Submission on the Social Security (Benefit Categories and Work Focus) Amendment Bill

1 The Beneficiary Advisory Service (“BAS”): strongly opposes this legislation and urges the select committee to reject it.

Our status as submitters

2 BAS was set up in 1992 to promote and protect the legal, social and citizenship interests of people on benefits and low incomes. Our workers, both paid and voluntary, are drawn from this group and derive a wide range of skills and opportunities through the work they do. Our organisation also reflects the ethnic diversity of our clients, as our workers are of Maori, Pacific and Pakeha/Palangi descent.

3 We are registered as a Charitable Trust under the name of the Christchurch Peoples Resource Centre.

4 Our primary service is to provide individual information, advice and advocacy for people who are experiencing problems in the benefit system. These problems range from simple entitlement questions to complex legal issues. We have dealt with many of the benefit reviews in Christchurch and we have helped to prepare cases for the Social Security Appeal Authority, the High Court and the Court of Appeal. People who are faced with social security problems are almost invariably referred to us if they contact other community agencies.

5 We have thousands of client contacts per year and deal with clients from all over the country. At any one time, we would be working intensively with around 50 -100 clients plus an average of 4 new client calls per day. This would involve information and advice, direct negotiation with the Ministry of Social Development, and representation at hearings. Our referrals come from all the major agencies and a wide range of non-community sources. We are unique as a service in terms of a combination of perspective, knowledge and skills.

---

1 As a result of the Christchurch earthquakes, we have no office address and work primarily from a home office. Our contact details are those set out above. We do not currently have an operating fax machine.
The flawed “consultation” process

6 We express our deep concern at the attenuated process for submissions. We also note with concern the tight timetable for the select committee to report back.

7 The bill itself is very lengthy and contains radical changes to existing legislation already notorious for its complexity. The regulatory impact statements and accompanying cabinet papers supplement the bill with hundreds of pages of required reading.

8 This inadequate time for submissions is exacerbated by the deletion of key passages from the regulatory impact statements and accompanying Cabinet papers. In our experience, the Ombudsmen are quite unable to deal in a timely way with challenges to the withholding of such material under the Official Information Act 1982, particularly when the passage of legislation is rushed.

9 The combination of these factors provides no real opportunity for adequate consultation to take place.

The flawed policy background

10 We observe from the Explanatory Note to the bill that the proposed reforms are a response to the review of the benefit system undertaken by the Government selected Welfare Working Group in 2010.

11 Accordingly, we now repeat the observations made in this respect in our earlier submission on the Social Security (Youth Support and Work Focus) Amendment Bill.

12 We share the well-documented concerns expressed by other commentators as to the loaded composition and terms of reference for that Group.2 We also share completely the view of various commentators that:

   Our welfare system is overdue for comprehensive review, but this clearly isn’t it. The public needs to be able to trust the integrity of the process, yet the review seems compromised already by its narrow parameters and predetermined conclusions.3

   From day one, the exercise has hardly been a wide-ranging or rigorous investigation. The WWG chose to fixate on a symptom (welfare dependency) selected a cause from its ideological kitbag (an alleged lack of personal motivation and of strong incentives to seek work) and adopted its policy recommendations to suit.4

   The [discussion paper is] a document that amounts to polemic masquerading as analysis. It is highly selective in citing statistics that suit its argument. It uses the experience of other countries to point to the relative failings of New Zealand’s social assistance policies. Perhaps worst of all, it makes assertions that are just plain wrong.5

---


The result is the most distorted presentation of statistics I have ever seen in a government-sponsored document.

In terms of these recommendations we endorse the views of the Child Poverty Action Group that:

The Welfare Working Group's final report, *Reducing Long Term Benefit Dependency*, is arguably one of the most unenlightened pieces of work to emerge from a government-funded task force. Most submissions were ignored, revealing that much of the consultation process was simply a public relations exercise.

In contrast, we believe that the founding principles outlined by the 1972 Royal Commission on Social Security remain entirely valid. That Commission was established by the National Government in 1969. These founding principles were that:

1. Social security is a *community responsibility* and it is a legitimate function of the state to redistribute income so as to ensure that everyone can live with dignity.

2. Eligibility should be based on *need*, determined by identification of circumstances, such as sickness, and by measurement, using an income test (although in some circumstances, such as age, need can be assumed to exist).

3. Eligibility should be based on *residence*, rather than contribution to any social security fund.

4. Benefits should be paid at a level which enables people to *participate in and belong to the community*.

We note also that the Royal Commission on Social Policy in 1988 stressed:

1. The right to a sufficient share of resources to allow full participation in society;

2. Relief of immediate need arising through unforeseen circumstances;

3. A commitment to ensuring the well-being of children.

We observe that the Prime Minister, as the child of a widow, and the Minister of Social Development, as a lone parent, each benefited from this approach to social security at a time in their lives when they were in need of support. Their widely publicised “back stories”, advanced during the process of changing the benefits system, should be seen in this context.

