

**Submission by the
Human Rights Commission**

**SOCIAL ASSISTANCE
(FUTURE FOCUS) BILL**

***To the Social Services
Select Committee***

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Social Assistance (Future Focus) Bill

1. INTRODUCTION

- 1.1 This submission on the Social Assistance (Future Focus) Bill is made by the Human Rights Commission. The Commission is an independent Crown Entity that derives its statutory mandate from the Human Rights Act 1993 (the Act).
- 1.2 The long title to the Act states it is intended to provide better protection of human rights in New Zealand in general accordance with United Nations Covenants and Conventions of Human Rights. The Commission has two primary functions including advocating and promoting “respect for and an understanding and appreciation of human rights in New Zealand society”.¹ It also administers a disputes resolution process for complaints about alleged discrimination²and deals with a significant number of broader human rights complaints.
- 1.3 To give effect to the primary functions, the Commission can report on the implications of any proposed legislation that it considers may affect human rights³ and make public statements on any matter affecting human rights ... including compliance with the New Zealand Bill of Rights Act 1990.⁴
- 1.4 The Equal Employment Opportunities Commissioner is required to evaluate the role that legislation plays in facilitating and promoting best practice in equal employment opportunities⁵.

¹ S.5(1)(a) Human Rights Act 1993

² Part 3

³ S.5(2)(k)(iii) Human Rights Act 1993

⁴ S.5(2)(c) Human Rights Act 1993

⁵ S.17 Human Rights Act 1993

2. SUMMARY OF THE COMMISSION'S CONCERNS

- 2.1 The Commission agrees that most people would benefit from being able to access decent and meaningful work and recently carried out a nationwide research project, the National Conversation about Work, that established the centrality of work in the lives of New Zealanders, whether currently in the labour market or seeking jobs.
- 2.2 The Bill has some positive features. It clarifies when benefits will be adjusted to ensure equitable treatment across all forms of income support and provides for improved assistance and support in relation to training.
- 2.3 However, the Commission strongly opposes sections of the Bill because:
- it discriminates against specific groups of New Zealanders
 - it contravenes aspects of New Zealand's international obligations
 - it is unlikely to achieve its purpose given the lack of available jobs in the time frame proposed
 - it has the potential to impact on young children if parents are forced to return to work and cannot arrange satisfactory childcare
 - it places extra burdens on sickness beneficiaries
 - it perpetuates stereotypes about already vulnerable groups

3. RIGHT TO SOCIAL SECURITY IN INTERNATIONAL HUMAN RIGHTS LAW

- 3.1 The right to social security is found in Article 22 of the *Universal Declaration of Human Rights*⁶ (the Declaration). Various forms of social security are also recognised in Art.25(1) of the Declaration.⁷

⁶ Universal Declaration of Human Rights (UDHR), adopted 10 Dec.1948, G.A. Res.217A (III) UN Doc A/81(1948)

⁷ Which reads in part that ... *everyone has the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control*

- 3.2 Art.9 of the *International Covenant on Economic, Social and Cultural Rights*⁸ recognises the right of everyone to social security. Art.10(2) specifically recognises the right of working mothers to “adequate social security benefits”, Art.10(3) requires States to undertake special measures of protection and assistance for children and young people while Art.11 recognises the “right to an adequate standard of living, including adequate food, clothing, and housing and to the continuous improvement of living conditions”.
- 3.3 There are also provisions guaranteeing the enjoyment on a non-discriminatory basis of the right to social security in the *International Convention on the Elimination of All Forms of Racial Discrimination*⁹ and the *International Convention on the Elimination of All Forms of Discrimination against Women*¹⁰. The *Convention on the Rights of the Child*¹¹ recognises the right of every child to benefit from social security as well as a right to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.
- 3.4 The most recent UN instrument, the *Convention on the Rights of Persons with Disabilities*¹², an innovative treaty which is designed to ensure that persons with disabilities can access the same rights as everyone else, also recognises the right of persons with disabilities to an adequate standard of living and social protection including access to social protection programmes and poverty reduction programmes.
- 3.5 Although the right to social security is found principally in international instruments dealing with economic and social rights, in the absence of an

