

# Social Security Legislation Rewrite Bill: Submission from the Office of the Children's Commissioner (OCC), June 2016

It is in everyone's interests for New Zealand's social security legislation to be easier to understand and use, but we must not lose sight of the main intentions of our welfare system.

## WE SUPPORT MANY ASPECTS OF THIS BILL, BUT HAVE SOME CONCERNS

It is in everyone's interests for New Zealand's social security legislation to be easier to understand and use. We also support in principle the concept of an investment approach, as long as it takes children's interests into account and ensures that unintended negative consequences for children are quickly identified and remedied.

That being said, we are concerned that the Bill as currently drafted misses an opportunity to take a genuine investment approach for children. It also poses some significant risks of worsening short and long term outcomes for children.

In this submission we draw on the intent of child-centred policy and the social investment approach to show how these risks can, and should, be mitigated without substantial change to the Bill.

## CHILD-CENTRED POLICY AND SOCIAL INVESTMENT

Benefits are not just for the individual recipients – benefit payments are *"to help people to support themselves and their dependents while not in paid employment"* (Section 1A(a)(i) of

the Act). This means they are part of the total family income that, in many cases, is vital to giving children a good start.

*New Zealand has a long history of supporting vulnerable children*

New Zealand is a developed and prosperous country. All New Zealand families should have sufficient income to meet the basic needs of their children. In most families, that income is made up of parents' employment earnings

along with various supplements such as Working for Families tax credits. In families where there are inadequate or no employment earnings, income support is required. Some degree of income support has been provided to support New Zealand children since the 1900s. State income support has long been an expression of community willingness to ensure that all children get a good start.

*Children living in low income households have an increased risk of poor outcomes*

We know that low family income is an important factor in poor child outcomes. Family income has a causal effect on children's education outcomes, behavioural and health outcomes, and that effect is strongest during early childhood.<sup>1</sup>

Around one quarter of 0-4 year olds have a parent on a main income benefit. Family income has a stronger causal effect on outcomes for children in poorer families, suggesting a more equitable redistribution of income can achieve better overall outcomes for children. Getting the welfare system performing well for families with children is critical to improving outcomes for these vulnerable children.

There are many reasons why parents may be unable to provide for their children. Whatever is going on for the adults in their lives, children's needs remain the same, and cannot

The Children's Commissioner has a statutory role to advocate for the rights and interests of all children in Aotearoa New Zealand.

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The UN Convention on the Rights of the Child guarantees children the right to benefit from social security (article 26) and an adequate standard of living (article 27).

New Zealand has signed the Convention and is required to ensure the full realisation of these rights.

<sup>1</sup> See for example: OECD, *Doing Better for Children*, 2011; Adema, Willem and Peter Whiteford (2007), "What Works Best in Reducing Child Poverty: A Benefit or Work Strategy?"

wait. The life-long consequences of early deprivation on children mean that the impact on children must be a part of any investment decisions about social security.

Child-centred welfare policy would put the needs of children first, and incorporate the following intentions:<sup>2</sup>

- > lift children out of poverty, especially those with multiple risk factors for whom poverty has the most damaging consequences
- > protect children during recessions as well as when the labour market is strong
- > support poverty exit through parental work where this is reasonable (dependent on the child's age and care needs)
- > maintain strong parental labour market attachment
- > minimise disincentives to work and create positive incentives for paid work
- > minimise disincentives for people to partner
- > be simple, for both families with children and for administration
- > be fiscally responsible.

Inevitably there will be trade-offs between these objectives. Overall, though, this Bill gives insufficient priority to children's interests.

*We should give greater priority to children's interests*

The Bill states at section 4(b) that "the priority for people of working age should be to find and retain work."

In our view, being a responsible parent is an equally important priority for those with children. Policy settings should not create situations that put these responsibilities in conflict.

The interests of children are not always easy to assess. In general, something that is of benefit to a parent will also benefit their children. However having employment as the sole objective in this legislation does not provide the necessary flexibility to balance immediate or longer term conflicts between the incentive for a parent to work and the child's best interests.

For example, it would be poor investment to move a parent into employment that does not meet the family's needs (e.g. does not pay

well enough, is too unpredictable, or is outside standard hours) and doesn't allow for good quality child care.

A genuine investment approach must be based on a positive commitment to improving social and economic well-being, not simply reducing fiscal cost. A social investment approach to our welfare system will need to promote long-term sustainable employment, improvements in outcomes for vulnerable children, and reductions in inter-generational welfare dependency. Such an approach must also be positive and informed by evidence. Reducing the number of people on benefits must not come at the expense of children. Poor childhood outcomes lead to increased expenditure on the health, welfare and justice systems, as well as a loss of potential to the detriment of individuals, families and communities, and society generally.

*The Bill can be strengthened to ensure the social investment approach produces long-term economic and social benefits*

An explicit commitment to children's rights and interests would help to ensure that the social investment approach produces genuine long-term economic and social benefits. Social security legislation should be strengthened to recognise the needs of children in the families receiving income support. We recommend adding a further principle to section 4 of the Bill, requiring that children's welfare and best interests should be a primary consideration in any decisions that will directly or indirectly impact on children. This would be consistent with the government's obligations under the UN Convention on the Rights of the Child, and would provide more balanced criteria for guiding policy implementation and evaluation.

