance to be awarded under the Family Proceedings Act 1980 or any other act. A person would need to take proceedings in the Family Court to obtain maintenance. Legal Aid for court proceedings is extremely limited nowadays and is primarily a loan rather than a grant. If a person sought to obtain maintenance and was left with a large legal bill to repay, this would place the family in a very bad financial position.

In addition, defended proceedings in the Family Court take years to resolve.

CLAUSE 187

CPAG does not support this clause and submits it should be deleted from the bill. Family proceedings claims are extremely expensive to pursue and take years to conclude. In addition, they impose severe stress on families and almost invariably result in permanent severing of family connections.

This would mean that a person seeking support from MSD would be likely to be cut off from family help – including financial assistance - for the rest of his or her life. Even if proceedings are taken, there is no guarantee a person will be successful with a claim. The law relating to family protection claims is very detailed and there are many reasons why a claim might not succeed.

If an estate is not a large one – as is the case with the overwhelming majority of estates in New Zealand – the cost of bringing a claim is likely to eat up almost the entire assets of the estate.

CPAG is particularly opposed to clause 187(3), which provides that MSD may intervene in court proceedings for enforcing a person's claim under the Family Protection Act 1955 and may give evidence or make submissions in support of the person's claim. CPAG considers this to be a provision which simply cannot be justified.

MSD is not an expert in family protection claims. It is entirely inappropriate that the ministry would have power to intervene in court proceedings in such a way and that it would consider giving evidence or making submissions. In addition, this would be an extremely expensive exercise for the ministry, as either its legal section or Crown Law would be required to prepare submissions and brief witnesses. The cost of this would undoubtedly exceed any financial advantage the ministry would expect to gain from not being required to pay a benefit for a period.

CLAUSES 193-200

CPAG does not support these provisions and submits that they should be deleted from the bill. If a person on bail does not attend court at the required time, a judge will generally issue a warrant for that person's arrest. However, there are many reasons why a person might not attend court at the scheduled time. These include children being sick, a car breaking down, a bus not coming at the scheduled time, illness on the part of the defendant, a defendant being assaulted and seriously injured by her partner, and other reasons.

In the past, a defendant who was running late for court – as opposed to not being able to get to court at all on the scheduled day – was able to ~~present himself~~present himself or herself at the court later on the scheduled day. However, in recent years that policy has been changed and defendants presenting themselves are now arrested and held in custody until they can appear in court – which might not be until the following day. This in some cases means children are left unattended.

CPAG is particularly opposed to clause 197, which provides that MSD may immediately suspend a benefit at the request of the New Zealand Police if specified conditions are met. CPAG believes it is undesirable in principle that an agency responsible for maintaining law and order, and which has no

responsibility for benefit payments, should be able to exert influence over whether or not a citizen continues to receive a benefit.

Our justice system is based on the principle that people are presumed innocent until convicted. CPAG believes that this provision raises serious risks and should be deleted from the bill.

CLAUSES 201 – 203

CPAG submits that these clauses should be rewritten to give priority to ensuring that the spouse or partner of a person on remand or in jail should be able to access financial support immediately in order to ensure that the spouse or partner and children are not suddenly deprived of all financial support and find themselves without money for food, rent and other essentials. MSD should be required to deal with such situations on an emergency basis and provide immediate financial aid.

Arrests normally occur without warning, and the arrested person might be held in custody for a lengthy period and be unable to make any arrangements relating to the family's finances. It is essential to ensure that the children and other parent are not adversely affected by such events.

CLAUSE 208

CPAG submits that this clause should be deleted from the bill. There are many reasons why people might feel compelled to leave employment. These include sexual harassment, bullying, stress and illness. People are not always in a position to disclose such personal matters, and are not always believed when they do so.

The 13-week stand-down period for benefits causes immense stress and financial hardship. As noted earlier in this submission, if the Government is concerned about Crown finances, it would recoup very large sums of money if more effort and resources were devoted to pursuing tax evaders.

PART 5

As already noted in this submission, CPAG is concerned about the emphasis in the bill on the obligations of beneficiaries and on sanctions and enforcement. Part 5, which deals with "Enforcement: sanctions and offences," is 62 clauses long. This is far too heavy an emphasis on punishing, rather than assisting, people in need.