⁸ ICESCR, adopted 16 Dec. 1966 entered into force 3 Jan. 1976, G.A. Res.2200A (XXI), UN Doc. A/6316 (1966)

⁹ ICERD, adopted 21 Dec. 1965, entered into force 4 Jan. 1969, 660 UNTS 195

¹⁰ CEDAW, adopted 18 Dec. 1979 entered into force 3 Sept. 1981, G.A. 34/180, 34 UN GAOR, Supp. (No.46) UN Doc. A/34/46 at 193 (1979)

¹¹ UNCROC, adopted 20 Nov. 1989, entered into force 2 Sept. 1990, G.A. Res. 44/25, 44 UN GAOR, Supp.(No.49), UN Doc. A/44/49 at 166 (1989)

¹² UNCRPD, adopted 13 Dec.2006 entered into force 3 May 2008, G.A.

individual complaints mechanism¹³, Art.26 of the *International Covenant on Civil and Political Rights*¹⁴ (non-discrimination) has been used to protect the right to social security through the complaints procedures in treaties dealing with civil and political rights¹⁵.The Human Rights Committee explained this as follows:

*Although Article 26 requires that legislation should prohibit discrimination, it does not of itself contain any obligation with respect to the matters that may be provided for by legislation. Thus it does not, for example, require any State to enact legislation to provide for social security. However, when such legislation is adopted in the exercise of a State's sovereign power, then such legislation must comply with article 26 of the Covenant*¹⁶.

3.6 There are also a large number of core labour standards that relate to fundamental principles and rights at work embodied in eight “fundamental” ILO Conventions. New Zealand has ratified six of these¹⁷and considers that its law and practice substantially comply with the principles that underlie the other two Conventions¹⁸.

3.7 New Zealand is a strong supporter of the ILO’s efforts to promote core labour standards and voted for the 1998 ILO *Declaration on Fundamental Principles and*

¹³ The UN General Assembly adopted an Optional Protocol to ICESCR in 2008 but it is still too early to see how it will play out in practice. New Zealand has not ratified the Optional Protocol.

¹⁴ ICCPR, adopted 16 Dec. 1966, entered into force 23 March 1976, G.A. Res.2200A (XXI), UN Doc. A/6316 (1966), 993

¹⁵ See for example, *Zwaan-de Vries v the Netherlands* (Communication No. 182/1984) and *Broeks v the Netherlands* (Communication No,172/1984). Both cases involved legislation which required married women to prove they were the breadwinner of the family in order to be eligible for unemployment benefits. The same condition did not apply to men.

¹⁶ *Zwaan-de Vries*, ibid. para 12.4

¹⁷ ILO Convention 29 on Forced Labour (ratified in 1938); ILO Convention 98 on the Right to Organised and Collective Bargaining (ratified in 2003); ILO Convention 100 on equal remuneration (ratified in 1983); ILO Convention 105 on Abolition of Forced Labour (ratified in 1968); ILO Convention 111 on Discrimination (Employment and Occupation) (ratified in 1983) and ILO Convention 182 on the Worst Forms of Child Labour (ratified in 2001) Ministry of Foreign Affairs and Trade: *New Zealand Handbook on International Human Rights* 3rd ed. (2008) at 37

¹⁸ New Zealand has not ratified ILO Conventions 87 on Freedom of Association and Protection of the Right to Organise and 138 on Minimum Age

Rights at Work (which places an obligation on the ILO's 181 member States to protect, promote and realise in good faith the principles and rights inherent in the fundamental Conventions, even if members have not ratified all of them)¹⁹.

- 3.8 Although New Zealand has not ratified Convention 102²⁰, it provides a benchmark for meaningful income replacement benefits and plays a key role in the definition of the right to social security under the international human rights instruments.
- 3.9 More recent ILO research has emphasised the importance of a social security floor and, having established it, moving towards more comprehensive social security benefits, while ensuring that levels of protection already reached are maintained.²¹
- 3.10 The latest consensus is that this will be best achieved by an integrated approach. It is also generally agreed that such an approach is more necessary than ever in the current economic climate²².

