Social Security (Benefit Categories and Work Focus)
Amendment Bill 2012
**Recommendations**

We recommend clause 100B, subsection 3, A is removed from the bill.

We recommend clause 100C, subsection 2 is revised as followed.

*A reassessment may be at a time, or after an interval, the chief executive thinks appropriate, as long as the interval is longer than 12 months.*

We recommend clause 60GAG, subsection 1b is removed from the bill.

We recommend clause 40C, section 2 is amended to allow an independent third party to have the final say on the choice of doctors for medical examinations.

We recommend that clause 132AD is removed from the bill.

We recommend clause 77 subsection 2 is revised as follows

*A benefit is payable to a beneficiary in respect of any absences of the beneficiary from New Zealand equal to or shorter than 6 weeks *

“(a) the benefit is not a benefit of a kind specified in subsection (2A); and

“(b) the benefit would, but for that absence, be payable to the beneficiary; and

“(c) the chief executive is satisfied that the absence do not affect the beneficiary’s eligibility for the benefit.*
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About us
CCS Disability Action is one of the largest disability services providers in New Zealand. We have been advocating for people with disabilities since 1935. Today, our organisation has a strong disabled leadership and human rights focus.

CCS Disability Action provides services nationally from sixteen incorporated societies. We deliver regular services to over 6,000 people of all ages with disabilities who choose to access our support. We also administer the Mobility Parking Scheme for over 100,000 people.

Introduction
CCS Disability Action welcomes the opportunity to submit on the Social Security (Benefit Categories and Work Focus) Amendment Bill 2012.

Disabled people and their families make up a significant percentage of people on income support. In 2011, 34% of people on a main benefit claimed a disability allowance (Ministry of Social Development, 2011 p 30, 235).¹

We fully support a focus on employment for all New Zealanders, including those on a Work and Income benefit. Appropriate employment can have a huge positive impact on people’s physical, emotional and financial wellbeing (Milner, Bray, Cleland, Taylor, Entwisle, & Wilson, 2003, p. V).

We also fully support the renaming of the benefit categories. The previous names carried a lot of stigma. However, we support the recommendations of People First New Zealand Nga Tangata Tuatahi that the Supported Living Payment be renamed Living Payment to avoid confusion with the Supported Living service provided through funding from the Ministry of Health.

¹ Since disability allowances can only be claimed for costs that are not met or subsidised by other agencies, the actual total of people with disabilities on main benefits and disabled children dependent on beneficiaries is most likely higher.
Despite supporting the intent of the bill, we have major concerns with the bill in its current form. The heart of our concerns about the bill are the Section 100 work capability tests, which can by carried out by contracted providers. According to a speech the Social Development Minister delivered on the direction of welfare reform in New Zealand, these tests will be based on the work of Professor Sir Mansel Aylward and the tests in the United Kingdom (Hon Bennett, 2012).

We support the use of appropriate tests designed to find out what assistance and supports the person needs to obtain employment. However, we have grave concerns about United Kingdom style assessments, especially when these are carried out by contracted providers. Despite the rhetoric about focusing on people’s abilities, these tests have proven to be medical model based checklists, often administrated by people with little real knowledge of disability. The complex social and economic factors that govern people’s access to employment are reduced in these tests to meaningless questions about the person’s ability to hold a half kilogram weight.

The model of disability and the thinking underpinning the welfare reforms appear to be at direct odds with the Government’s other disability initiatives, the New Zealand Disability Strategy and the Convention of the Rights of Persons with Disabilities. This creates major problems for the direction and aims of the reforms. We have serious doubts that the consequences of the changes have been properly considered.

Ultimately, because of our concerns, we cannot support the Bill in its current form.

