

**Submission by the
Human Rights Commission**

***Social Security (Youth Support and
Work Focus) Amendment Bill
to the Social Services Select Committee***



Human Rights
Commission
Te Kāhui Tika Tangata

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1. Introduction

- 1.1 The Human Rights Commission is an independent Crown entity that derives its statutory mandate from the Human Rights Act 1993 (the Act). The long title to the Act states it is intended to provide better protection of human rights in New Zealand in general accordance with United Nations Covenants and Conventions of Human Rights. The Commission's statutory functions are to:
- advocate and promote respect and an understanding and appreciation of human rights in New Zealand
 - encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand
 - lead, evaluate, monitor and advise on equal employment opportunities and
 - provide an enquiries and complaints service.
- 1.2 This submission is informed by the Commission's work on the right to social security including its focus on those groups most vulnerable to poverty. The following publications and projects are particularly relevant to the Select Committee's deliberations:
- the right to social security chapter in *Human Rights in New Zealand 2010* which was informed by roundtable discussions in Christchurch, Wellington and Auckland on the right to an adequate standard of living
 - the Commission's consultation with over 3000 New Zealanders through its 2008-10 National Conversation about Work
 - the Commission's May 2010 submission on the Social Assistance (Future Focus) Bill¹
 - three submissions made by the Commission in 2010 and 2011 in response to the Welfare Working Group's reports²
 - the Commission's youth employment work including its support for a coordinated national approach that ensures all young people are enabled to develop career plans.³
- 1.3 The Commission has a responsibility to monitor domestic legislation for its human rights compliance and provides specialist human rights policy advice to Parliament, government agencies and other organisations and groups. Therefore the Commission welcomes the opportunity to make a submission on the Social Security (Youth Support and Work Focus) Amendment Bill (the Bill).

¹ Accessible online at: http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/19-May-2010_14-35-48_Social_Assistance_Future_Focus_Bill-14May10.doc

² The Commission's submissions in responding to each of the Welfare Working Groups reports are available on its website here: http://www.hrc.co.nz/resources#Human_Rights_Submissions

³ The Commission's youth employment work includes its indicators in the *Tracking Equality at Work* framework; *Breaking through: Young people at work* which provides advice to employers; and a current project of audio interviews with young people for radio and internet broadcast.

- 1.4 The Commission welcomes the human rights implications statements in the Regulatory Impact Statements prepared by the Ministry of Social Development (MSD) around this Bill. While the Commission does not share MSD's conclusion that the *prima facie* discrimination in the Bill is justifiable, it commends the prominence given to this analysis. At the same time, the Commission is disappointed that human rights implications were largely withheld from the publically released Cabinet papers.
- 1.5 The Commission's submission starts by raising concerns about the very limited time for making submissions on this Bill. It then outlines the main provisions of the Bill, assesses these for compliance with international and domestic human rights obligations and suggests some possible amendments to the Bill's proposals.
- 1.6 The Commission would like to appear before the Select Committee to speak to this submission.

2. Insufficient time for submissions to the Select Committee

- 2.1 The Commission has strong reservations about the timeframe provided for submissions and, subsequently, for the Select Committee to prepare its report back to the House. These concerns centre around well-developed principles of representative democracy.
- 2.2 In 2011 the Commission issued a draft discussion paper on strengthening representative democracy and the right of citizens to participate in parliamentary processes. Subsequently the document has been finalised, incorporating relevant points from submissions. It emphasises the following principles of representative democracy:
- the right of citizens and agencies to participate meaningfully in the political process
 - the responsibility of Parliament to produce the highest quality legislation possible and its constitutional obligation to scrutinise legislation effectively
 - the transparency of a legislative process conducted in a manner permitting public, full and open policy deliberation and
 - the respectful and dignified use of Parliamentary procedures and practices that enhance the reputation and integrity of Parliament.⁴
- 2.3 Short submission timeframes risk undermining the first three principles listed above particularly when proposed legislation has the potential to affect marginalised groups or those who do not normally engage with or understand the legislative process. While the Welfare Working Group's two discussion papers and final report prompted significant debate about welfare reform, it

⁴ These principles have been identified in the House of Lord Select Committee on the Constitution (2009) "Fast-track legislation: Constitutional Implications and Safeguards. Vol 1:report", HL Paper 116-1 (The Stationery Office Limited, London) and further developed in Geiringer,C., Higbee,P., and McLeay,E. "The Urgency Project" (2010) Standing Orders Review 49th Parliament Submission to Standing Orders Committee.

was not until this Bill was tabled in Parliament on 19 March that members of the public could assess its specific proposals.

- 2.4 The Bill had its first reading on Tuesday 27 March when it was referred to the Social Services Select Committee. On the afternoon of Wednesday 28 March the Select Committee confirmed that the deadline for submissions was Friday 13 April. With the Easter break, this amounted to just over 10 working days for submissions. This is insufficient time to enable the public to participate meaningfully in the political process.
- 2.5 The constrained timeframe has also meant that information sharing provisions in the Bill pre-empt more comprehensive legislation proposed in the Privacy (Information Sharing) Bill. This potentially produces less robust legislation and raises specific privacy concerns as outlined later in this submission.
- 2.6 The Cabinet papers and Regulatory Impact Statements identify that the primary rationale for such a tight consultation process is to meet the prior announcement that proposed changes will be in place by July 2012. The Commission does not consider this justifies the resulting time limitations on public participation in the consultation process.

3. The Bill's provisions

- 3.1 This section summarises the key changes in the Bill before analysing them against international human rights standards, including whether or not the provisions are discriminatory.

Work Availability – extension for sole parents, widows, women alone and spouses and partners of people receiving a main benefit

- 3.2 The Bill extends provisions that the Commission opposed in its 2010 submission on the Social Assistance (Future Focus) Bill.⁵ The part-time work test will now commence when a parent's youngest child turns five instead of six. The proposed full-time work-test will apply when a parent's youngest child is aged 14, rather than 18 under the current provisions.
- 3.3 In addition the Bill introduces a work activation power allowing Work and Income to direct parents to prepare for work before they are expected to be available for it (that is before their child turns five). The definition of part-time work has been changed to include a job for between 10 and 20 hours a week, while fulltime work is defined as between 20 and 40 hours.
- 3.4 The Bill responds to the concerns raised by the Commission and the Attorney-General that the Future Focus package discriminated on the grounds of sex, marital status and family status. It does so by extending the Bill's provisions to women receiving the Widows' benefit, the DPB for Women Alone and to partners of other main beneficiaries. This is despite an explicit request to

⁵ Accessible online at: http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/19-May-2010_14-35-48_Social_Assistance_Future_Focus_Bill-14May10.doc

avoid this approach, in paragraph 5.9 of the Commission's May 2010 submission on the Social Assistance (Future Focus) Bill:

The Commission warns against attempting to rectify the discrimination by amending the offending clauses so they also apply to widowers or older women without dependent children⁶ and requests the Committee to seriously consider whether imposing the work test on women in this situation can be justified at all.