4. INTERNATIONAL GUIDANCE

- 4.1 As a general principle, to satisfy even the core minimum obligations set out in the international instruments, States must ensure that their social security systems provide a “safety net” or - to use the ILO terminology – social security “floor”, to protect the most vulnerable groups in society²³.

¹⁹ Ibid. at 37

²⁰ Social Security (Minimum Standards) Convention (No.102)

²¹ Ibid.

²² ILO *Responding to the crisis: Building a “Social Floor”* World of Work No.67 Dec.2009 at 13

²³ EU-China Human Rights Network: *Working Paper on the Right to Social Security*, Network Seminar on Human Rights, Colchester U.K (2004) at 7.

- 4.2 Guidance on how the right to social security in Article 9 of the ICESCR should be interpreted can be found in General Comment 19²⁴. The introductory section of the General Comment states that social security because of its redistributive character plays an important role in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion. As a result the measures that are used to provide social security benefits cannot be narrowly defined and must guarantee minimum enjoyment of the right to all peoples²⁵. The Committee noted that the denial of or lack of access to adequate social security undermines the realisation of many other covenant rights.
- 4.3 In identifying the normative content of the right, the Committee specifically commented that while elements may vary according to different conditions it should always be borne in mind that social security is a “social good and not merely an instrument of economic or financial policy”²⁶.
- 4.4 What is required to comply with Art. 9 is a system which ensures that benefits are available to address the relevant social risks and contingencies²⁷. Benefits should be adequate and cover the situations in the Universal Declaration²⁸ and, where benefits are withdrawn, reduced or suspended it must be for reasons that are reasonable and subject to due process.²⁹
- 4.5 While the Committee acknowledges that, as with all the substantive social and economic rights, the right to social security is subject to progressive realisation (that is, States can implement the right incrementally over time, depending on the

²⁴ Committee on Economic, Social and Cultural Rights, *General Comment No.19: The right to social security (art.9)* E/C.12/GC/19 adopted 23 Nov.2007. General Comments are interpretations of aspects of treaties by the international body responsible for monitoring their implementation. As such they are regarded as the most authoritative legal interpretation of how a treaty should be implemented and indicate the requirements and standards that must be satisfied to ensure a State does not breach its international commitments.

²⁵ Ibid. para 4

²⁶ Ibid. para 9

²⁷ Ibid. para 11

²⁸ See fn 7

²⁹ General Comment 19 at para 24

availability of resources³⁰) some of the obligations imposed by the Covenant must be recognised immediately – namely, the rights must be exercised without discrimination of any kind and on equal terms for both men and women.

- 4.6 Perhaps most importantly, there is a strong presumption that there will be no retrogression. In other words, that existing measures are not repealed or amended in a way that undermines what has already been achieved in realising the right. The Committee explains this as follows:

If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all the alternatives and that they are duly justified by reference to the totality of the rights provide for in the Covenant, in the context of the full use of the maximum available resources of the State party. The Committee will look carefully at whether: (a) there was reasonable justification for the action; (b) alternatives were comprehensively examined; (c) there was genuine participation of affected groups in examining the proposed measures and alternatives; (d) the measures were directly or indirectly discriminatory; (e) the measures will have a sustained impact on the realisation of the right to social security, an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security; and (f) whether there was an independent review of the measures at a national level³¹.

- 4.7 For the reasons outlined below, the Commission considers that certain aspects of the Bill do not comply with New Zealand’s commitments under Art.9 because

³⁰ For further on this see statement by the Committee: *An evaluation of the obligation to take steps to the “maximum of available resources” under an optional protocol to the Covenant* (E/C.12/2007/1)

³¹ General Comment 19 at para 42

they are discriminatory. They are also retrogressive and could undermine the right to a minimum standard of living for some vulnerable groups.

- 4.8 The Commission, therefore, considers that the changes cannot be justified in the current climate and are likely to have an ongoing and detrimental effect on the right to social security. Further the Bill is at odds with international thinking about social security as a crisis response during the recovery from the global economic recession. The ILO, for example, considers that the crisis has acted as an accelerator in the social security debate amongst OECD countries which have developed a new understanding of the importance of social security as a prerequisite to growth rather than a burden to society.