**Employment and models of disability**

When our organisation was founded in 1935, one of the dominant concerns was employment. Our first annual report stated:
“As the position is being investigated it becomes even clearer than before that the main work of the Society will lie in preparing and helping the cripple to establish himself or herself as a self-supporting independent unit in our economic system. The vocational training and placing in employment, or self sustaining industry will be the main work of the Society.” (The New Zealand Crippled Children Society, 1936, p. 6)

It is no different today. However, the underlying methods, language and theories have changed radically. In 1936 the organisation used a Medical Model of Disability. The main focus was changing the disabled person to make them work ready and then placing them in a limited selection of jobs. Although even in 1936, the wider social aspects were considered. The report also states:

“Then a cripple consciousness must be created in the community, and existing prejudices, often ill-founded, to the employment of cripples in suitable industries removed. “ (The New Zealand Crippled Children Society, 1936, p. 6)

Today the main focus is on removing the barriers society creates that prevent disabled people from accessing employment. These Barriers include, access to education, support services, transport, housing and employer attitudes.

We have changed our focus because of the experience of our organisation and the wider disability community over the years. Disabled people’s own experiences have lead to a new model of disability that challenges the old medical model. The new model is called the Social Model of Disability.

The Social Model recognises that people have impairments, but focuses on the role society plays in creating disability. In the Social Model, disability is discrimination imposed upon people with impairments. **Disability is not what you have, but what you experience in a disabiling society.** Both the United
Nations Convention on the Rights of Persons with Disabilities, which New Zealand has ratified, and the New Zealand Disability Strategy is based on the Social Model of Disability.

**The model of disability underpinning New Zealand welfare reform**

Unfortunately, the current welfare reforms do not appear to be based on the Social Model of Disability. Instead according to the Minister of Social Development in her recent speech signalled that the current welfare reforms will be based on the work of Professor Sir Mansel Aylward and the work capability test carried out by Atos in the United Kingdom (Hon Bennett, 2012).

The work of Professor Sir Mansel Aylward and Atos in the United Kingdom share a very different history to the Social Model of Disability and the disability rights movement.

Sir Mansel divides disabled people on the invalid’s benefit in the United Kingdom into two distinct groups. The small number with objective moderate to severe disabilities and the larger group (80%, according to him), which only have common health problems. He states that the larger group has the same common health problems as the working population. The difference between those working with common health problems and those on benefits is primarily psychosocial issues, particularly people’s beliefs. Sir Mansel states these psychosocial barriers are the most important barriers to employment. He calls for professionals to intervene with educational and cognitive methods to correct problems with people’s attitudes to their condition and work (Aylward 2010).

Sir Mansel could be a talented public health researcher, but his work on disability has been severely derided (Jolly, 2012). The problem with Sir Mansel’s work and the bio-psychosocial model is that it does not reflect the real life experiences of disabled people. As a result it is very limited in its ability to address the barriers they face, especially the social, economic, and
political barriers.

Unlike the Social Model of Disability which was primarily developed by disabled people themselves, the bio-psychosocial model was primarily developed by non-disabled professionals (Parliamentary Office of Science and Technology, 2012, p. 3). This is reflected in the model, which is almost exclusively focused on the individual and the role of professionals in helping the individual. Although, the model mentions social factors, it does not develop any coherent way to address social barriers.

When Clint Dilks talked on our blog about his experience spending five months applying for jobs and attending numerous interviews, it was clear that the dominant barriers were employer attitudes. What made the difference for Clint in the end was a positive attitude from his employer (Dilks, 2012). The ability of Professionals, especially medical professionals, to address these barriers is almost non-existent. It requires wider social, economic and political change.

Based on the Social Model, the barriers to employment include;

- attitudes of employers and fellow workers;
- availability of suitable jobs in the local economy;
- ability to make adjustments to the work place;
- availability of flexible hours;
- availability of formal and informal support networks;
- a person’s access to education and work experience;
- lack of accessible transport options and;
- an inaccessible built environment. (Parliamentary Office of Science and Technology, 2012 p. 3)

The bio-psychosocial model has no real ability to address any of these barriers. They are also barriers that professionals cannot adequately address at an individual level. This is why the model has not worked in the United
Kingdom. The Atos work capability test, which is based on Sir Mansel’s work, has been widely criticised by disability rights groups ((Jolly, 2012), politicians, including ministers (BBC News, 2012), and medical associations, such as the British Medical Association (The Guardian, 2012). There has been intense media coverage on the test and the role of Atos.