The concept of “full participation in society” by beneficiaries was removed in 1991, as an aim and a consequence of the 1991 benefit cuts. The motivation was elaborated in the then government’s *Welfare that Works* document. The principle was partially reinstated under the social development model adopted by successive governments between 1999 and 2008, from which this bill departs.

Even at the basic level of thinking represented by this bill, which places no value whatsoever on the unpaid work of care-giving and recognises only paid labour as “work”, no consideration has been given to the potential for “full participation” approach.

---

to actually make it easier for a beneficiary to come off the benefit and enter the paid workforce.

19 Our organisation has also existed long enough to experience the shift in thinking from the original principles to the contrasting neo-liberal approach now represented by the Welfare Working Group report and this bill.

20 Again, the *Explanatory note* to the bill asserts that the availability of social security benefits makes people dependent on the state (so-called “welfare dependency”). We note that the concept of “dependency” is a loaded one in the context of social security, because here the otherwise neutral word has pejorative connotations in the hands of neo-liberal thinking. We do not talk, for example of “working group fee dependency”, “mortgage dependency”, “business loan dependency”, or “salary dependency”.

21 “Dependency” has also tended not to be defined in any detail in official accounts and has not been the subject of any thorough empirical research based on conditions in this country. Instead, in the hands of the Welfare Working Group and the current Government, it is a concept dogged by rigid ideological perception and buttressed by unreliable anecdote.

22 Nor is it our experience, contrary to the neo-liberal position, that beneficiaries become passive recipients with no will to help themselves or that social security benefits produce disincentives to self-reliance.

23 To take just one example of the people targeted by this bill, over two thirds of DPB recipients receive the benefit for less than four years, and over a quarter of these people receive it for less than one year, even in the adverse labour market conditions resulting from a recession. Further, if we take the last statistical year unaffected by the Christchurch earthquakes, in the year to March 2010 nearly 26,000 people withdrew from the DPB and about 31,000 took it up, indicating return to the workforce when circumstances allow, again even during a recession and with an accompanying weak labour market.

The real crisis: economic mismanagement leading to lack of jobs

24 If the lack of motivation or absence strong penalty incentives was the real issue, then one would expect that benefit numbers would remain unchanged when employment opportunities are plentiful. In fact, as is well-documented, when an economy is managed in a way that encourages adequately rewarded and safe work, benefit numbers plummet. We might consider the dramatic fall in those receiving the unemployment benefit to a low of around 20,000 in 2007 which then increased on the last available figure to 60,000 by March 2011.

25 In short, the crisis in this country is a jobs crisis: according to the December 2011 Household Labour Force Survey 150,000, people are currently unemployed and actively seeking work. In our own city, for example, more than 1,000 people recently applied for 170

---

8 There is a useful analytical discussion in Jonathon Boston, Paul Dalziel and Susan St John (eds), *Redesigning the Welfare State in New Zealand*, OUP 1999, ch 2.


1 In the mid-2000s, for example, unemployment benefits were approximately one quarter of those currently received.
26 The numbers of those receiving social security benefits is then compounded by poor management of the economy and associated cutbacks in accident compensation entitlements under the current government. On the last available statistics covering the main benefits published by the Ministry of Social Development, of those people represented in the statistics:

- 85,000 are receiving a medically tested invalid’s benefit, meaning that they are viewed by law as severely and permanently incapacitated in terms of ability to work. Many of these people would have been receiving accident compensation entitlements had they not been cut out of the scheme by earlier changes restricting entitlement.
- 60,000 are receiving a medically tested sickness benefit, meaning that they are viewed by law as being temporarily unfit to work. Again, many of these people would have been receiving accident compensation entitlements had they not been cut out of the scheme by earlier changes restricting entitlement.
- 60,000 are receiving an unemployment benefit, which requires recipients to be actively seeking work as a condition of entitlement. This represents an almost fourfold increase under the current Government.
- 60,000 are receiving a domestic purposes benefit, mostly raising children alone.

27 Then, stating the obvious, the Ministry of Social Development itself has observed that the rise in benefit numbers in some categories reflect economic conditions. In this context, as has been observed:

> Blaming the welfare system for the current existence of poverty is like seeing the incidence of Third World diseases in this country, and blaming it on the existence of hospitals. Similarly, the social safety net does not cause people to live in poverty and be out of work – it is an effect, not a cause.

28 The untested proposition of “dependency” is thus used as a diversion from the real problems generated by a policy framework that has failed to address unemployment and has simultaneously created acute poverty among vulnerable families. As one commentator put it:

> The same politicians who have been unable to manage an economy so that it employs people, are now blaming people for not finding jobs that do not exist. Nothing in this process is directly about reducing or alleviating poverty. It is mainly about reducing costs by making it harder for families to access the assistance they need in adversity – and this is being done in part at least to make up for the revenue given away in last year’s tax cuts. It is part of the wealth transfer from the poorer to wealthier members of New Zealand society occurring on the government’s watch.