- 3.5 The Commission reiterates its major concerns from that submission that are relevant to this Bill. As the Commission's National Conversation about Work confirmed, work is central to the lives of New Zealanders, whether currently in the labour market or seeking jobs. Most people would benefit from being able to access decent and meaningful work. However the Social Assistance (Future Focus) Bill contravened aspects of New Zealand's international obligations around the right to social security and to decent work. Significant barriers included the lack of available jobs and the Bill's potential impact on young children if parents are forced to return to work and cannot arrange satisfactory childcare.
- 3.6 The Commission notes and welcomes the continued exemption from work-preparation / activation and work-testing obligations where there is intimate partner violence, recent bereavement or separation or someone is caring for sick or disabled children. It is unclear how transparent these exemptions have been through the Future Focus package or the training given to frontline staff around ensuring those eligible have access to these provisions.

Work availability - subsequent child while on a benefit

- 3.7 All parents who have a subsequent child while receiving a benefit will only have a deferral from part-time or full-time work tests until their newborn child is 1 year old.

Youth Package

- 3.8 The Bill introduces a new system of income support for 16 and 17 year olds and for 16 to 18 year old parents. It increases obligations, and therefore sanctions, and requires compulsory participation in approved budgeting, income management and, where appropriate, parenting programmes.
- 3.9 A Youth Payment (YP) and Youth Parent Payment (YPP) will replace current benefits available for these groups. Benefit levels are unchanged but the benefit abatement rate will be set at 100 per cent for every dollar of weekly income over \$206.73, to encourage participation in education or training rather than employment. Transitional provisions mean no current beneficiary will be worse off. However new beneficiaries will retain less part-time earnings and lose eligibility for the benefit once their weekly income reaches \$256.73, which is lower than the current threshold.⁷

⁶ Clauses 13 and 14

⁷ Schedule 1, setting out new Schedule 26 in the principal Act

- 3.10 The Commission critiqued similar proposals when they were recommended by the Welfare Working Group, questioning how they would ensure adequacy of core benefit levels and reduce the high incidence of child poverty amongst beneficiary families.⁸
- 3.11 Currently the Domestic Purposes Benefit is available to people aged 18 and over. The YPP will extend to those aged 18, so that 18 year old sole parents are covered by the obligations and sanctions in the Youth Package. Sixteen to 18 year olds on the YPP will be required to be in full-time education, training or work-based learning once their child is 1 year old, or is 6 months old if they are attending a school Teen Parent Unit.
- 3.12 Sanctions follow the approach used in the Social Assistance (Future Focus) Bill with a lower maximum sanction for parents, removing a maximum of 50 per cent, rather than 100 per cent, of their benefit. The Commission opposed such sanctions when they were introduced as part of the Future Focus package and this remains its position. In particular, how will the wellbeing and best interests of children be prioritised if a parent's or guardian's benefit is reduced as a result of such sanctions?
- 3.13 The Commission supports the Bill's provisions allowing access to YP and YPP benefits for those who would otherwise qualify except they do not meet the 2 year residency in New Zealand requirement.

Youth Pipeline – information sharing provisions

- 3.14 Part 1 clause 18 of the Bill inserts **new section 123F**, enabling the Ministry of Social Development and Ministry of Education to enter into an information-sharing agreement and the Ministry of Education to “use national student numbers for the purpose of gathering the information”. The Commission shares the Office of Privacy Commissioner concerns about safeguards required around the use of unique identifiers.
- 3.15 Part 1 clause 19 inserts **new section 125C** enabling release of “any personal information” about a young person to contracted youth service providers. All further details will be set out in subsequent regulations under the Act - that are not subject to public consultation.
- 3.16 Part 1 clause 19 inserts **new section 125D** enabling an agency specified by Order in Council to “disclose any information about a young person to a contracted service provider, if satisfied that “the information will help the provider to provide services under a contract **under section 125A**”.

⁸ Page 16 of the Commission's August 2011 analysis of the Welfare Working Group's final recommendations

4. International Human Rights Standards

- 4.1 The right to social security, including the requirement to address the specific needs of women, children and young people, and disabled people, is detailed in:
- Article 25 of the Universal Declaration of Human Rights (UDHR)
 - Articles 9 and 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
 - Article 14 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)
 - Article 26 of United Nations Convention on the Rights of the Child (UNCROC)
 - Article 28 of the Convention on the Rights of Persons with Disabilities (UNCRPD) and
 - Article 21 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
- 4.2 The right to social security is of central importance in guaranteeing human dignity for people when circumstances deprive them of the capacity to fully realise their economic, social and cultural rights. Social security, and its interface with the tax system, redistributes resources and thus plays an essential role in reducing and alleviating poverty and promoting social inclusion. State parties are required to take measures “to the maximum extent of their available resources” in order to respect, protect and fulfil these economic, social and cultural rights.
- 4.3 One of the most comprehensive assessments of the right to social security is contained in the 2008 general comment from the United Nations Committee on Economic Social and Cultural rights (CESCR).⁹ It considers New Zealand and other States parties’ compliance with their international human rights obligations under ICESCR. The Committee has identified five essential elements of the right to social security, namely:
- availability of a sustainable social security system
 - coverage of social risks and contingencies
 - adequacy – of amount and duration, respecting the principles of human dignity and non-discrimination
 - accessibility – coverage for all, especially those who are marginalised, and eligibility criteria must be reasonable, proportionate and transparent and
 - relationship to other rights – other measures are necessary to complement the right to social security, including rehabilitation, childcare and welfare, and measures to combat poverty and social exclusion.

⁹ Committee on Economic, Social and Cultural Rights (2008), general comment 19. The right to social security, 39th session: E/C.12/ GC/19. Accessible online from <http://www.unhcr.org/refworld/docid/47b17b5b39c.html>

- 4.4 CESCR has also highlighted the importance of non-discrimination, particularly for groups who traditionally face difficulties in exercising the right to social security including women and children and disabled people. Recently both the Committee on the Rights of the Child and the Special Rapporteur on the rights of indigenous peoples have reiterated the need to address the economic marginalisation of Māori and the impact on Māori children.
- 4.5 Key principles from international human rights standards that are particularly relevant to the Select Committee's consideration of this Bill are set out below.