Groups in the United Kingdom have said that the test is ‘damaging and distressing’ and have led to suicides (BBC News, 2012). Spartacus, a disabled-person-led research organisation now says that due to welfare reforms in the United Kingdom there is now a terrible “Trust Deficit” between Government and disabled people (Campbell, et al., 2012, p. 5).

A large number of people have appealed their assessment. 41% of those found fit for work appealed the decision and out of that 41%, 38% had their appeal upheld. For people using the support of professional advocacy groups, the appeal success rate is closer to 70%. There has been a large backlog of appeals as tribunals are unable to cope with demand. People are on a lower rate of benefit during the appeal process. Appeals also cost the Government £42.2 million pounds in 2010/11 (Parliamentary Office of Science and Technology, 2012).

**Barriers to employment**

The high rate of unemployment among disabled people is chiefly because of the barriers society creates, not because of their own attitudes. In research we carried out in 2003, all the people involved identified ‘the ability to obtain meaningful employment’ as being very important to them. However, none of those interviewed had a job of more than three hours a week. People’s work was a source of pride and social identity, as well as increasing a very low income. There was no sign of people’s own attitudes playing a significant role in preventing employment (Milner, Bray, Cleland, Taylor, Entwisle, & Wilson, 2003, p. v).
The Convention Coalitions’ second monitoring report notes the discrimination disabled people face in accessing employment. The report notes that in 2008, employment made up the largest number (27.7%) of complaints to the Human Rights Commission about disability discrimination (Convention Coalition, 2012 p 38).

The benefit system contributes to these barriers and discrimination by being inflexible and complex. Sometimes because of abatements and supplementary benefits, part time work ends reducing a person’s income. Unfortunately, this bill has not addressed abatement issues or extended open employment.

Progress to address these barriers has been slow and in some areas threatens to be undone by the on-going economic crisis as well as current and proposed policy. For example, the proposed removal of access and mobility representations in the Land Transport Management Act may negatively impact on the accessibility of public transport, which in turns affects people’s ability to get jobs. The Convention Coalition’s second monitoring report notes that a lack of access to transport and disability support services has a direct impact on access to employment (Convention Coalition, 2012, Pg 11).

Disabled people with a tertiary qualification are employed at about the same rate as non-disabled New Zealanders with no qualification. In 2006, Statistics New Zealand found that the lower level of successful participation by disabled students in secondary and tertiary education affects their ability to gain employment (Statistics New Zealand, 2008, p. 8). Yet the Government is removing Student Allowance eligibility for postgraduate study and long programmes. Last year the Government changed the definition of parental income for the allowance and frozen inflation adjustments for four years.

The recent announcement that the Mainstream Employment Programme was
suspending new placements, because of over demand, demonstrates where the primarily barriers are. The programme only offers benefits to employers. The suspension has a huge missed opportunity that showed the silo approach that plagues government policy and practice. By reprioritising funding to the programme the government could have made a real immediate difference to the unemployment rate among disabled people. Employers and potential employees were ready and willing, simply awaiting the government support provided in the programme. Instead the government chose to treat the over demand as a problem rather than an opportunity. The announcement of the suspension on the same date as the Minister gave a speech on disabled people and welfare reform showed how uncoordinated government services are in tackling the barriers to employment.

We appreciate that disabled people have been involved in the development of welfare reform through the Disability Employment Forum and the Health and Disability Panel. That this expert advice appears to have been of secondary importance to the advice of outside non disabled experts such as Professor Sir Mansel Aylward is disturbing. Our organisation is especially concerned by this because the United Kingdom welfare reform process is regarded as deeply flawed. Local expert advice, especially from disabled people, should be prioritised in the welfare reform process.