---

11 As reported on 21 September 2011, at www.stuff.co.nz
12 The relevant Benefits Fact Sheets for the end of March 2011: see “research and publications” at www.msd.govt.nz
13 And some of this number will have been transferred to the benefit after being removed from accident compensation coverage by the current Government’s amendments to the scheme, which predominantly adversely affected coverage of low income workers.
14 And the number of working age people receiving disability benefits in New Zealand still falls well below the OECD average, whilst the proportion in work is higher than that average.
15 Fact sheets, as above, note 8.
17 Gordon Campbell, making the above point, in “Ten Myths About Welfare”. http://gordoncampbell.scoop.co.nz
Or to quote another commentator on this bill: 18

The numbers on benefits move in line with business cycles. When the economy is growing and employers are short-staffed beneficiaries go to work – even those most maligned of beneficiaries, sole parents. National is conducting a witch hunt and it’s not just disappointing in terms of the intellectual vacuum that underlies its social policy, it’s a despicable display of victimizing the less fortunate.

The overall attack on beneficiaries is also used as a policy tool to reinforce the encouragement of precarious low wage employment, forcing beneficiaries faced with sanctions to compete with others for available work, enabling employers to reduce existing wages and conditions. This is a brutal policy objective last articulated and employed under the Employment Contracts Act 1991 and the associated benefit cuts. 19

In the labour market context also, the welfare “reforms” can be seen as aimed at diverting low and middle income workers from the Government’s attacks on their security of employment and basic working conditions, through mechanisms such as the introduction of “trial periods”, the enhanced ability of employers to disadvantage and dismiss workers “justifiably”, the proposed removal of mandatory rest and meal breaks, and the overall weakening of the rights of unions including the right to enter premises to check safety and the right to bargain collectively.

The bill’s failure to deal with poverty

The gap between rich and poor has widened more in Aotearoa New Zealand in the past twenty years than in any other developed country according to the OECD, which has warned of the consequent “unravelling of the social contract”. This country now ranks seventh among advanced economies for inequality. The main reason lies on the benefits side of the divide, as eligibility rules have been tightened and certain benefits and allowances abolished, reducing spending on social protection. Transfers to the poorest have failed to keep pace with earnings growth whilst high earners have been given tax cuts. 2

Indeed, poverty in this country has reached the point where many children regularly go to school hungry, food banks are experiencing record levels of demand and preventable “third world” diseases associated with poverty have become commonplace in some communities, particularly Maori and Pasifika communities. 21

According to the Government’s own Green Paper for Vulnerable Children, “nearly 20 per cent of New Zealand children live in poverty ... [which] in conjunction with other factors can further impact on children’s futures”. 22

---

19 The 1991 benefit cuts, which have never been restored, were imposed as part of a package with the Employment Contracts Act 1991 and the then Government’s “blueprint” Welfare that Works indicated that the two measures had been aligned so as to make wages more “realistic”. As noted, the current tightening of the benefit system in the “future focus” legislation similarly runs hand in hand with moves to reduce employment protection, and render low-paid work more precarious, through weakening unions, extending trial periods and reducing protection against unjustifiable action and unjustifiable dismissal.
2 OECD, Divided We Stand, 2011.
22 At page 4.
As the Child Poverty Action Group and the Alternative Welfare Working Group have observed, solutions are readily available which could lift beneficiaries and their children out of poverty. We unreservedly endorse the approach that these organisations recommend, which include extending Working for Families to every low-income family, whether in paid work or not.

But when it comes to alleviation of poverty for those on benefits, and their children, we find no answer in this bill except for an implied assumption that this poverty, and the risk of even more acute poverty in the absence of benefit payments, acts as a spur to incentive and effort. Even if there was a buoyant labour market, this approach would still reflect a profoundly mean-spirited and negative view of human nature. It would also ignore the considerable constraints on employment experienced by those without access, for example, to affordable quality child care.

But to return to the fundamental point, the jobs simply do not exist, a point glossed over both by the Welfare Working Group report and by the proponents of the bill. The current Government and its National-led predecessor have failed to create an environment where sustainable jobs exist on the scale required to provide employment for the 150,000 people already recorded as being actively engaged in job search. The result is that, under current labour market conditions, appropriate work is demonstrably not available. The extension of work-testing then begins as an ideologically inspired burden on the people concerned and ends as a tool to enable employers to reduce conditions as an additional 17,600 desperate job-seekers enter the bottom rungs of a tight market.

In the absence of any developed argument to the contrary, we are then left to adopt the only hypothesis that accommodates the known facts. The proponents of this bill are quite content to allow the current appalling levels of poverty in this country to continue, both for adults and children, until those experiencing poverty (or their parents) obtain paid work, regardless of its unavailability.

This is utterly shameful.

Analysis of the bill’s clauses

The extremely limited time for preparation of submissions, coupled with the high complexity of the proposed changes, makes it impossible for an organisation such as ours to enter into a clause by clause analysis of this bill. In the time available we are able to make only the following broad observations on some of the worst features of a deeply flawed approach.