Dignity and Respect

- 4.6 The right to social security is of central importance in guaranteeing human dignity for people when circumstances deprive them of the capacity to fully realise their economic, social and cultural rights.¹⁰ Respect for human dignity must also be a part of the way in which social security is delivered.¹¹

Best interests of the child (including child health and development)

- 4.7 Children whose parents are dependent on income from a social security benefit are the group most vulnerable to hardship and poverty. Therefore any welfare reform has the potential to significantly impact, either positively or negatively, on their wellbeing. Article 2.1 of UNCROC requires the best interests of the child to be a primary consideration in all actions concerning children.
- 4.8 In January 2011 the United Nations Committee on the Rights of the Child reviewed New Zealand's performance in meeting its UNCROC obligations. Its relevant recommendations include that:
- all necessary measures are taken to provide support to disadvantaged families and their children to move out of poverty in a sustained way, while at the same time, continuing to provide assistance to those below the poverty line¹²
 - inequalities in access to health services are addressed through greater co-ordination between health policies and those aimed at reducing income inequality and poverty¹³
 - steps are taken to ensure that all children have access to high quality early child-care education that, at a minimum, is free for socially disadvantaged children and families¹⁴
 - efforts are intensified to develop services that provide assistance to parents and legal guardians in their child-raising duties, including parenting-support counselling, drug and alcohol treatment and culturally appropriate services for Maori and Pacific people¹⁵ and

¹⁰ Committee on Economic, Social and Cultural Rights (2008), para 1.

¹¹ Article 1, Universal Declaration of Human Rights

¹² UN Committee on the Rights of the Child (4 February 2011) *Concluding Observations: New Zealand*, paragraph 43

¹³ *Ibid*, Paragraph 37

¹⁴ *Ibid*, Paragraph 45(a)

¹⁵ *Ibid*, Paragraph 31

- stronger efforts are made to provide young people with appropriate reproductive health services, including education and promotion of healthy lifestyles¹⁶.

4.9 The Commission notes with concern that there is no specific reference to either UNCROC or prioritising the best interests of the child within the Social Security Act. Clause 34 of the Bill inserts new sections 60GAD to 60GAF setting out new obligations when beneficiaries have additional dependent children. Section 60GAD defines the purpose of these provisions as follows:

60GAD Purpose of sections 60GAE and 60GAF

The purpose of **sections 60GAE and 60GAF** is to improve the financial and social outcomes for families that include people to whom those sections apply by providing earlier access to employment services and expectations, while recognising the care and development needs of children.

4.10 These provisions place greater work availability obligations on parents who have another child while receiving a benefit. These expectations will be based on the age of their previous youngest child, once their newborn is one year old. This may mean either a part-time or full-time work test for parents with very young children.

4.11 The Office of Children's Commissioner's (OCC's) February 2011 Inquiry into non-parental education and care of infants and toddlers *Through their Lens* stressed that:

As a signatory to UNCROC, New Zealand has a legal obligation to consider the best interests of children in its policies. If this is to be done well, some changes need to be made to the current set of policies, regulations and practices around support for parental and non-parental care of infants and toddlers.¹⁷

4.12 OCC's report provided detailed recommendations around:

- reviewing policy settings across paid parental leave provisions as well as childcare provisions, in order to tip incentives and supports towards parental and extended family care of very young infants
- providing greater flexibility in the provision of early childhood services, to meet the interests of infants and toddlers in part-time use of formal early childhood services and
- improving quality by tightening the regulatory regime, increasing the infant and toddler content in teacher education programmes and the monitoring of practices for under 2-year-olds.

4.13 The Commission supports these recommendations. Given they have yet to be implemented, the Commission considers greater emphasis is required in the

¹⁶ *Ibid*, Paragraph 41(a)

¹⁷ Carroll-Lind, J. and Angus J. (2011) *Through their Lens: Inquiry into non-parental education and care of infants and toddlers*, Summary Report. Wellington: Office of the Children's Commissioner, p. 11.

Bill to protect the best interests of young children when their parent/s are work-tested. Therefore the Commission **recommends** new section 60GAD is amended to read “while recognising the care and development needs *and prioritising the best interests* of children”. This would then have a flow-on impact to section 60GAF which gives MSD’s Chief Executive discretion about applying the subsequent child work-test.

60GAF Chief executive may refrain from applying section 60GAE

The chief executive may refrain (for any period he or she thinks fit) from applying **section 60GAE** in relation to any additional dependent child or children (within the meaning of that section) if satisfied in any particular case that–

- (a) to do so would best achieve the purpose stated in **section 60GAD**; or
- (b) there are circumstances beyond the control of the beneficiary parent concerned making it inappropriate or unreasonable to apply that section.”

The right to found a family

- 4.14 Article 16(1)(e) of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) requires States parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. Specifically it sets out women’s right to “decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights”.
- 4.15 In its general recommendation 19, the CEDAW Committee has emphasised that States parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction.¹⁸ The more stringent work test applied to women who have a subsequent child while receiving benefit is likely to be regarded as a coercive measure undermining parents’ right to freely decide on the number and spacing of their children. Nor can it be justified as in the best interests of the child.

Addressing specific barriers that limit the right to work for vulnerable groups

- 4.16 The right to decent work is set out in all core human rights instruments as well as International Labour Organisation conventions. The Commission recognises the importance of access to decent work as a pathway out of poverty and in order to improve outcomes for children. Advice provided by the Ministry of Social Development in Cabinet papers supporting the Bill also indicated that access to decent work as well as high quality childcare is required if childcare for one year old children is to have a positive rather than negative impact on children’s wellbeing.

¹⁸ Committee on the Elimination of Discrimination Against Women (1992). General Recommendation 19, Violence Against Women, para 24(m). Eleventh session: CEDAW/A/47/38 (Accessible online at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>).

- 4.17 Imposing sanctions and limitations on rights, including the right to social security will not lessen 'welfare dependency' if there is insufficient work available. The Commission notes a range of barriers that limit access to decent work for vulnerable groups, including those described below.

Parents

- 4.18 For parents, barriers include availability of part-time employment and access to flexible, local, quality, affordable, early childhood education and out-of-school care. The Bill includes a Guaranteed Childcare Assistance Payment as part of its Youth Package, but notes gaps in the supply of early childhood education and care. This is reinforced by the Commission's National Conversation about Work which identified pockets of New Zealand where the problem of availability cannot easily be addressed by more money, as there are simply no existing services.
- 4.19 The stringent work test for parents who have a subsequent child while receiving a benefit is of significant concern. Once the newborn child turns one the parent may be required to be available for part-time or full-time work. In its Regulatory Impact Statement, the Ministry of Social Development identified part-time work expectations when a child is aged 1 or 2 as having the "greatest potential risk of negative impacts on children of those work tested" and "no highly subsidised provision of childcare will make transition to work more problematic".¹⁹
- 4.20 The Bill proposes that 16 to 18 year olds on the Young Parent Payment will be required to be in full-time education, training or work-based learning once their child is 1 year old, or is 6 months old if they are attending a school Teen Parent Unit. The availability of quality ECE services is essential if the best interests of their children are to be safeguarded, particularly for infants and toddlers.
- 4.21 OCC's report reiterated there is an under-supply of centre-based services for infants and toddlers generally and especially in areas of low-income households. Access to services is also limited by the cost of the service, and for some, a question of acceptability from a cultural perspective. These issues are compounded for parents in precarious employment attempting to find affordable ECE services that will support short-term, evening, weekend and/or split-shift employment.