CLAUSES 214 – 239

CPAG does not support these sections and submits that they should be deleted from the bill. It is entirely inappropriate to sanction individuals, parents and families already suffering severe financial hardship by reducing or cancelling their benefits. CPAG is extremely concerned that the main burden of such sanctions is borne by children, who are deprived of the essentials of life because already-low family incomes are further reduced.

CLAUSES 251- 270

CPAG does not support these sanctions on young persons and young parents. MSD's responsibility should be to assist these young people. There has been considerable media publicity recently about people living in cars and garages in Auckland. Academic research calculates that one in a hundred New Zealanders is homeless and that homelessness is worsening in this country.[10] A majority of those sleeping in cars and garages have sought help from MSD but have been unable to comply with requirements or have been turned away. Long lists of requirements and constant demands for beneficiaries to fulfil obligations prevent New Zealanders from accessing the help they need.

It is far more expensive for the country when parents cannot access warm and dry accommodation and children become chronically ill, requiring ongoing care from the health system throughout their lives. If adequate support is provided to these children at a young age and to their parents, there are very large, long-term cost savings.

CLAUSE 272

CPAG does not support clause 272. CPAG is concerned that it creates a high risk of women being exposed to violence by partners or spouses, or former partners or spouses.

CLAUSE 282

This clause should apply to all beneficiaries and all classes of benefits.

CLAUSES 285- 290

Clauses 285 to 290 deal with reviews of entitlements and rates payable. The current review procedures are immensely time-consuming and stressful for beneficiaries.

[10] "One in 100 NZers are homeless – study," Radio New Zealand, 3 June 2016, http://www.radionz.co.nz/news/national/305536/one-in-100-nzers-are-homeless-study.

The author of this submission has dealt with many cases in which information – for example, medical certificates – has been provided multiple times to the ministry and has been repeatedly lost. In addition, the shortness of the review periods involves beneficiaries in expense and considerable expenditure of time. Requiring benefit recipients who are chronically ill to repeatedly provide medical certificates causes stress in their relationships with their doctors, who become frustrated and cannot understand why the same information needs to be provided over and over again when it is plain the person's medical condition has not changed.

CPAG submits that the current review process needs to be completely overhauled. Beneficiaries are already under an obligation to advise the ministry if there is a change in their circumstances. The current review processes mean there is a doubling-up on this obligation. CPAG submits that clause 286(2) should be deleted from the bill.

CLAUSE 291

CPAG submits that clause 291 should be amended by deleting the word "later" and inserting the word "earlier."

CLAUSE 293

CPAG submits that this clause should be deleted from the bill.

CLAUSE 327

CPAG is concerned that the implication of this clause is that beneficiaries are poor money managers, and that if they receive budgeting advice and learn to manage their money better, their financial problems will be cured.

In fact, the core cause of the financial hardship suffered by beneficiaries is that benefits in New Zealand are set at a low, non-liveable rate in the mistaken ideology that, by making life as difficult as possible for beneficiaries, they will all obtain jobs and cancel their benefits.

CLAUSES 332, 421 AND 423- 424

CPAG does not support MSD being able to make deductions from benefits without the consent of beneficiaries. In addition to being likely to cause financial hardship to families, it is demeaning for beneficiaries to have so little control over their finances.

Clause 421 provides that regulations may –

"specify circumstances in which some or all of 1 or more instalments of a benefit of a class of beneficiaries can or must be redirected (with or without good cause, and with or without the affected beneficiary's consent) and therefore not be paid to, or on account of, the beneficiary personally."

This is an extraordinarily broad provision. CPAG does not support it and submits that it should be deleted from the bill. CPAG is particularly concerned about the inclusion of the phrase "without good cause."

The Regulatory Impact Statement: *Policy changes proposed as part of the Rewrite of Social Security Act 1964*, dated 25 May 2015, states at page 21 that MSD cannot, under the current legislative settings, identify specific circumstances where a client should have redirection –

"instead, frontline staff must take into account the overall circumstances of each individual and consider whether that individual meets the threshold of good cause in order to apply their discretion to granting or declining a benefit redirection.
"Having to individually consider and justify each redirection for HNZ tenants is not productive use of frontline staff time when the comprehensive assessment process to establish need for social housing has already occurred. The consideration of individual circumstances inevitably results in the conclusion that redirection of benefit to pay rent is justified for each social housing tenant."

CPAG does not agree that it is not productive use of the time of frontline staff for them to consider individual beneficiaries' circumstances.