5. DISCRIMINATION

- 5.1 Although the Commission deals with discrimination on a daily basis, discrimination itself is not defined in either the Human Rights Act 1993 (HRA) or the New Zealand Bill of Rights Act 1990 (BoRA).
- 5.2 The BoRA standards are incorporated into the HRA by Part 1A of the Act³². Effectively, therefore, a matter which is prima facie discriminatory may be justified in terms of s.5 BoRA and will not be considered to breach the right to freedom from discrimination.
- 5.3 In deciding whether a matter is discriminatory, the Commission follows the approach suggested by the Supreme Court in *McAlister v Air New Zealand Ltd*³³ and applied by the Human Rights Review Tribunal in *Atkinson & Ors v Ministry of Health*³⁴. That is, a matter will amount to prima facie discrimination if it involves different treatment by reason of one of the prohibited grounds that has the effect

³² Part 1A applies to the legislative, executive and judicial branches of government or anybody or agency carrying out a public function conferred pursuant to law.

³³ (2009) 8 HRNZ 801; (2009) 9 NZELC 93,242 (SCNZ); [2009] NZSC 78

³⁴ HRRT 33/05 (8 Jan 2010)

of disadvantaging an individual or group. Here the disadvantageous treatment is the part-time work test linked to sanctions for non-compliance that applies to certain classes of beneficiaries.

5.4 The Bill discriminates on the following grounds:

- sex (widows with children do not have to undertake the test but widowers do);
- marital status (solo parents whose partner is deceased do not have to take the part-time work test but solo parents who are not with their partner for other reasons – for example, they are divorced or separated - do)
- family status (older single people who receive the DPB (solo parent benefit) because they are caring for children are treated differently as they will be subject to the work test and associated sanctions whereas older single women who may have cared for children but no longer do receive the DPB (women alone benefit) which is not subject to the work test).

5.5 Once it is established that treatment is discriminatory then it is necessary to consider whether it can be justified under s.5 of the BoRA. Section 5 provides that:

...the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

5.6 In deciding whether the limitation can be justified, the Supreme Court in *R v Hansen*³⁵ identified the following criteria:

- (a) does the limiting measure serve a purpose sufficiently important to justify curtailment of the right or freedom?
- (b)
 - (i) is the limiting measure rationally connected with its purpose?
 - (ii) does the limiting measure impair the right or freedom no more than is reasonably necessary for sufficient achievement of its purpose?

³⁵ [2007] 3 NZLR 1 (SC) at 28

(iii) is the limit in due proportion to the importance of the objective?

5.7 The Commission agrees with the Attorney General that the Bill “by introducing a part-time work test for solo parents on the DPB but not the Widows Benefit and the DPB (Women Alone Benefit) ... appears to be inconsistent with s.19 of the Bill of Rights Act and it cannot be justified under s.5 of that Act”.³⁶ While encouraging people to return to the workforce may be a significant and important objective, the treatment of women on the DPB with school age children is unlikely to achieve this goal and, given the possible long term effects of this measure, cannot be justified.

5.8 As the Attorney-General also notes, retaining the distinction between widows and widowers promotes the stereotype of widows and older women as being less capable of supporting themselves. The Commission considers that this is outdated and incompatible with contemporary social mores.³⁷

5.9 The Commission warns against attempting to rectify the discrimination by amending the offending clauses so they also apply to widowers or older women without dependent children³⁸ and requests the Committee to seriously consider whether imposing the work test on women in this situation can be justified at all.

6. IMPLICATIONS FOR SOLO PARENTS

6.1 The current work test requirements under the Social Security Act do not apply to solo parents on the DPB. The effect of the Bill will be to require solo parents to

³⁶ *Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Social Assistance (Future Focus) Bill* (2010) at paras 11 et seq

³⁷ Since the 2001 Amendment to the HRA (which allowed complaints about discriminatory legislation for the first time) the Commission has received 26 complaints and enquiries relating to the widows' benefit. Of these 17 related to the perceived unfairness that the benefit was only available to women.

³⁸ Clauses 13 and 14

look for, and accept, suitable part-time work when their youngest dependent child turns six. The proposal appears to be driven purely by financial considerations³⁹.