Disabled people

- 4.22 For disabled people, barriers include the attitude of those employers who do not reasonably accommodate an employee's disability, inadequate transport and/or home support that will enable participation in paid employment. While most of the welfare reforms affecting disabled people will be contained in a

¹⁹ Ministry of Social Development (15 Sept 2011) *Regulatory Impact statement: Welfare reform – Work Availability Expectations for Domestic Purposes and Widows Beneficiaries and Merging Benefit Categories*, page 5

second Bill later this year, presumably some of the young people and parents covered by this Bill's provisions will have a disability. The Commission understands there is no simple way for the Ministry of Social Development to identify disabled people in receipt of mainstream benefits. If that is the case, then it is important therefore that operational guidelines are developed and applied to protect disabled people's right to reasonable accommodation²⁰ when seeking employment, including their right to refuse work that does not meet these requirements, without being sanctioned.

Māori

- 4.23 Māori make up a significant proportion of those who will be affected by the youth package and changes to work obligations for parents who have a subsequent child while receiving a benefit. International human rights standards recognise that indigenous peoples are vulnerable to systemic discrimination and therefore often require special measures in order to realise their rights. Articles 17 and 21 of the United Nations Declaration on the Rights of Indigenous People (UNDRIP) focus on employment rights and the need for special measures to ensure continuing improvement of indigenous peoples' economic and social conditions.
- 4.24 In New Zealand, the Treaty of Waitangi places an obligation on the Crown to ensure that Maori enjoy the same rights as other New Zealanders (article three and non-discrimination). What measurable targets and strategies are in place to increase the number of Māori in sustainable employment, including Māori sole parents? What monitoring will be in place to measure the disproportionate impact of welfare reforms on Māori and to address any concerns about indirect discrimination?

Participation and Social Inclusion

- 4.25 As already noted, the right to social security is spelt out in the ICESCR and other key human rights instruments. Social security, and its interface with the tax system, redistributes resources and thus plays an essential role in reducing and alleviating poverty and promoting social inclusion. The 1972 Royal Commission on Social Security recommended that the welfare system ensure beneficiaries had a standard of living at least similar to that of other New Zealanders, so that they were able to participate in and feel they belonged to the community at large.²¹ The 1988 Royal Commission on Social Policy concluded that people required "access to a sufficient share of income and other resources to allow them to participate in society with genuine opportunity to achieve their potential and to live lives they find fulfilling".²²
- 4.26 The Social Security Amendment Act 2007 introduced sections 1(a) and 1(b) to the Social Security Act 1964, specifying its purpose and general principles.

²⁰ Article 27(1)(i) of the UNCRPD

²¹ Krishnan V (1995), 'Modest but adequate: an appraisal of changing household income circumstances in New Zealand', *Social Policy Journal of New Zealand* 1, 4, pp 76–97

²² Royal Commission on Social Policy (1988), *The April Report – Report of the Royal Commission on Social Policy*, volume 1, (Wellington: RCSP), p 731

These do not contain any reference to social inclusion. The rationale for providing financial support is more narrowly defined as “to help alleviate hardship”. This raises a question around whether benefit adequacy is solely to address absolute deprivation, or whether the financial position of those on benefits relative to others is also deemed relevant.

- 4.27 Given the importance of participation and inclusion in addressing inequality the Commission **recommends** that a specific reference to increasing participation and social inclusion is added to the purpose (section 1A) and/or principles (section 1B) of the Social Security Act 1964

Privacy

- 4.28 Article 17 of ICCPR prohibits arbitrary or unlawful interference with someone’s privacy, and the same rights are applied to children in UNCROC. The Bill raises the following privacy concerns. Firstly, the income management provisions effectively deny to youth receiving benefits the right to make private decisions and choices about personal and family expenditure that the rest of the population takes for granted.
- 4.29 In addition, the proposal to add information sharing provisions between MSD and the Ministry of Education into this Bill is contrary to the advice of the Office of the Privacy Commission (OPC). This was noted in MSD’s 16 February 2012 Agency Disclosure Statement at the front of the Regulatory Impact Statement *Welfare Reform: Phase One – Social Security Amendment Bill* (No. 1):

The Office of the Privacy Commissioner does not support inclusion of the proposed information sharing provisions in the Social Security Act 1964. They consider it would be more appropriately implemented through the provisions of the Privacy (Information Sharing) Bill. They agree that to minimise confusion and to create a consistent standard for information sharing across government. [sic] All provisions should mirror provisions of the Privacy (Information Sharing) Bill as closely as possible. We will develop these provisions with the Privacy Commissioner.²³

- 4.30 The Commission supports OPC’s preferred option that an information sharing agreement between the two agencies be entered into once the Privacy (Information Sharing) Bill, currently before the House, is passed. If, instead, information sharing provisions are progressed through this Bill, what commitment is there to subsequently amending the Social Security Act if revisions are required to mirror final amendments arising from the enactment of the Privacy (Information Sharing) Bill?
- 4.31 The Commission has particular concerns about the level of information that could potentially be shared with contracted providers, particularly given the

²³ See also the Comment from the Office of the Privacy Commissioner in paragraphs 32.1 – 32.6 of *Cabinet paper D: Youth Pipeline Information Sharing*.

tight timeframe for setting in place necessary safeguards in regulations under the Act and in contracts with individual providers. The breadth of the services being provided by contractors means they potentially have access to employment, education, health, criminal justice and other personal information.

- 4.32 What safeguards and contractual requirements will be in place to protect this arguably unprecedented access to information by contracted youth service providers? The Commission **recommends** that contracts with youth service providers stipulate they are required to give consideration to UNCROC provisions alongside the objectives of the Bill, including prioritising the best interests of the child.

Accountability

- 4.33 One key aspect of the human rights approach to policy development is accountability, ensuring that individuals and groups are able to complain about decisions that affect them adversely.
- 4.34 The Bill introduces contracted youth service providers who will play a significant role in ensuring young people comply with the Youth Package obligations including its income management provisions. What are the avenues for disputing information provided by contracted youth service providers that will be used by Work and Income to make decisions about compliance and ultimately may result in significant financial sanctions? The Commission analyses the information sharing provision in more detail below against non-discrimination obligations in domestic legislation.
- 4.35 Some significant details are not contained in the Bill but will instead be set out in operational guidelines or regulations which are not subject to public consultation. Given the fundamental changes to the social security system proposed in this Bill, the Commission is concerned that operational guidelines and regulations may not pay sufficient attention to the best interests of the child and/or the need to address systemic discrimination or barriers faced by vulnerable groups.
- 4.36 There is a number of references in Cabinet papers and/or Regulatory Impact Statements to the impact of Future Focus provisions introduced in September 2010 which reintroduced part-time and full-time work tests for parents on benefits. The Commission was not able to find an evaluation of the Future Focus package on the MSD website. It is imperative that there is a comprehensive evaluation strategy to assess the impact of proposed changes in this Bill. This should include greater public access to some key administrative data. The Commission **recommends**:
- independent evaluation, including public access to some MSD administrative data, in order to monitor the impact of welfare reforms contained in this Bill and
 - ensuring data can be disaggregated sufficiently to measure the impact of welfare reforms on groups vulnerable to systemic disadvantage –

this will require scoping options for collecting better data on beneficiaries with disabilities.