Pre-benefit activities, clause 9

---

23 In the suite of papers at www.cpag.org.nz
25 Which gave the issue no extended treatment whatsoever.
41 We oppose clause 9, which proposes to extend required pre-benefit activities to those people receiving an emergency benefit, applicants for sole parent support and the partners/spouses of applicants for job seeker support and the supported living payment.

42 In our view, required pre-benefit activities as they currently exist are both unnecessary and unduly stressful on those who are forced to seek social security assistance. In this context they appear to be used principally as a crude device to delay the initial payment of a benefit to those who are already suffering acute hardship.

43 In the specific context of clause 9:

- extending the requirement to the emergency benefit pays no regard to the many varied, and often desperate, situations in which applicants for an emergency benefit find themselves;
- extending the "job readiness" approach to applicants who are sick or suffering from injury or disability ignores the very factors that have led them to apply for a benefit in the first place; and
- further extending the approach to the partners/spouses of applicants for a benefit has significant implications both in terms of the impact on some of the relationships concerned (which may not reflect mutual tolerance of the required steps, such as incursions on privacy for example) and in terms of the inadequate protection afforded to the applicant should their partner fail to comply (in effect “punishing” the applicant for the “failure” of a person over whose actions they lack control).

Replacement of invalids’ benefit with supported living payment, clauses 13 - 19

44 We oppose clauses 13 – 19 which propose to replace the current invalids' benefit and domestic purposes benefit for domiciliary care with a supported living payment in new sections 40C – 40H.

45 We are particularly concerned that, in each case, those affected will be subject to more restrictive access to the necessary “support” for living and the stigmatising so-called “social obligations” under clause 25.

46 In relation to carers currently receiving the domestic purposes benefit (most of whom are women caring for sick family members) the proposal profoundly devalues the work already being done and adds more stress to an already difficult situation. These carers already save the State the far greater expense of caring for their family members in hospital. They deserve better.

47 So far as people living with disability are concerned, the proposed regime is profoundly insensitive to their needs. In our experience, those people currently receiving an invalids’ benefit already experience stringent medical testing in order to determine entitlement. Requiring them to repeatedly see a doctor for work ability assessments under the proposed regime will add further stress and misery to existing hardship.
We have also experienced significant problems with the existing use of “designated doctors” under the legislation as it stands. We anticipate that the proposed regime will exacerbate these problems. In particular, there is the very real risk that Work and Income will employ doctors on the basis of their demonstrated propensity to remove people from the benefit, without proper medical justification, in the same way as the Accident Compensation Corporation has been seen to operate.

The result will be to remove people from the supported living payment and transfer them to the “job seeker support” at a lower rate. This will take away the support that they need for specific medical problems and exacerbate the stress by requiring them to engage in an inappropriately stringent form of work-testing for a person suffering from their particular condition.

Creation of “jobseeker support” benefit, clauses 20 and 40

We oppose clauses 20 and 40 which propose the partial amalgamation of the current sickness benefit and unemployment benefit to create a replacement benefit of “job seeker support” in new sections 88B – 88M.

First, this as a transparently cynical “rebranding” designed to create the illusion both that the required jobs are there to be sought and that failure to fill them is the fault of beneficiaries. As noted earlier in this submission, this is demonstrably not so in either case.

Second, the amalgamation of the two previously separate benefits results in increased surveillance, work-testing and work ability assessments for those who are sick. Many people in this category suffer from chronic ill-health which merits additional social support rather than bureaucratic intervention once aptly, if unfeelingly, described by Work and Income itself as “hassling”.

Obligations to work with contracted service providers, clause 22

We oppose clause 22, which proposes that any person receiving one of the three main benefits (and their spouse/ partner if relevant) must work with contracted service providers and applying sanctions for non-compliance.

We strongly oppose the privatisation of welfare provision by placing the administration and delivery of some public services in the hands of contracted private sector “service providers”. Like others, we are concerned that these measures may be utilised as a stalking horse to justify future privatisation of other welfare services, and incursions on privacy.

We are aware of the considerable evidence demonstrating the significant and well-publicised failures associated with this step when taken overseas, notably in the UK and some states in the USA. We agree with the observation that:

27 Just as the initial National Party manifesto commitment to limit the ability to impose “trial periods” to small employers was extended to all employers within one Parliamentary term.
Quite apart from the objection in principle, we note that the rushed nature of the first stage of this legislative scheme has – in the view of officials - led to limited time being available “to build the capacity and capability of Service Providers, who will play a key role in the package”. Unlike officials, we do not see the “generalist” role of “service providers”, and associated matters, as being mitigating factors in this respect. Given the enormous power which these contractors will have over vulnerable people, we find it utterly appalling that any doubt remains as to their capacity and capability.

Nor are we reassured by the official recognition that this shift to contracting “carries risks of gaming and unintended consequences” so that monitoring the performance of private providers will be carried out, although recognised as being “difficult”. Those risks are about to be visited on some of the most vulnerable people in our community and monitoring reports will not be possible until the risks have eventuated.