**Obligations on beneficiaries**

Previous research has also shown that 26% of people on the Domestic Purpose Benefits have children with disabilities. 39% of parents receiving the child disability allowance were on a main benefit or superannuation (Ministry of Social Development, 2011 p 114, 115).

We know that disabled children and their families face discrimination in access to childcare. Often this discrimination is far greater than in primary and secondary education.
New Zealand research has found cases of parents petitioning early childhood centres for the removal of disabled children (Stark, Gordon-Burns, Purdue, Rarere-Briggs, & Turnock, 2011, p. 11-12).

We welcome attempts to address this discrimination, but the current focus of the Ministry of Education is on addressing participation rates for Maori and Pasifika children. Early childhood education participation rates for disabled children are not even counted (Education Counts, 2012).

The new obligation on beneficiaries to have their children attend early childhood education needs to be paired to measures to address discrimination in access for disabled children.

**Comment on clauses**

**Work capability tests**

The primarily aim of work capability tests should be to find out what assistance and supports the person needs to obtain employment (clause 100b, 3f). The decision as to what benefit the persons is eligible for is already decided by other tests, such as medical examination. To introduce another layer of assessment complicates the system. The relationship between work testing and medical examination is unclear. If someone qualifies for the Supported Living Payment under a 40C examination, but does not under a 100B work assessment, what is their status? Likewise, if someone qualifies under a 100B assessment, but not a 40C examination, what is their status?

In the circumstances, especially given the negative assessment in the United Kingdom, we recommend the status quo of just a medical examination is retained. The work capability test should focus on what assistance and supports the person needs to obtain employment. Also assistance to find employment should be offered to people on any benefit
category.

We recommend clause 100B, subsection 3a is removed from the bill.

**Reassessment**

We highly recommend that the reassessment periods are not left at the discretion of the Chief Executive (clause 100c). The United Kingdom experience shows the potential for abuse of the reassessment process. People sometimes appeal a decision, win the appeal and then almost immediately are subjected to a reassessment, starting the process again. This appears to be a tactic designed to overturn successful appeals. It causes considerable hardship for the person involved and result in significant bureaucratic costs.

While we recognise Work and Income is a very different organisation to the Department for Work and Pensions, we believe it would be an important safeguard to set a minimum period between assessments.

We recommend a minimum period of one year is set between assessments to prevent excessive reassessments.

We recommend clause 100C, subsection 2 is revised as followed.

*A reassessment may be at a time, or after an interval, the chief executive thinks appropriate, as long as the interval is longer than 12 months.*

**Contracted providers**

We oppose the use of contracted providers for assessment. The experience in the United Kingdom has shown the difficulty in holding anyone accountable for such assessments. Atos stresses that it just carries out assessments and that Jobcentre Plus staff make the decisions. Professor Malcolm Harrington in
his first Independent Review, however, found that Jobcentre Plus staff do not in practice make decisions, but instead they typically ‘rubber stamp’ the advice provided through the Atos assessment.

The interest of major insurance providers such as Unum in the welfare system is highly questionable. Unum funds the work of Sir Mansel, which Atos bases its assessment process on. Unum primary product is disability insurance. A product that competes with state funded welfare. There is no doubt common ground between insurance providers and the government in areas, such as injury prevention and rehabilitation. There is little common ground, however, in areas such as the quality of the welfare system and assessment processes.

We recommend avoiding the problems that have plagued United Kingdom reforms by not using contracted providers to carry out assessments.

We recommend clause 60GAG, subsection 1b is removed from the bill.

**Medical examination**

The independence of doctors is a key safeguard in the benefit assessment process. In the Bill, the current process of the Chief Executive having the final say on the choice of a doctor is retained. Given the recent questions around the independence of ACC appointed doctors, it would be a more effective safeguard if an independent third party had the final say on the choice of doctors, such as the Health and Disability Panel. This could potentially reduce the rate of appeals.

We recommend clause 40C, section 2 is amended to allow an independent third party to have the final say on the choice of doctors for medical examinations.