Non-discrimination

- 4.37 Freedom from discrimination is one of the core tenets of international human rights standards. As these requirements are reflected in New Zealand's domestic legal framework, in both the Human Rights Act (HRA) 1993 and the New Zealand Bill of Rights Act (NZBoRA) 1990, they are outlined in the next section.

5. Discriminatory Provisions – compliance with the NZBoRA

Compulsory Income Management Provisions

- 5.1 The Bill makes a number of distinctions based on age, family status and employment status in relation to benefit eligibility, obligations while on benefit, income management and abatement rates. Given time constraints, this submission concentrates primarily on distinctions based on age and family status that underpin the income management provisions as the Commission considers these are particularly problematic aspects of the Bill.
- 5.2 The Ministry of Justice (MoJ) has provided advice to the Attorney-General about whether the Bill is consistent with the NZBoRA.²⁴ It considered potential issues of inconsistency with s 19(1), the right to freedom from discrimination and concluded that examples of prima facie discrimination could be justified.²⁵
- 5.3 The Commission does not agree with the Ministry's analysis. It considers that the provisions denying young people as a group the ability to manage their money are discriminatory and that the distinctions based on age and family status (in relation to young parents) cannot be justified under section 5 of the NZBORA.
- 5.4 The Commission has previously critiqued the Welfare Working Group's recommendations around compulsory income management.²⁶ If the system is to proceed as part of the welfare reform package, it is important that

²⁴ Accessible online at: <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/social-security-youth-support-and-work-focus-amendment-bill>

²⁵ The MOJ advice identifies prima facie discrimination (i.e. different treatment that disadvantages a group against whom it is unlawful to discriminate in the HRA) on the grounds of age, family status and employment. The test of whether a measure that is prima facie discriminatory can be justified under s.5 BORA is found in *R v Hansen* [2007] 3 NZLR 1 (SC) at 28. It involves the following considerations:

- (a) Does the limiting measure serve a purpose that is sufficiently important to justify curtailment of the right or freedom?
- (b) (i) Is the limiting measure rationally connected with its purpose?
 - (ii) Does the limiting measure impair the right or freedom no more than is reasonably necessary for sufficient achievement of its purpose?
 - (iii) Is the limit in due proportion to the importance of the objective?

²⁶ Page 17 of the Commission's August 2011 analysis of the Welfare Working Group's final recommendations

discriminatory aspects of it are removed, namely the blanket application of income management to young people receiving benefits. Later in the section the Commission outlines how this might be achieved, through a human rights approach to income management. The Commission's view that the Bill's current income management provisions are discriminatory and unable to be justified under the BORA is based on its reasoning set out below.

Age discrimination

- 5.5 The Commission accepts that data suggests that those who enter the benefit system at 16 or 17 tend to stay on benefits longer and that this is often associated with poor life outcomes for the youth themselves and for their children if they become parents. On this basis, the Commission agrees that the purpose of the legislation is probably sufficiently important to justify infringement of the right to not be discriminated against on the basis of age.
- 5.6 Under the BORA it is then a question of whether what is proposed is rationally connected to the outcome, whether the limiting measure impairs the right no more than reasonably necessary and whether it is proportionate. In relation to the issue of rational connection, the Commission is concerned that there is no evidence that links compulsorily managing benefit incomes to 16 and 17 year olds staying on benefits for shorter periods. Whereas there is a stronger link between the goal of reducing benefit time with the obligation to undertake education and training, no such link exists in relation to denying a young person the right to manage their income. In fact, compulsory management of a young person's income may lead to learned dependency.
- 5.7 The Commission notes that the Regulatory Impact Statement stated (para 35) that "...payment of benefit to third parties could have positive benefits, assisting young people to manage their finances better...[and concludes that] ...these positive outcomes justify the different treatment for these young people."
- 5.8 Given the significant incursions into young people's rights to privacy and to live with dignity the Commission considers that "*could*" is insufficient to establish the type of evidence-base needed to show justification under section 5 of the BORA and to meet contemporary standards of fairness.
- 5.9 The Commission acknowledges the possible rationale that imposition of compulsory income management on a teen parent might be in the best interests of a child. However, for a rational connection to be established, the need for compulsory income management would have to be established on an individualised basis and based on evidence that the particular parent needs assistance with financial management. For example, this might be due to problems such as family violence, gambling or a history of not meeting rental payments.
- 5.10 The blanket application of an assumption that all teen parents receiving benefits cannot manage their incomes is not proportionate in terms of the test in the BORA. It is likely to perpetuate age stereotypes. This stereotyping is likely to compound the barriers that youth already encounter when seeking

satisfying employment. It is the antithesis of a human rights approach founded on dignity, respect, fairness and equality.

Family Status

- 5.11 Under the provisions of the Bill, 18 year old parents will be treated differently than 18 year olds without a child. The disadvantage is that the income of 18 year old parents will be managed for an additional year, beyond the income management of other 18 year olds.
- 5.12 The MoJ advice acknowledges this family status distinction disadvantages 18 year olds with a child as they will be subject to an additional year of obligations and sanctions under the Youth Package (until they turn 19). It specifically notes the disadvantage caused by money management obligations that will remove young parents' choice as to how they manage their own finances.
- 5.13 The MoJ advice is that the discriminatory aspects of the Youth Package, including its money management provisions, are justified as:
- there is a rational connection to the objective of providing additional support for education or training for young parents
 - young parents may require increased support due to their additional responsibilities and increased vulnerabilities and
 - that there are benefits to young parents of education or training opportunities and access to parenting courses.
- 5.14 The Commission disagrees. As stated above it considers that the objective of assisting young parents to manage their finances is important. It also accepts that the children of teen parents tend to experience more hardship and poorer outcomes. However, the Commission does not accept that there is a rational connection between the purpose and limitation in terms of the BORA test.
- 5.15 As stated above, the Commission accepts the possible rationale that imposition of compulsory income management on an 18 year old parent may be in the best interests of a child. However, this would need to be established on an individualised basis. It considers that there is no justification for discriminating between 18 year olds who are parents, and 18 year olds who are not parents. The justification provided by the MoJ is rationally connected to continuing to support young parents in education or training, but not to compulsory income management.
- 5.16 The Commission notes that the Youth Package provisions assume that wrap-around support is universally required by all parents aged 18. However, more evidence is required to back this up. Many children born to young parents thrive. Research about risk and protective factors for children who do and don't experience positive life outcomes is a necessary evidence base for the lawful application of any income management regime to young parents.