CLAUSE 333

CPAG submits that clause 333(2) should be deleted from the bill. It is simply inconceivable that a beneficiary would be able to pay a penalty of up to three times an amount to which, in MSD's view, the beneficiary was not entitled. The use of this provision could only result in severe hardship to families and, particularly, to children. Such a severe penalty is also out of step with penalties imposed in other parts of the legal system on people with very low incomes.

CLAUSE 341

CPAG does not support making it mandatory for MSD to recover debts. Until recently, the law provided that the chief executive could recover such debts, but this course of action was not mandatory. The most recent law changes imposed a duty on the chief executive to undertake recovery.

This provision causes immense hardship to beneficiaries, and particularly to their children. CPAG examined this issue in detail in its December 2014 report,

the complexities of "relationship" in the welfare system and the consequences for children. [11]

What this provision means, in practice, is that beneficiaries suffer double sanctions, and are also burdened for the rest of their lives with debts they will never be able to repay. Beneficiaries convicted of benefit fraud and who serve prison sentences, for example, will still be pursued by MSD to repay their alleged debts after they come out of jail. Repayment of the debt is a realistic prospect in only a tiny fraction of cases. Many beneficiaries coming out of jail will immediately require new benefit support. Those who are able to enter the workforce are unlikely to be going into highly-paid jobs.

In our criminal law system, if people cannot repay fines or reparation within a finite period of time – generally five years at the most – such sanctions either will not be imposed, or the sums will be written off. People in other parts of the legal system are very unlikely to be burdened with debts which will stay with them for the rest of their lives.

Requiring beneficiaries to repay the entire amount of debts established by MSD also means that the beneficiaries can never improve their families' circumstances. The amount deducted by MSD from a person's benefit in repayment of a debt is likely to be fairly small – though it will still make a significant dent in the family's income and ability to provide for the necessities of life. However, if a beneficiary obtains a job and the family moves to a higher income, it will be no better off as MSD will immediately increase the amount of the deductions it makes to recoup the debt.

CPAG submits that debts should be written off. They cannot be recovered without the reduced family income having an adverse impact on children. It is immensely stressful for beneficiaries to have such large sums of debt hanging over their heads permanently, and without any means of repaying them. As mentioned earlier in this submission, if the Government is concerned about losses to the Crown's income, it would be better to devote more time to ensuring tax evaders pay tax, and that child support and child support penalties are paid.

MSD spends hundreds of thousands of dollars in pursuing beneficiaries for repayment of debts which they cannot pay. In one case, MSD has spent more than $100,000 and recovered less than $2000 from a chronically-ill beneficiary

[11] http://www.cpag.org.nz/assets/141204CPAG%20Welfare%20System%20final.pdf

in her fifties who will never be physically fit for work again. That beneficiary has challenged the recovery through the courts. At a hearing in the High Court in 2013, when the judge questioned the Crown's lawyer about what realistic prospect there was of the beneficiary being able to repay the debt established, the lawyer replied that she might win Lotto and would then be able to repay the debt.

In addition, MSD has on many occasions in recent decades applied the law incorrectly. Examples include misapplication of the law in relation to "relationships in the nature of marriage," as highlighted by the 2001 Joychild report; misapplication in the 2000s of the law relating to special needs grants; and most recently incorrect application of the law relating to the accommodation supplement. Given MSD's failure either to understand or to apply the law correctly, it is entirely inconsistent for such a punitive approach to be taken to beneficiaries.

Clause 423 refers to MSD determining that debts are uneconomic to recover. CPAG submits that MSD should in all cases be required to assess whether it is economic to recover the debt: in most cases it will not be as the beneficiary or former beneficiary simply will not have the money to make repayments. MSD should be barred from pursuing beneficiaries for lengthy periods over debt repayments. In the case referred to above, in which the beneficiary is challenging the recovery through the courts, MSD has been pursuing her for 15 years.

If CPAG's submission that debts should not be recovered is not accepted, CPAG submits that a specific new ministerial discretion to cancel a debt should be introduced into the legislation. This would mirror the power conferred on the Minister of Immigration under section 378 of the Immigration Act 2009 to give a special direction, and would enable the Minister of Social Development to direct MSD to cease attempts to recover a debt. In the case referred to above in which MSD has pursued a beneficiary for 15 years, it was apparent from the outset that there was no prospect she would be able to repay the debt of $117,000 established against her. MSD has now spent more than the entire amount of the debt on seeking to recover it. This power should be inserted into clause 7 and should specifically spell out a ministerial discretion to cancel debts.