We also note that the legal status of the service provider’s role remains unsatisfactorily unclear in a number of respects.

Then, the service provider will be the first port of call when sanctions are initiated for purported failure to meet an obligation.

The result is that a person airily described in earlier background papers as a “generalist”, rather than a “specialist”, after only a limited time for assessment and training, will then be able to make recommendations to Work and Income which could result in a person having significant reductions in their entire weekly income by way of sanction.

Exacerbating this problem, our experience with contractors in assessing “family breakdown” cases under the current independent youth benefit is that Work and Income staff almost routinely “rubber stamp” the contractor’s recommendations rather than exercise their statutory discretion appropriately.

Our objections under clause 22 extend also to the proposed information sharing framework, which (as the Privacy Commissioner earlier observed) is distinct from that in the Privacy (Information Sharing) Bill currently before select committee. We believe that it is repugnant to allow beneficiaries less favourable protection than others in relation to their personal information and potentially a breach of the New Zealand Bill of Rights Act 1990.

---

29 Office of the Minister of Social Development, Further Policy Decisions on the Youth Package, undated Cabinet paper, paragraph 113.
3 Ibid, para 85.
31 Under a Memorandum of Understanding, the Ministry of Social Development contracts out initial assessment of applicants for independent youth benefit to Group Special Education, if family breakdown is the ground of application.
32 As recorded in the regulatory impact statements.
The proposal to allow government agencies to share this information with private contractors acting as “service providers” is particularly alarming, both in itself and as a legislative precedent. We note, for example, that officials envisage that the “service provider” will be given sensitive information about matters such as health (often, in our experience, involving abuse where mental health is concerned), and medical records. Once it becomes apparent to beneficiaries that such information will be disseminated in this way we believe that it could operate to deter them from making necessary disclosures.

These privacy concerns are exacerbated by the recent well-publicised breakdown of privacy protection within the IT system of the Ministry of Social Development, despite earlier warning, and the finding by the Privacy Commissioner that the Minister of Social Development herself breached the privacy of beneficiaries in publicly releasing their personal information. This indicates in our view that the issue is not taken sufficiently seriously within the Ministry or at the political level.

**Work preparation exercise, clause 24**

We oppose clause 24, which extends work preparation requirements to those with a dependent child under the age of one year and those caring for a “patient” at home.

First, the proposal is no substitute for the current Government’s removal of many types of support that would better assist those concerned, such as the training incentive allowance.

Second, the proposal will add unnecessary and undue stress and hardship on people who are already living in a very difficult environment. Without policies which are genuinely aimed at assisting people into employment when they are able to take it, as opposed to stigmatising and victimising the poorest members of society as a diversion from economic failure, this approach will simply create an environment in which favoured private contractors are set free to exploit the vulnerable for profit.

We are particularly concerned that this will impact heavily on young women who are caring for an infant. The resulting stress and anxiety that will accompany such “hassling” will then pose a risk not only to the mother but also to the child, who will suffer as a result.

The supposed safeguard of compliance with reports, etc, only as often as Work and Income “reasonably requires” is totally meaningless, in our experience. No effective means exist to challenge the unreasonable use of such provisions.

**Social obligations of certain beneficiaries with dependent children, clause 25**

We oppose clause 25 which imposes so called “social obligations” on all parents who

---

34 As above, paragraph 144.
35 See the discussion of the review and appeal system below.
receive a benefit and carries sanctions for non-compliance.

71 We note that this set of “social obligations” is not applied to those receiving social support through “working for family” tax credits, but directed only at beneficiaries and their families.

72 In our view, this provision represents the high water mark of legislation designed to stigmatise beneficiaries and their families in a bid to divert attention from the real breakdown of social obligation in Aotearoa New Zealand – the failure of this Government and the previous National-led coalition Government to support struggling families and, in particular, their children.

73 If the Government was truly concerned for the dependent children of beneficiaries then, in our view, it would deal effectively with the issue of child poverty and, in addition, devote the necessary funding to increase access to early childhood education and other public services for those currently living below the poverty line.

74 As an organisation, we are constantly made aware that beneficiary families make trade-offs which might then lead to them failing these obligations on occasion. By what twisted logic, then, is it proposed in this bill to financially penalise parents whose children are already missing out on essential support? As one commentator recently put it, aptly in our view, the perspective of the child “usually gets overlooked and

The neglect is nicely illustrated by the bill before Parliament that would empower the Government to cut the benefit payments of households that do not look after their children. Children who are already victims will suffer further. The practice in some countries of punishing rape victims is barbaric; this bill is equally barbaric, as are those who promote it. A child-focused approach observes that children do not choose to come into this world; when they do, we are responsible for giving them a decent opportunity to establish themselves. It certainly says we should not victimise them.

75 In our view this punitive provision, along with others in the bill, breaches several key articles in the UN Convention on the Rights of the Child. These include:

- Article 2, under which all appropriate measures are to be taken by states to ensure that a child is protected against punishment on the basis of (among other things) the status or activities of the child’s parents.