Indirect sex and race discrimination

- 5.17 In addition to the MoJ's advice, Cabinet papers have noted that there are gender implications to the Youth Package.²⁷ The papers note that the Youth Parent Payment will predominantly affect women, and more specifically, Māori women.²⁸ The Youth Parent provisions are therefore prima facie indirectly discriminatory on the basis of sex and race.
- 5.18 The income management provisions will have a disproportionate effect on mothers, particularly Māori mothers. The Commission is concerned that there has been very limited consideration of the disproportionate impact on these women, and no analysis as to whether the income management provisions may amount to indirect discrimination.

Cost of compulsory income management

- 5.19 The Commission also notes that there is a lack of evidence that the purported benefits of any income management measure warrant the cost of administering the measure. A literature review conducted as part of a current Australian project on evaluation frameworks for income management programmes notes:
- Ideally, positive outcomes of conditional welfare programs should be weighed against their cost effectiveness, particularly when conducting robust evaluations, but cost effectiveness is an area which is underdeveloped in this field.²⁹
- 5.20 In summary the Commission does not consider the Bill in its current form or the background papers provide sufficient evidence to back up the underlying rationale that compulsory income management is necessary, effective and the least intrusive way of meeting the policy objectives.

A Human Rights approach to Income Management

- 5.21 The Commission considers that the income management provisions can be modified to be more consistent with international human rights principles and the BORA if they reflect the following:
- i) the starting premise that all young people are equally capable of managing their own finances
 - ii) there is an option for voluntary opting into income management measures by any benefit recipient and
 - iii) there is provision for compulsory income management to be applied as a last resort to any individual on a benefit where there is evidence that

²⁷ Cabinet Paper, Policy Decisions on the Youth Package, para 69.

²⁸ *Ibid.*

²⁹ Accessible online at:

http://www.fahcsia.gov.au/sa/families/pubs/nim/Pages/executive_summary.aspx ADD full citation.

it is warranted (for example, history of gambling and not meeting housing costs.).

- 5.22 This would be consistent with the Western Australian approach that allows compulsory income management for child protection purposes:
- when warranted and necessary in individual cases and
 - as requested by the Department of Child Protection and
 - implemented by Centrelink as the income support equivalent of Work & Income.
- 5.23 If income management is applied compulsorily to a particular person (based on assessed need), the following minimum provisions should apply:
- the term of compulsory management should be for the minimal time necessary to achieve the objective
 - the percentage of income managed should be determined on a case by case basis with no fixed maximum amount of cash in hand
 - the payment card must not clearly identify the holder as a beneficiary
 - there must be clear pathways to moving off income management and
 - review and appeal provisions must be available and known.

Income management lessons from Australia

- 5.24 Income management measures have been introduced in Australia pursuant to the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth). These measures are applied to those on social security and can be compulsory in five circumstances. These include at the direction of a child protection officer (s123UC), or where the person's or their partner's child is not meeting school enrolment requirements (s123UD).
- 5.25 There are also Australian examples where voluntary income management measures have been pursued. Examples include a case management child protection strategy in Western Australia and the Tangentyere Council's food voucher system in the Northern Territory. It was put in place by Aboriginal elders and has operated for more than 25 years. The Tangentyere Council scheme enables people receiving Centrelink payments to choose to have a nominated proportion of that payment to be provided in the form of a food voucher. The Council supports over 800 Aboriginal people under this voluntary measure.³⁰
- 5.26 A 2010 evaluation of Western Australian income management measures compared voluntary and compulsory schemes. Both were effective in helping people to meet their priority needs and those of their children and had positive impacts on the wellbeing of children and families.³¹ While there was some

³⁰ Tangentyere Council, 'Tangentyere's Voluntary Food Voucher System'. At http://www.tangentyere.org.au/services/finance/food_voucher/ (

³¹ Accessible online at: http://www.fahcsia.gov.au/sa/families/pubs/cpsim_vim_wa/Pages/default.aspx

evidence of a positive impact on people's financial management capabilities of participants, this was not conclusive.

- 5.27 People on voluntary income management were significantly more likely to say the scheme had made their lives "a lot better" (51 per cent) compared to those on the compulsory scheme (34 per cent). This difference was reflected in the likelihood that people would encourage income management to others. While 67 per cent of those on the compulsory scheme had recommended or planned to recommend income management to someone else, this rose to 82 per cent of people on the voluntary programme.
- 5.28 The human rights implications of compulsory income management have been very contentious in Australia. This reflects the high threshold in international human rights law whenever policies are applied in a discriminatory manner.
- 5.29 The Australian Human Rights Commission (AHRC) considered income management measures imposed under the Northern Territory intervention which were justified by the government as special measures. It found that, "such measures will not be special measures where they are implemented without the consent of the group to whom they apply"³² and must be understood consistently with the right of Aboriginal and Torres Strait Islander peoples to self-determination. The AHRC considered that it would be "inconsistent with the right to self-determination for a measure that limits the rights of a group to be imposed upon it without the consent of the group".³³
- 5.30 In its submission to the Senate Community Affairs Legislation Committee in February 2012, the AHRC stated its preference that income management measures be voluntary, used as a last resort for targeted risk areas, and applied for a defined period and in a manner proportionate to the context.³⁴
- 5.31 These concerns were reinforced by the United Nations Special Rapporteur on the Rights of Indigenous Peoples, in his 2010 report on the situation in Australia.³⁵

When government measures not only apply differential treatment to indigenous peoples, but also limit or condition their enjoyment of human rights and cast a stigmatizing shadow upon them, the most exacting inquiry must apply. To find the rights-limiting, discriminatory measures of the Northern Territory Emergency Regulations (NTER) to be justified would require a careful assessment that they are strictly

³² Australian Human Rights Commission (2009) *Draft guidelines for ensuring income management measures are compliant with the Racial Discrimination Act*, at para 89

³³ *Ibid* at para 90

³⁴ Australian Human Rights Commission (2012) *Submission to the Senate Community Affairs Legislation Committee in the Inquiry into the Stronger Futures in the Northern Territory Bill 2011 and two related Bills*, at para 144.