- 6.2 The Commission considers that this is short sighted. Currently, there is insufficient good, affordable childcare or work with suitable hours and flexibility to permit solo working parents to cover school holidays and those occasions when their children are ill⁴⁰. While clearly there are benefits for children in having parents engaged in meaningful paid work, we are not aware of any research of the effect on children who do not have adequate after school care (in addition to the extra stress in low waged or beneficiary households).
- 6.3 Research indicates that the cost and availability of suitable childcare can be a major barrier to solo parents seeking work⁴¹. Often women in this situation also have few qualifications with the result that they are less able to find work which pays enough to meet the costs of childcare and transport. They are more likely to find casual jobs or jobs that have non-standard hours - which can add to difficulties with childcare.
- 6.4 The National Council of Women has also raised the issue of the effect the proposed changes could have on women fleeing situations of domestic violence. Given the proposed work test regime, the cost of childcare and the need to

³⁹ On introducing the social welfare reform package, the Prime Minister stated that “if we were to assist just 5% of solo parents with a youngest child aged over six into work, there would be a saving of almost \$200 million over the next ten years”. Susan St. John - an economist at Auckland University- has queried this claim noting that it fails to account for the other costs that will be incurred as a result such as the cost of balancing it with the demand for the unemployment benefit that could result with the influx of solo parents in the casual labour market (which could have the effect of ousting single people).

⁴⁰ See, for example, *The State of the Nation*, a report by the Salvation Army Report available at <http://salvationarmy.org.nz/uploads/StateOfTheNation.pdf> at p.8 “ the availability of ECE places in poor urban suburbs is nearly half the national average suggesting a large and lingering inequality of access for poor and generally brown children”.

⁴¹ Centre for Social Research and Evaluation , *The 2002 Domestic Purposes and Widow’s Benefit Reform: Evaluation Report* Ministry of Social Development (2007) at 4; See also comments at para 8.6

accept poorly paid work women could be forced back, or remain in, violent relationships⁴².

- 6.5 The Commission cannot see how forcing solo mothers to work in such situations can benefit either society or the women themselves. Contrary to what has been said in connection with this Bill, living on a benefit is not a life style choice that appeals to most people. The harsh lifestyle, loneliness and loss of social status are incentive enough to return to work without the added imposition of penalties if people do not make themselves available for unrewarding, low paid employment.
- 6.6 As the Human Rights Review Tribunal noted in *Child Poverty Action Group v Attorney-General*⁴³(a case which dealt with discrimination on the ground of employment status resulting from denial of the in-work tax credit (IWTC) to beneficiaries):

We are very troubled by the argument that anyone who is ineligible for the IWTC could simply chose to go into a job and so become eligible. That cannot be realistic for all beneficiaries, and quite likely it is not even realistic over the short - to even medium- term for the majority of them. After all, the OECD experts described the movement in other OECD countries of single digit percentages of people who receive benefit income into work in terms of being a significant achievement...

We accept that there must be a number amongst the cohort of those who receive income-tested benefits who could work if they wanted to, but effectively choose not to. Nonetheless, we think it is regrettable that the Crown sought to argue that all recipients of income-tested benefits fall into that same category. The ability of any given person to

⁴² National Council of Women, *Press Release: Any DPB Sanctions Can't apply to Domestic Violence* (30 March 2010)

⁴³ [2008] NZHRRT 31 (16 December 2008) at paras 187 & 188

work depends on many factors that can be quite beyond their control, including their health, the need to care for others, the availability of suitable work, and the willingness of prospective employers to give them a chance, to name just a few obvious things. Overall, we were left with a real concern that this type of generalisation as it was put up on behalf of the Crown – i.e., that all those on a benefit income are simply there by choice – represents exactly the kind of stereotyping, prejudice and disadvantage that the anti-discrimination standard of NZBORA is intended to protect against.

- 6.7 The changes proposed in this Bill are unlikely to lower the numbers of solo parents on the DPB - this is more likely to coincide with periods of low unemployment⁴⁴ or where training programmes designed to better equip people for the workforce are introduced⁴⁵.