- Article 3, under which the best interests of the child shall be a primary consideration in all state actions concerning children, whether undertaken by public or private social welfare institutions.

- Article 6, under which states must ensure to the maximum extent possible the survival and development of the child.

76 We find it abhorrent that there is a need even to advance this argument in a social democracy in the 21st century.

77 Finally, we oppose also the related extension of that exercise enabling it to be conducted under the guidance of a contracted service provider. Our objection to the

involvement of private sector providers is adequately elaborated above.

**Disability allowance preferred supplier, one-off hardship preferred supplier, clauses 28 and 38**

78 We oppose clauses 28 and 38, which require goods and services relevant to a disability allowance, or one off hardship, to be purchased from a “preferred supplier”.

79 First, it is yet another stigmatising measure suggesting that beneficiaries cannot control their own lives to the extent of being trusted with money (alongside measures such as the recently introduced payment cards for young people).

80 Second, and by extension, as it relates to the disability allowance, it removes control from people over their own health insofar as it relates to an already tightly targeted and inadequate allowance. It fails also to recognise existing shortfalls in the allowance, which often does not cover full costs of disability. In such circumstances, in our experience, people receiving the allowance will prioritise when allocating the allowance and also “shop around” to find the best way of extending the allowance they have. This clause will remove that flexibility from their lives.

**Drug-testing obligations, clauses 42 and 43**

81 We oppose clauses 42 and 43 which introduce new drug-testing requirements into the work test, with accompanying sanctions for failure.

82 First, the existing legislation already adequately enables Work and Income to assess whether an applicant for the unemployment benefit has taken reasonable steps to find appropriate work, if they refuse a job choice in a drug-tested industry. Operational guidelines around this issue have been in force under s 89 of the Social Security Act 1964 since the so called *Jobs Jolt* package in 2003. The current proposal is therefore another “dog whistle” attempt to stigmatise beneficiaries, this time as drug abusers.

83 Second, compulsory drug-testing of the type implicitly encouraged by this clause was rejected in 2003 because such tests are, in effect, a medical procedure where compulsion carries implications under the New Zealand Bill of Rights Act 1990. We believe that this rejection was entirely appropriate.

84 Third, the transfer of the results of drug-testing from the employer to the Ministry of Social Development is yet another incursion on the privacy of beneficiaries’ personal information, with resulting implications under the Privacy Act 1993. As a relatively common example, what if the test is positive due to a prescribed medication for a condition which the beneficiary would not normally need to disclose, nor wish to disclose, in the course of a benefit application?

85 Fourth, the Ministry of Health has warned that this policy will not only cost more than double the $6 million the Government claims it will save but will also have unintended consequences on people’s health and overall welfare (for example, by driving some recreational users onto harder drugs which stay in the body for shorter periods). 37

---

37 “Bennett ignored advice from Health Ministry”, *NZ Herald*, 17 August 2012.
Fifth, as an advocacy organisation that also operates in the employment arena we are acutely aware of the misleading results arising in many employer-administered drug tests, in particular “false positives”, amply documented in the academic literature 38 and in court decisions in this country and elsewhere. In employment cases, at least there is an adequate and relatively speedy system of checks and balances under the Employment Relations Act 2000. 39 Under the Social Security Act 1964, however, the result of a failed drug test (or subsequent evidential test) can only be called into question in a benefits review committee, which is not independent of the Ministry and often involves long delays, 4 and then by appeal to the Social Security Appeal Authority, a process which has routinely taken over a year to run its course. 41

Sanctions, clauses 44 - 48

We oppose clauses 44 – 48 which extend the range of sanctions available under the Social Security Act 1964.

In particular, we strongly oppose the imposition of a 13 week period of non-entitlement where a person is deemed to have failed to accept an offer of suitable work. The concept of a “suitable job” is an amorphous concept and cannot safely be identified for this purpose. Nor can such a draconian sanction be warranted, even if precise definition were possible.

How, in any event, is such a person supposed to survive without income? We recall that when mandatory penalties of this type were introduced by the National Government in relation to the unemployment benefit in the 1990s, in one well-publicised Christchurch case a young man was found to have been forced to live in a dug-out on the Port Hills and rely on handouts for food. Is this what the proponents of the bill have in mind?

The potential outcome then includes a mandatory 50 percent reduction in weekly income, even where the person concerned is responsible for a dependent child.

This provision lacks any statutory safeguards in relation to the health and safety of the child or the parent.

Introducing the first stage of this “reform” of the welfare system, the Minister of Social Development observes at this point that the retention of 50% percent of the benefit is designed “to avoid undue hardship for their children”. 42 Exactly what do the proponents of this bill think amounts to “due” hardship for the child of a parent in these circumstances? And, given the recognition that those on the full payment are already living in poverty, what possible justification can there be for risking the well-being of a child by halving what is already a poverty-line payment to her or his parent, no matter

38 See, for example, Caroline Morris, “Drugs, the Law, and Technology: Some Problems in the Workplace” (2002) 20 New Zealand Universities Law Review 1.