**Disability Allowance**
The tightening of the rules governing the Disability Allowance in clause 132AD seem counter to the intent of the Bill and wider Government policy. The Disability Allowance is designed to meet extra costs associated with disability that are not covered by other sources. These extra costs, such as doctor’s visits, travel to appointments and heating can be the key factor in a person maintaining their health and access to employment. The wide scope of the allowance allows it to fill gaps in government services and funding. The allowance plays a vital role in the government’s disability funding.

The rate of disability allowance is already limited by schedule 19, limiting the crown’s liability. Other Government initiatives, such as the Choice in Community Living project, the New Model and Enabling Good Lives all rely on the use of existing funding in flexible ways to achieve the goals disabled people want. The changes proposed to the Disability Allowance are in the opposite direction. The changes will result in more regulation and less flexibility in allowance spending. This will impact on the other government initiatives.

Budget 2012 stated that the Government was planning to make savings of $16 million a year through these changes. These savings may carry a high cost in terms of health and employment. The decision to restrict the Disability Allowance appears to be at odds with the investment approach.

We recommend that clause 132AD is removed from the bill.

**Overseas travel**

Currently, the chief executive of the Ministry of Social Development can allow people on the invalid’s benefit to be overseas for up to six weeks before the benefit is stopped. This is enabled in the existing clause 77 subsection 3A. This is in addition to the automatic right to go overseas for up to four weeks for someone on the invalid’s benefit under clause 77 subsection 2.
The new subsection 3A appears to only allow people representing New Zealand at major sporting events to go overseas for up to six weeks, subject to the chief executive’s approval. The new amendment bill also explicitly restricts the four weeks of absent to be in one 52-week period. While the existing legalisation was unclear, these changes are a retrograde step.

It would be more equitable and consistent to simply extend the six weeks to everyone on a Supported Living Payment. There are a variety of legitimate reasons for someone to travel overseas for up to six weeks. People could be representing New Zealand at international forums such as the United Nations. They could also be attending academic conferences or representing disabled person organisations overseas. Some disabled people have unpaid roles in governance committees that require overseas travel. Overseas experience can improve someone’s chance of employment. It should not be the role of the government or the Ministry of Social Development to decide that some reasons for travel, such as sporting representation, are more legitimate than others.

Allowing everyone on the Supported Living Payment to travel for up to six weeks would make the system simpler, easier to administer and more equal. It would also help New Zealand to meet its commitments under Article 18 of the Convention on Rights of Persons with Disabilities.

The restrictions on travel seem unnecessary. The cost to crown is the same when someone is travelling. In most cases it will be less because supplementary benefits are not available past four weeks and disability support services are often not available.

We recommend clause 77 subsection 2 is revised as follows:

*A benefit is payable to a beneficiary in respect of any absences of the*
beneficiary from New Zealand equal to or shorter than 6 weeks

“(a) the benefit is not a benefit of a kind specified in subsection (2A); and

“(b) the benefit would, but for that absence, be payable to the beneficiary; and

“(c) the chief executive is satisfied that the absence do not affect the beneficiary’s eligibility for the benefit.

Conclusion
The current form of the Bill is inconsistent with other Government policy. The New Model, Choice in Community Living and Enabling Good Lives emphasise putting disabled people in charge of their own lives. These policies are based on the use of flexible funding to ensure disabled people live good lives.

Parts of the Bill appear to hark back to a time before the Social Model of Disability, the New Zealand Disability Strategy and the Convention on the Rights of Persons with Disabilities; a time when medical professionals, such as Sir Mansel, called the shots.

There is unity across the disability community about the need to break down the barriers to employment. The key to doing this is to work in partnership with the disability community. Policies need to be based on the Social Model of Disability, the New Zealand Disability Strategy and the Convention on the Rights of Persons with Disabilities. Policies should not be based on models of disability that have destroyed trust between the government and the disability community.

The Bill needs to be revised before it can meet the goals of the Government and the disability community.
Bibliography