³⁵ Human Rights Council (2010) *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people: Situation of indigenous peoples in Australia*, James Anaya, A/HRC/15/37/Add.4. Available online at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/138/87/PDF/G1013887.pdf?OpenElement>

necessary to the achievement of the legitimate NTER objectives, that those objectives somehow override the rights and freedoms being limited, and that there is an absence of suitable alternatives.³⁶

Other Discriminatory Provisions in the Bill

Youth Package Obligations

- 5.32 The Commission notes that the BORA test has been applied to the Bill's imposition of mandatory training, employment, budgeting advice and parenting support on youth recipients of benefits. The Commission agrees with MoJ that the purpose of imposing these obligations is sufficiently important to justify discriminating by reason of age and family status (for 18 year old parents). It is then a question of whether what is proposed is rationally connected to the outcome, whether the limiting measure impairs the right no more than reasonably necessary and whether it is proportionate. In this regard, the Commission is concerned about the blanket nature of the provisions and limited discretion to take into account an individual's specific circumstances.
- 5.33 Neither the Bill nor background Cabinet papers or Regulatory Impact Statements demonstrate consideration as to whether there are less intrusive ways in which to improve education, training or employment outcomes for young people and life outcomes for children and teen parents. For example, these might include:
- prioritising investment in the supply of ECE facilities prior to the rollout of a obligations for young parents to be full-time education, training or work-based learning
 - authorising contracted youth service providers to waive participation in budgeting or parenting programmes when there is evidence that a young person already has these skills
 - introducing a voluntary option for young people to request additional budgeting or parenting support and
 - in the case of young parents, requiring contracted youth service providers to prioritise the best interests of the child.

DPB: for care of the sick or infirm

- 5.34 Clause 9 of the Bill relates to the provision of DPB to care at home for the sick or infirm. Currently there are restrictions on who can access the DPB for this reason – the recipient has to be over 16 and, if 16 or 17, there must be no other caregiver available.
- 5.35 As a result of the proposed amendment the age will be lifted to 19. This discriminates on the grounds of both family status (having responsibility for the care of dependents) and age. This was not addressed in the MoJ advice but, again, given the selection of 19 as the relevant age it is arguably not rationally connected to what it sets out achieve. What it will do is discriminate against younger family members wishing, or needing, to care for an ailing

³⁶ *Ibid*, Appendix B, para 26

parent or grandparent. The Commission recommends that some level of discretion is retained to enable some arrangements to be considered on a case by case basis, particularly for those aged 18.

Subsequent children

- 5.36 As already noted, clause 34 of the Bill inserts new sections 60GAD to 60GAF setting out new obligations when beneficiaries have additional dependent children. This may mean that parents will be required to undertake fulltime or part-time work when their youngest child is one year of age.
- 5.37 The MoJ acknowledges this raises the issue of discrimination by reason of employment status. However MoJ considers that this does not lead to disadvantage because the obligation is only to take up 'suitable employment' Furthermore the Ministry considers introduction of the work obligation for parents who are considered to be at higher risk of long term benefit dependence is proportionate and meets the justified limitation test.
- 5.38 The Commission reiterates concerns raised in its submission on the Social Security (Future Focus) Bill namely that insufficient attention has been given to the constraints on availability of employment and good quality child care, including in regional labour markets where a higher proportion of parents have subsequent children while receiving a benefit.³⁷
- 5.39 The Commission does not consider that the case has been made that the subsequent child test is the least intrusive means to support parents in this situation to move into decent work. As outlined in section 4, it also contravenes women's right to freely decide on the number and spacing of their children.
- 5.40 Therefore the Commission **recommends** that clause 34 is deleted from the Bill. If clause 34 is retained, the new section 60GAD, which it inserts, should be amended to require prioritising the best interests of the child.

6. Broader human rights issues

- 6.1 This section examines in more detail some broader human rights issues, that arise from the Bill's provisions.

Removal of the Independent Youth Benefit

- 6.2 The proposed Youth Payment will replace the current Independent Youth Benefit (IYB) that is available for 16 or 17 year old applicants who are either enrolled at secondary school, engaged full-time on a training course, capable and willing to look for work, or unable to work or study as a result of sickness, illness or disability³⁸. In addition, as with the IYB, young people must not be financially supported by their parents and could not reasonably be expected to

³⁷ Ministry of Social Development (15 February 2012) *Annex to Paper C Welfare reform: parents on benefit who have subsequent children*

³⁸ Section 60F Social Security Act 1964

be financially dependent on their parents (due to either family breakdown, their parents' inability to support them, or where they are leaving the care of the State)³⁹.

- 6.3 The Bill no longer includes a focus on the vulnerability of young people who have been in Child, Youth and Family care. Currently, s60FA(2)(ba) of the Social Security Act enables young people who have transitioned from Child Youth and Family care to qualify for the IYB.⁴⁰ The Bill would repeal this provision without replacing it with an equivalent clause. The Commission **recommends** that the Bill enables young people transitioning out of Child, Youth and Family care to be eligible for the Youth Payment, unless they are living with a caregiver or responsible adult. In other words, the default expectation would be that children transitioning from Child, Youth and Family meet the exceptional circumstances criteria in the Bill.

Impact of sanctions

- 6.4 In 2006 the Social Security Advisory Committee (SSAC), the main United Kingdom statutory advisory body to government on social security matters, published its evidence review of sanctions in the benefit system. Drawing from overseas research and evaluation it identified common issues around communicating the sanction regime to claimants, inconsistent application, higher sanctioning rates for disadvantaged groups and inconclusive evidence about the impact of sanctions.⁴¹
- 6.5 In New Zealand, Cabinet paper B *Welfare Reform: Availability and preparation for work for sole parents, widows, women alone and partners* also notes concerns about possible miscommunication or misunderstanding about this Bill's proposed sanction. It cites Peters and Joyce's 2006 review of the JSA sanctions regime, specifically as evidence that sanctions regimes are more effective when they are simple and easy to understand.⁴²
- 6.6 The Peters and Joyce review for the Department for Work and Pensions identified mixed findings about the impact of sanctions. Just over two-fifths of the 3,017 survey respondents said they were more likely to look for work as a result of benefit sanctions. Over two-thirds (68 per cent) reported financial hardship resulting from sanctions. Qualitative interviews with seventy beneficiaries showed they relied on friends and family, took out loans, spent savings or applied for other benefits or allowances after being financially sanctioned. Reliance on family and friends meant sanctions had a knock-on

³⁹ Section 60FA Social Security Act 1964

⁴⁰ See sections 140, 78, 101 and 110 of the Children, Young Persons and their Families Act 1989

⁴¹ Social Security Advisory Committee (2008) *Sanctions in the benefit system: Evidence review of JSA, IS and IB sanctions. Occasional Paper No. 1*, p 71. Accessible online at http://ssac.independent.gov.uk/pdf/occasional/Sanctions_Occasional_Paper_1.pdf

⁴² Office of the Minister for Social Development (15 February 2012) *Paper B Welfare Reform: Availability and preparation for work for sole parents, widows, women alone and partners*, para 50.

effect within the wider community and potentially prolonged the financial impact as people took time to pay off debt.⁴³

- 6.7 Cabinet paper B also footnotes a 2004 review of benefit sanctions in the United States undertaken by Dr Alex Warren.⁴⁴ This report was cited in the UK SSAC report when it questioned the impact of sanctions and the policy parameters required to make them effective. Waddan proposed that welfare recipients fail in their obligations due to significant barriers or misunderstandings about the social security system, rather than a desire to exploit it. Therefore he recommended:
- designing participation requirements that are realistic for each claimant
 - using conciliation process after noncompliance before a sanction is imposed and
 - once a sanction is imposed, the claimant should be told how to stop the sanction and allowed to do so as quickly as possible.