39 As a recent example, see Hayllar and Anor v The Goodtime Food Company Ltd [2012] NZEmpC 153.

4 See the discussion of review and appeal provisions below.

41 For recent examples, see below.

what default a case manager perceives the parent as committing?

93 In our view, again, this punitive provision, along with others in the bill, breaches several key articles in the *UN Convention on the Rights of the Child*. These include:

- Article 2, under which all appropriate measures are to be taken by states to ensure that a child is protected against punishment on the basis of (among other things) the status or activities of the child’s parents.

- Article 3, under which the best interests of the child shall be a primary consideration in all state actions concerning children, whether undertaken by public or private social welfare institutions.

- Article 6, under which states must ensure to the maximum extent possible the survival and development of the child.

Case management

94 More generally, in term of imposing sanctions, as an advocacy organisation we are confronted daily with the shortcomings of a complex social security scheme, operating under operational guidelines that are often at odds with the law, being administered by inadequately trained case managers who are themselves under pressure not to be seen as overly generous with entitlements.

95 Under the current approach, as part of the “one stop shop” policy, an appointment is made through a call centre. One “case manager” then deals with the application process and assesses total eligibility. This requires that one person to have a grasp of all relevant information across the whole spectrum of benefits. Further, for some years, the focus in terms of staff performance by officers of the Ministry and its predecessors has been on the speed of decision-making (“turn-around time”) rather than the accuracy of decision-making.

96 The Ministry of Social Development’s predecessors noted the following problems arising from this approach, in its past briefing papers to incoming governments:

- **Staff**: find the policy complex and difficult to understand; administer the policy inconsistently; make “variable use” of some allowances; generally have difficulty with the administration of discretion.

- **Applicants/recipients**: have difficulty in understanding and accessing entitlements; often “break the rules” and incur overpayments innocently; face varying decisions from staff, based on differing interpretations.

97 These problems were revisited in the 2000 *Hunn Report* which came to closely similar conclusions, after interviewing both Departmental staff and advocacy groups. A recurrent theme in the *Hunn Report* into the Department of Work and Income, both in interviews with staff, community organizations and advocacy groups was the inability of front-line staff to deal with the complexity of the rules they are required to administer.

---

and the detrimental effect this had on the accuracy of advice then provided.

98 In our experience, continuing departures from the proper exercise of discretion illustrate a deep-seated and systemic failure, often reflected in the fact that the decisions were originally made by a case manager, then signed off by a more senior manager, and sometimes upheld by a benefits review committee (comprising a majority of departmental officers dependent on the same, often flawed, information base), then remaining unchanged after consideration by the Ministry’s legal staff.

99 Such examples are commonplace in our experience and reflected in decisions of the Social Security Appeal Authority when belatedly overturning wrongly imposed sanctions. 44

100 It is of acute concern that this flawed system is now about to extend to an even more complicated legislative framework without decisions being speedily and independently reviewable.

101 We note in passing that at least case managers are bound by a Public Service Code of Conduct and associated employment-related constraints, 45 as opposed to the contracted “service providers” on whose judgment they will come to rely where some beneficiaries and their families are concerned.

Review and appeal

102 We observe that the bill alters the framework for reviewing and appealing decisions under the Social Security Act 1964 in some respects.

103 This brings the review process within the ambit of consideration by this committee. Given the draconian sanctions contained in this bill, it is wholly unsatisfactory to record that the process for reviewing decisions made by “service providers” and case managers alike is also markedly unsatisfactory.

104 Twelve years’ ago, the Ministry of Social Policy document, *Review of the Benefit Review and Appeal System*, identified the fundamental objectives of the review and appeal process as being two-fold. The first objective was to ensure that a correct result was achieved in individual cases, using a fair and timely process. The second objective was to modify the decision-maker’s behaviour in the wider context, so as to make better decisions in the first instance, and to better engage in the review and appeal process.

105 The main problems then identified with the review process were:

- timeliness of benefits review committee hearings;
- expertise of departmental officers involved in review hearings, compounded by lack of information, the increasing complexity of the relevant legislation and the

44See para 113 below and its accompanying footnote.

45 *Drader v Chief Executive, Ministry of Social Development* [2012] NZEmpC 179.

46 Key characteristics of the process were identified as being accuracy/quality (in terms of interpreting and applying the law and exercising discretion appropriately); consistency in outcome and process; efficiency in terms of time, resources and cost; accessibility in terms of informality, geography, cost, transparency and user-friendliness; timeliness (including flexibility in emergency cases); fair procedure (in terms of compliance with the rules of natural justice); finality; greater accountability and incentives for behavioural change; consistency with state sector operating requirements; and “workability”. 
lack of centralised training and ongoing support;
- a perceived lack of confidence on the part of beneficiary advocates and their clients in the fair consideration of the review by officers of the department, because of a perceived lack of impartiality of the personnel involved in review hearings;
- the present composition of benefits review committees, including the process for selection of community and departmental representatives, training and ongoing support to assist benefits review committees to cope with the increasing complexity of relevant legislation;
- lack of comprehensive monitoring information in connection with volume and distribution of review cases, client satisfaction with process, costs, etc; and
- accessibility to the review process when reviews are carried out by specialist units.