CLAUSES 343 AND 428

CPAG understands that MSD wishes to communicate more speedily and reduce costs by sending beneficiaries emails, rather than posting letters to them. However, CPAG is concerned about lack of access to computers and the internet by many beneficiaries and the risk that emphasising electronic communication might mean that some people do not receive communications from the ministry.

CLAUSES 369-373 AND SCHEDULE 7

CPAG submits that benefits review committees should be abolished and replaced by an independent review process. Benefits review committees comprise three members – two MSD employees and one community representative.

It is the experience of the author of this submission that the committees almost invariably uphold MSD's original decision. As two of the members are employed by MSD, the process is not independent.

CPAG submits that an independent review process outside the ministry and not staffed by ministry employees should be established. In addition, it should be a requirement that cases are reviewed by a MSD lawyer before they are heard by the independent reviewer. This author's experience is that cases are often not reviewed by an MSD lawyer before they are heard by the benefits review committee. The members of the committee are not lawyers, and it is a frustrating experience for lawyers to present submissions outlining the law and have these disregarded because there is no legal input to the benefits review committee process. Involving lawyers at an early stage could assist in speedier resolution of cases, as, if correct legal advice and principles were followed at the outset, this would prevent cases having to proceed to the Social Security Appeal Authority or High Court for resolution according to the law.

A further difficulty faced by beneficiaries seeking to review decisions is that Legal Aid is not available until a case reaches the Social Security Appeal Authority. Section 374 of the bill provides that no MSD decision can be appealed to the authority unless it has first been confirmed or varied by the benefits review committee, or was made by the chief executive personally. It is extremely difficult for beneficiaries without legal knowledge or advice to challenge MSD decisions. The lack of Legal Aid means that many cases cannot reach the Social Security Appeal Authority simply because the beneficiary lacks the skills and support to present a case at the benefits review committee

hearing. Although beneficiary advocates assist in doing this, they are overworked and are able to help only a small proportion of beneficiaries.

CLAUSES 380-387

Clauses 380 to 387 deal with appeals to the Social Security Appeal Authority. CPAG submits that, when a beneficiary is investigated as a result of a complaint made by a member of the public, the identity of the person making the complaint should be disclosed to the beneficiary.

It is common when a relationship ends for a vindictive and violent man to complain to MSD that his former partner has been receiving money to which she is not entitled. It is immensely stressful for beneficiaries to deal with these allegations. It can sometimes take years for wrong allegations to be disproved.

MSD appears to pay no heed to the motives of the people who make the allegations and places far too great reliance on such complaints. It is immensely unfair that beneficiaries and their advocates are not permitted to know the names of their accusers. This would be unacceptable in other parts of our justice system.

CLAUSES 390 – 394 AND SCHEDULE 9

CPAG is concerned that, as members of the Medical Board are appointed and paid by MSD, there is a danger of them becoming too closely aligned with MSD's views on issues and not being truly independent.

CLAUSES 397- 438

CPAG does not support the bill's provisions transferring more issues to regulations rather than including them in the act, as this means changes can be made without adequate consultation and oversight.

The bill includes 32 provisions for regulation-making, relating to a wide variety of issues, including temporary additional support, standdowns, childcare assistance and funeral grants. CPAG submits that matters of substance and policy should be dealt with in the primary legislation.

CLAUSE 508

Clause 508 provides for jail terms of up to 12 months and fines not exceeding $5000 for offences against the legislation. However, people prosecuted for benefit fraud will usually be prosecuted under the more serious s 228 provision in the Crimes Act 1961 making it an offence to use a document to obtain a

pecuniary advantage. That section provides for a maximum jail term of seven years.

CPAG submits that mothers convicted of benefit fraud should not be sent to jail. Those most severely punished by the jail sentence are the children. It is immensely damaging for children to be separated from their mothers, particularly in the very traumatic circumstances of a jail sentence being imposed. Such children are generally already living in one-parent households, and imprisoning the mother deprives the children of both parents.

It is extremely expensive to keep people in jail – approximately $105,000 a year for a female prisoner. That money would be far better applied to keeping the mother and children together and ensuring they are properly financially supported.

CPAG submits that the bill and the Crimes Act should be amended to focus on the welfare of children and provide a statutory bar on imprisoning mothers convicted of benefit fraud.