**Recommendation one:**

Amend section 4 of the Social Security Legislation Rewrite Bill to introduce a new subsection 4(f) as follows:

*4 Principles*

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

*(f) That primary consideration is given to the welfare and best interests of any child or children who may be directly or indirectly affected by the exercise of that duty or function*

<sup>2</sup> Expert Advisory Group, *Working Paper no.10: Reforms to the Tax, Benefit and Active Employment System to Reduce Child Poverty*, Children's Commissioner, August 2012, p5

## OVERALL OBJECTIVES OF THE BILL

### *Making the social security system easier to understand and use*

The stated intention of the Bill is to make this fundamental piece of legislation more accessible, “by setting out clearly the existing requirements for eligibility, obligations, sanctions, and rights to review and appeal decisions, and how assistance is delivered.”

This is a worthy aim, and should help Work and Income staff, as well as families and their advocates, to ensure people receive their proper entitlement. Evidence of more clients receiving their correct entitlements will be a sign that this rewrite has been successful.

Monitoring and evaluation are fundamental requirements when undertaking public policy development and innovation in areas with the potential for significant long-term social and economic impacts. Careful monitoring is vital so that policies can be amended quickly if they are not achieving the desired results, or causing harm.

In 2012, the Children’s Commissioner’s Expert Advisory Group on Solutions to Child Poverty recommended an annual calculation and publication of information on the take-up of all major benefits and in-work payments by eligible families with children (broken down by family size, structure and ethnicity), including the take-up of second-tier benefits like the Accommodation Supplement and the Child Disability Allowance. There should also be an annual analysis of the benefit take-up rates by those eligible for receipt of each benefit.<sup>3</sup>

### **Recommendation two:**

*A monitoring and reporting requirement, including public reporting of the impact on children, be included in the Act, to enable evaluation and accountability for the implementation of the new legislation.*

<sup>3</sup> Expert Advisory Group on Solutions to Child Poverty, 2012, *Solutions to Child Poverty in New Zealand: Evidence for Action*, p40.

## IMPLEMENTATION OF WORK FOCUS AND SOCIAL OBLIGATIONS

In 2012 social obligations were added to the primary legislation, allowing for significant sanctions on benefit recipients who do not meet certain education and primary health care requirements for their dependent children. This Bill carries forward the obligations and sanctions regime, and further embeds the default focus on moving beneficiaries into paid work.

In principle, obligations relating to education and primary health care for children should help to reduce the risks of children having poor life outcomes. However, there are serious risks to children in the implementation of work focus and social obligations approach.

### *The legislation could be significantly improved to reduce these risks*

For example:

- > better results could be achieved by delivering the policy and legislative intentions in a way that is supportive and enabling, not as a punishment
- > if sanctions must be used, they should be staged so that non-monetary sanctions are introduced prior to any reduction to the benefit levels
- > monetary sanctions – up to 50% of the benefit where there are children in the family – should be applied in families with dependent children only after all other avenues have been exhausted. In practice this should apply only to a very small number of families
- > there should be an assurance that measures will not result in harm to children, and unintended consequences will be monitored.

Adding children’s best interests as one of the principles for the new Act would help to prevent such unintended negative consequences for children. This would need to be reinforced by appropriate oversight and evaluation of the implementation process and its impact on children.

### *There should be monitoring and reporting on the impact of sanctions on children*

Appropriate monitoring and evaluation is vital to ensure that children are not being harmed by the implementation of the sanctions and work focus regime.

Anecdotally, we are aware of recent examples of sanctions being applied inappropriately, including to parents of children with serious illnesses. An unexpected hospital stay should not result in a benefit loss because a parent did not receive a letter. The stress is not helpful for children's recovery, and the reputational harm to Work and Income is considerable. Examples like this are concerning, and suggest variability in the practice of application of sanctions and a lack of child-centred thinking.

We have requested more information to get a better picture of how sanctions are being applied and their impact on children, but have been told that this information is not available. This suggests more robust monitoring and evaluation should be a priority. This is particularly important given the level of detail contained in regulations, which are not subject to the same scrutiny and review as primary legislation.

Some simple amendments to this Bill could help to ensure these things happen. Improved consistency and quality of child-centred practice across should be a priority for the Board supervising Work and Income, meaning it will need members with relevant expertise. There should also be a statutory requirement for regular reporting of the impacts on children of actions taken under this legislation.

Given these changes have been in place since 2012, we recommend the Committee request analysis of the impact to date, in order to support its deliberations on the this Bill.

**Recommendation three:**

*Specify that at least one member of the Work and Income Board must have expertise in child well-being and development.*

**Recommendation four:**

*That the Committee request information from the Ministry of Social Development detailing the numbers of children whose families have experienced sanctions, and any analysis about the impact of the sanction regime on children, including any evidence of improved rates of enrolment in education and primary health care services.*

## SUBSTANTIVE POLICY REFORM

In 2012, the Expert Advisory Group on Solutions to Child Poverty considered ways that welfare settings could reduce child poverty. Recommendations one to four above draw on the experts' conclusions for obvious improvements to the current legislation.

The experts also made recommendations for more profound policy development of the social security system that would support better outcomes for children. We think social security legislation needs a comprehensive rewrite not only to update its language and make it more user-friendly, but also to take a fresh look at key elements of the policy framework.

These changes could be made in this Bill, or, if the Committee decides that it is not the appropriate mechanism for a substantial policy update, we suggest that the following are seriously considered for a future amendment:

- > indexation of all child-related income support, benefits and tax credits to ensure support keeps pace with productivity growth in the broader economy
- > an independent and comprehensive review of all child-related benefit rates and relativities, with a primary goal to reduce child poverty
- > a new income support payment for families with dependent children to replace a number of the existing benefits and tax credits
- > reform of the In-Work Tax Credit to better assist families in poverty.