Payment Cards

- 6.8 The Commission is concerned that requiring young people to use a payment card may subject them to indignity. Under Article 1 of the Universal Declaration of Human Rights, all human beings are born free and equal in dignity and rights. As previously noted, women will be disproportionately affected by the Youth Payments and therefore disproportionately subject to income management and the use of payment cards.
- 6.9 Research on the perceptions of women subject to income management in Australia's Northern Territory identified the following concerns relating to the use of a payment card:⁴⁵
- the perception that card is intended for black women
 - the perception for the majority of women that Centrelink and others in the community do not have respect for them, or consider them to be less competent with money or as parents
 - 74% of card users said they feel people are not as nice to them when they see the card
 - 54% of card users said they do not feel good using the card in big shops, while 45% said they do not mind using the card in big shops
- 6.10 The Commission would be concerned if the payment card clearly identifies a young person's income source to retailers as this would risk stigmatising people based on their employment status.

Contracted service providers - incentives

⁴³ Peters, M. and Joyce, L. (2006) *review of the JSA Sanction Regime: Summary Research Findings*, DWP Research Report No. 313. Accessible online at: <http://research.dwp.gov.uk/asd/asd5/summ2005-2006/313summ.pdf>

⁴⁴ Waddan, A. (2004) 'Sanctions: mixed messages from the USA' in *Benefits*, Vol. 12, issue 1, pp. 26-30

⁴⁵ Equality Rights Alliance (2011), *Women's Experience of Income Management in the Northern Territory*, (Canberra: ERA), p 40

- 6.11 2008 research found that in both Australia and the Netherlands “there is a strong association between incentive-based contracts and ‘parking’, where harder to help participants receive a bare minimum of services”.⁴⁶
- 6.12 What incentives and accountability mechanisms will be put in place to ensure contracted providers:
- provide services tailored to someone’s specific needs
 - focus on placements into decent work and sustainable employment and
 - do not ‘cherry-pick’ clients in order to obtain the highest subsidy possible and/or prioritise cheaper interventions over those that will make the most sustainable improvement in outcomes?
- 6.13 Given the importance of transparent accountability mechanisms, what review and appeal options are in place if a young person considers they have been coerced into inappropriate options?

7. Conclusion

- 7.1 Firstly, the Commission has considered whether the Bill’s provisions reflect the five essential elements of the right to social security. It accepts that the welfare reforms do not undermine the availability of a social security system that covers a comprehensive range of social risks and contingencies. However it has concerns in the following three areas:
- adequacy – the policy rationale has identified financial mismanagement as the problem and has not considered the adequacy of current benefit levels, let alone how these will be compromised when sanctions are applied
 - accessibility – the Bill raises the eligibility for adult benefits to 19 years of age for teen parents, and evidence suggest that sanctions will largely be imposed on vulnerable groups and
 - relationship to other rights – particularly what measures will be in place to address lack of early childhood education and care in remote locations and at times of the day to enable young parents’ participation in education, employment or training.
- 7.2 Secondly, the Commission considered the specific non-discrimination requirements set out in international human rights standards and reflected in section 19 of the NZBoRA. It agrees with the Ministry of Justice’s assessment that a number of the Bill’s provisions amount to prima facie discrimination on the grounds of family status, age and employment status.
- 7.3 The Commission does not consider that sufficient consideration of other options has been undertaken in order to demonstrate that the Bill’s proposals are the least intrusive way to meet its policy objectives. There is a lack of connection between the imposition of compulsory income management and

⁴⁶ Finn, D. (2008) *Lessons from contracting out welfare to work programmes in Australia and the Netherlands*, p 1. York: Joseph Rowntree Foundation. Accessible online at: (<http://www.jrf.org.uk/sites/files/jrf/2307.pdf>)

the policy objective of financial management in the best interests of a child. Nor is there evidence justifying the blanket application of compulsory income management to youth. Therefore the Commission considers that prima facie discrimination, particularly in relation to the income management provisions, is not justifiable.

The Commission **recommends**:

- contracts with youth service providers stipulate they are required to give consideration to UNCROC provisions alongside the objectives of the Bill, including prioritising the best interests of the child
- more allowance be incorporated into youth package obligation provisions to enable individualised and useful uptake of training, education, budgeting and parenting programmes
- youth service providers should be authorised to waive programme attendance when young people can demonstrate they already have the relevant skills
- the Bill is amended to require provision of information about sanctions including how they can be lifted, and to establish a low-level conciliation process to be used before a sanction is imposed
- operational guidelines are developed and applied to protect disabled people's right to reasonable accommodation when seeking employment, including their right to refuse work that does not meet these requirements, without being sanctioned
- a specific reference to increasing participation and social inclusion is added to the purpose (section 1A) and/or principles (section 1B) of the Social Security Act 1964
- income management provisions are modified to be more consistent with international human rights principles and the NZ Bill of Rights Act by:
 - making these provisions optional and
 - providing for compulsory income management to be applied as a last resort where there is sufficient evidence that this is warranted
- in those instances where compulsory income management is warranted, based on assessed need, the following minimum provisions should apply
 - the term of compulsory management should be for the minimal time necessary to achieve the objective
 - the percentage of income managed should be determined on a case by case basis with no fixed maximum amount of cash in hand
 - the payment card must not clearly identify the holder as a beneficiary
 - there must be clear pathways to moving off income management and
 - review and appeal provisions must be available and known.
- the Bill's proposed information sharing provisions are deleted and that an information sharing agreement between the Ministry of Social Development and Ministry of Education is entered into once the Privacy (Information Sharing) Bill provisions are enacted

- if information sharing provisions are progressed through this Bill, that the Social Security Act is subsequently amended, if necessary, to ensure consistency with provisions enacted through the Privacy (Information Sharing) Bill
- clause 34 is deleted from the Bill
- if clause 34 is retained, that new section 60GAD is amended to read “while recognising the care and development needs *and prioritising the best interests* of children”
- some discretion to enable applications for the DPB to be considered, on a case by case basis, from young people aged 16 or over caring for an ailing parent or grandparent
- young people transitioning out of Child, Youth and Family care are defined as meeting the exceptional circumstances criteria in new section 159 (2) of the Bill
- independent evaluation, including public access to some MSD administrative data, in order to monitor the impact of welfare reforms contained in this Bill
- ensuring the Ministry of Social Development’s administrative data can be disaggregated sufficiently to measure the impact of welfare reforms on groups vulnerable to systemic disadvantage –including scoping options for collecting better data on beneficiaries with disabilities