7. EFFECT ON PEOPLE WITH DISABILITIES

- 7.1 Disability is a prohibited ground of discrimination under the HRA. It includes physical and psychiatric illness⁴⁶. Both General Comment 19 and the UN Convention on the Rights of People with Disabilities refer to the right of people with disabilities to receive social security on a non-discriminatory basis.
- 7.2 The Convention recognises that people with disabilities have the right to have access to social protection and poverty reduction programmes and the General Comment emphasises the importance of ensuring there is adequate income support to persons with disabilities who have temporarily lost, or had a reduction in, their income. Further, State Parties are required to provide support in a

⁴⁴ St John (supra)

⁴⁵ The Commission also queries in this regard the removal of the personal development aspect from employment plans under s.600 SSA 1964. Personal development can be a powerful underlying motivator and source of confidence.

⁴⁶ S.21(1)(h) HRA 1993

manner that “respect[s] the principle of human dignity contained in the preamble to the Covenant”.⁴⁷

- 7.3 The Bill introduces a work test and sanctions regime for people in receipt of a Sickness Benefit. At present people in receipt of a sickness benefit are not required to seek or accept offers of part-time work but, under the Bill, if people are assessed as having the capacity to work part time they will be required to seek and accept part-time work (including seasonal work)⁴⁸.
- 7.4 Although people on an unemployment benefit are required to make themselves available for work – effectively in return for receiving the benefit - people on a sickness benefit receive the benefit because they are unable to work because of illness, injury or disability⁴⁹. Evidence suggests that people with disabilities have a greatly diminished likelihood of finding full-time employment generally⁵⁰ which implies that they would find it equally difficult to locate suitable part time employment. The likely outcome therefore is that people on sickness benefits will end up competing with solo mothers on the DPB for low paid, insecure employment.
- 7.5 The Regulatory Impact Statement for the Bill states that the 2008 economic recession has seen the number of working-age people on the Unemployment Benefit, the Sickness Benefit and the Domestic Purposes Benefit increase significantly over recent months. For example, the number of people on the sickness benefit increased from 49,093 to 59,158 in the two years to December

⁴⁷ Supra (fn 26) at paras 20 & 22

⁴⁸ In deciding whether this is the case the Commission adopts the approach suggested by Tipping J in *McAlister*, i.e. it is enough that the ground is a material ingredient in the different treatment.

⁴⁹ Research indicates that of the 56,000 working age people currently in receipt of the Sickness Benefit 41% had psychological or psychiatric conditions: Centre for Social Research and Evaluation, Ministry of Social Development, *National Fact Sheet – Sickness Benefits* March 2010

⁵⁰ Jensen et al. *Work Participation Among People with Disabilities: Does the Type of Disability Influence the Outcome?* Social Policy Journal of New Zealand, Issue 24 (2005) at 134. The overall likelihood of finding employment diminishes sharply with the severity of the disability.

2009. As at March 2010 the number of sickness benefit recipients aged 18 to 64 was 55,796 - an increase of 9% or 5,000 over the year.⁵¹

- 7.6 The Commission's National Conversation about Work found that a notable feature of the recession was the number of agencies who reported that people with disabilities had suffered disproportionately in redundancies and layoffs but as employment data is not disaggregated by disability this is not a visible indicator in national statistics. Many of the unemployed disabled people the Commission spoke to wanted suitable jobs.
- 7.7 It is clear that the Ministry of Social Development believes its current service model is suitable for the current labour market as it notes in the Regulatory Impact Statement:

*Work and Income work actively with people to ensure that people return to work as soon as possible. The work that they do consistently results in a larger reduction in benefit numbers than is forecast through the economic and fiscal updates. The service model that they have initiated is recognised internationally as very effective in assisting people into employment.*⁵²

- 7.8 The Commission considers that many disabled people who lost jobs and are now more dependent on welfare want to access suitable work in their home towns. However, in many instances jobs are simply not available for them. Forcing sickness beneficiaries to accept poorly paid, casual or temporary work will not contribute to a fairer benefit system and is inconsistent with the international requirement to treat people who find themselves in such situations in a dignified manner.