106 The working group generally considered that benefits review committees were ineffective.

107 In our assessment, no effective changes have been made to the system since that date. This point is illustrated, for example, by High Court decisions delivered after the working group reported, in which benefits review committees had taken over a year to convene despite the concerns as to timeliness expressed by the working group.47

108 Taking just this one issue, timeliness, the legislation sets no minimum time for establishing a review. The relevant policy states that staff must “action applications for review promptly”. There is an internal “time standards” guide in dealing with review applications, which provides for the convening of a committee within 19 days of the application for a review. Delivery of decisions then adds to the delay.

109 The Ministry’s internal time standard of 19 days is itself entirely inadequate when measured against the pressing needs of claimants. Consider, for example, a person who has just been subjected to a draconian 13 week period of non-entitlement proposed in this bill because her case manager deems that she has rejected an offer of “suitable employment” and whose children are now subjected to the results of that assessment.

110 Apart from this issue, we believe strongly that a more balanced, independent, review structure should be substituted, adopting the Social Security (Benefit Review and Appeal Reform) Amendment Bill sponsored by Sue Bradford MP in 2009, and reflecting the stronger protections afforded to accident compensation claimants.

111 Our experience of benefits review committees leads to particular concern with the quality of evidence they receive from Work and Income presenters and with the quality of their decision-making. The added complications arising under this bill from amorphous concepts such as “suitable work” and the difficult legal issues around drug-testing can only exacerbate the existing problem.

---

47 Daniels v Chief Executive, Department of Work and Income [2002] NZAR 615, in which, again, a year had elapsed initially, before a committee convened (explained as being due to the administrator of the plaintiff’s file taking extended leave) followed by a further five month delay (because the Department was awaiting the outcome of two High Court cases dealing with the same legal issue) and Gould v Chief Executive of the Department of Work and Income New Zealand, unreported, HC, Rotorua, 18 July 2003, AP 19/02.
In this context, we reiterate that the Appeal Authority decisions overturning unlawfully imposed sanctions have not resulted from an isolated mistake by a case manager. In each case, the case manager’s decision would have been signed off by a more senior manager after considering the file. A benefits review committee, with a built in majority of departmental officers, would have upheld it. The resulting legally untenable imposition of a sanction would then have been considered by the Ministry’s legal staff in the context of the appeal, before the case proceeded to the Authority.

By way of example, in one recent case the Ministry of Social Development imposed a 13 week stand down on the absurd basis that the appellant had become “voluntarily unemployed” where the Ministry knew from the outset that the appellant had actually been dismissed by the employer rather than leaving of his own volition. He had no savings and, over a nine week period, he was repeatedly refused assistance for food and shelter to which he might have been entitled.

The appeal system is also within the ambit of the select committee’s consideration. We believe also that the current complex and cumbersome appeal process should be revisited and that the approach in the Social Security (Benefit Review and Appeal Reform) Amendment Bill should replace it.

To take timeliness as just one issue, it is plainly nonsensical, and extraordinarily stressful for clients, that adverse decisions on issues which often involve urgent needs take up to two years between the review decision and delivery of the decision on appeal from an independent Appeal Authority. This is particularly true of decisions involving the imposition of sanctions.

In the example at paragraph 113 above, the Appeal Authority did not rule in his favour until almost a year after his original application for an unemployment benefit was unlawfully denied.

By the same token, in two further decisions last year, both finding that sanctions had been improperly applied, the Appeal Authority process had taken over a year in each case.

As we have noted, we see similar systemic failures as entirely predictable under the regime which this bill proposes.

Summary and conclusion


49 A survey of Appeal Authority decisions delivered in December 2011 indicates delays of up to two years between a benefit review committee decision and delivery of a decision by the Appeal Authority.

5 SSAA Decision No 50/2007, SSA 157/06, (Social Security Appeal Authority, Auckland, 13 June 2007, M Wallace, chairperson, P McKelvey and H Tukukino, members).

The bill is not based on the sound empirical research and analysis that should accompany legislation of this kind. Rather, it is based on the deeply flawed, if predictable, ideological polemic of the Welfare Working Group.

Contrary to its General Policy Statement, the bill does nothing to improve social and economic outcomes for individuals, families and the country, or to help more parents out of poverty. Nor, indeed, do we believe that this is any part of the intention of its sponsors.

Rather, the bill is designed to reinforce the culture of blame and stigmatisation of the poor that this Government has fostered as a cynical political and labour market tool. It has aptly been described as barbaric in its disregard for the welfare of children, in particular. 52

We urge the select committee to reject this bill.