SCHEDULE 4, PART 2

Clause 2 provides for a lower payment to beneficiary parents under the age of 25 years. This is discrimination on the grounds of age, and prohibited under the Human Rights Act 1993. Other parts of the schedules contain similar prohibited discriminatory measures.

SCHEDULE 6

Clause 1 of Schedule 6 requires people to answer all questions asked by MSD about benefits unless the information sought would be privileged in a court of law.

CPAG is extremely concerned about the practice of MSD staff arriving unannounced at beneficiaries' homes and questioning them with a view to making determinations about whether MSD believes a benefit has been fraudulently obtained.

Beneficiaries are caught by surprise and generally do not have a support person present. The author of this submission acted in relation to one case in which the beneficiary had English as a second language. MSD employees came unannounced to her home and questioned her about the father of her child.

She was asked whether she lived with him and replied in the affirmative. It was rapidly apparent to the author of this submission that the beneficiary did not understand the difference between “stayed” and “lived.” As English was her second language, she did not understand that there was a significant distinction between the meanings of “lived” and “stayed.” She stayed the odd night at the home of the father of her child. Accordingly, when she was asked whether she “lived” with him, she replied that she did, although she had never in fact lived with him. It was plain on the facts and evidence that she was not in a relationship in the nature of marriage with him.

Although this was explained to MSD, it went ahead and established a debt against her. The benefits review committee upheld the ministry’s decision. The beneficiary appealed to the Social Security Appeal Authority. That was the first time at which the case had been examined by a ministry lawyer.

He advised MSD that the beneficiary had not been in a relationship in the nature of marriage. However, his legal advice was disregarded by both the manager and the MSD employee working on the case.

This meant that a hearing had to be held at the Social Security Appeal Authority, which ruled that the beneficiary had not been in a relationship in the nature of marriage.

CPAG believes that if beneficiaries were provided with support and legal advice at the outset of investigations – and if MSD both referred cases to its lawyers and accepted that legal advice – unnecessary benefits review committee hearings and Social Security Appeal Authority appeals could be avoided. These processes are extremely stressful for beneficiaries.

SUPPORT FOR OBTAINING DRIVER’S LICENCES

CPAG submits that new clauses should be written into the legislation requiring MSD to provide non-recoverable financial support to beneficiaries and others to enable them to obtain their drivers’ licences.

People who drive without licences and are stopped by the police initially receive a warning and are forbidden to drive until they obtain their licences. If they are stopped a second time and still have not obtained a licence, they will be charged with Driving While Forbidden. This is often the first contact a young person will have with the criminal justice system.

There are a number of reasons why young people cannot obtain drivers' licences: common barriers are lack of money for the licence fees; not having a birth certificate or other necessary identity documents; or not being able to read and write.

On the first occasion on which a person appears in court charged with Driving While Forbidden, the person will generally be remanded to give him or her time to obtain a licence. If a licence is obtained, the case will be dismissed on the next occasion the person appears in court.

However, if the person has been unable to obtain a licence, he or she will eventually be convicted if brought before the court on successive occasions for this offence.

It is in the interests both of the person and of the community generally that he or she should obtain a licence. If MSD was tasked with assisting with this, it would in the long run save large amounts of time in court costs, as well as police, judge and lawyer time. It would also help to keep young people out of the criminal justice system and avoid setting them on the first steps towards further offences.

BENEFITS TO BE SET AT LIVEABLE RATES

Benefit levels have over the years become lower and lower in comparison to their rates when they were originally set and also in relation to wages. The Government's announcement in the 2015 Budget that some families on benefits would receive an extra $25 a week from 2016 was the first increase to benefit rates unrelated to inflation in over four decades. No Government has acted to reverse the 1991 benefit cuts.

CPAG submits that all benefits should be set at liveable rates that allow beneficiaries to provide adequately for their families, and ensure that families and individual beneficiaries are not living in poverty as a result of being on benefits. Successive governments have kept benefit rates very low in the punitive and mistaken belief that this would force people off benefits and into work.

No-one is on a benefit from choice. People on benefits because they are chronically ill, seriously injured, have mental health problems, or for a myriad of other reasons would much rather have good health and be able to work. People who are unemployed would much rather be working. Keeping benefits very low simply punishes people for problems not of their own making and

heightens their disadvantage. CPAG submits that provisions should be written into the bill stating that benefits are to be set and maintained at liveable levels.