⁵¹ Supra fn 50
⁵² at para 16

8. ASSUMPTION THAT RELEVANT WORK IS AVAILABLE

- 8.1 The Regulatory Impact Statement states that, *“the key assumption underpinning this analysis is that work will become available for people as the economy recovers and that the implementation of the work-test can be matched to the employment capacity in local labour markets.”*
- 8.2 The most obvious flaw with this proposal is the assumption that work will be available when many of the measures in the Bill are due to take effect⁵³. For example, the proposed date for the commencement of the part time work test for sole parents on the Domestic Purposes Benefit whose youngest child is six years old is 4 October 2010 - in less than six months time.
- 8.3 In the course of the National Conversation about Work the Commission talked to 3000 employers and employees, as well as individuals and groups seeking work, throughout New Zealand. There are several significant points to be made about attitudes to employment and focus on work that arise from this project.
- 8.4 It is the lack of jobs in regions and provinces as well as urban areas, rather than attitudes to work amongst job-seekers, that is the critical driver of a focus on work. The results of the National Conversation overwhelmingly show that many vulnerable and disadvantaged people who lose jobs or are unemployed and receive social security assistance both want to get back to work as soon as possible and to reduce their dependency on benefits. It is the unavailability of suitable, decent work where they live that relentlessly limits their employment focus.
- 8.5 While employment is the “lagging indicator” in economic recovery - and the ILO predicts it may take five years for proper job recovery - the Commission’s visits

⁵³ There was a loss in New Zealand of 8000 part time jobs for women identified in the latest Household Labour Force Survey, December 2009 quarter.

indicate a new wariness is abroad amongst some employers. The current conservatism of employers around hiring may become a new employment norm in some industrial sectors which has not been properly identified in economic forecasting.

- 8.6 A significant feature of employers' experiences during the recession, in addition to economic pain for some business, was the emotional trauma of having to lay off workers. Companies around New Zealand who cut labour costs told us they would not be returning to previous labour levels. They say the recession had taught them they had to be more disciplined about hiring, they expected greater productivity from staff still employed, they were working in different ways, and they complained of the "hassle" of compliance issues.
- 8.7 The Commission heard over and over again that the lack of adequate childcare, which would allow families to match their desire for part time work with the need to care for their children, is a significant limiting factor for solo parents and others who want to work. Very often available work does not match the hours offered by childcare facilities and in many rural areas childcare does not exist at all.
- 8.8 It seems highly unlikely that there will be adequate part time jobs available for Domestic Purpose Beneficiaries, even if they can access suitable and affordable childcare, given the annual decrease at March 2010 of 5000 in female employment (with falls in both fulltime and part time employment of 4000 and 1000 respectively).

9. CONCLUSION

- 9.1 Decent employment is central to social inclusion. The existence of a social security floor that reflects and affirms human dignity is now recognised by the ILO and the OECD as the mark of a civilised, progressive society.

- 9.2 New Zealand’s strong reputation for upholding non-discriminatory behaviour is reflected both in its ratification of international agreements and enactment of domestic legislation such as the BoRA and the HRA. The Commission is very concerned, therefore, that amendments such as this - which the Attorney-General has publicly acknowledged as discriminatory and unable to be justified - should be introduced and is strongly opposed to any measure that would result in further restrictions as a way of rectifying the discrimination in the Bill. The Commission also considers the proposed Bill is retrogressive and out of step with other OECD countries.
- 9.3 While the Commission recognises the importance and benefit of meaningful paid work, it does not consider that the “unrelenting focus” on work in this Bill will have the effect of producing a “fair social assistance system that is work-focused”⁵⁴ and nor does it acknowledge the strong desire of many job seekers to access decent work where they live.
- 9.4 The lack of suitable work for the groups of beneficiaries targeted by the legislation will not only undermine New Zealand’s international commitment to the right to social security but, in the absence of evidence to the contrary, is likely to lead to solo parents with school age children and sickness beneficiaries accepting low paid, unrewarding work – if they can find it – and struggling to find suitable childcare, particularly in rural areas.
- 9.5 The Human Rights Commission considers aspects of the Bill are fundamentally flawed and it should be withdrawn. The Commission is happy to provide human rights expertise in any subsequent legislation to ensure it is consistent with the New Zealand Bill of Rights Act.

⁵⁴ Explanatory note to the Bill at 3