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Beneficiary Advisory Service

Submission on the Social Security (Youth Support and Work Focus) Amendment Bill

1 The Beneficiary Advisory Service ("BAS")[1] 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 around 4000 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.

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[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, which allows only 11 working days for the preparation of submissions. We also note with concern the exceptionally tight timetable for the select committee to report back.

7 The bill itself is 68 pages long and contains radical changes within existing legislation already notorious for its complexity. The regulatory impact statements and accompanying cabinet papers supplement the bill with a further 148 pages of required reading.

8 It is no answer to argue, as the Minister of Social Development has, that a lengthier submissions process is unnecessary because the thrust of this legislation has been foreshadowed. Almost all legislation is introduced after advance notice. Fundamental changes to the welfare system, accompanied by harsh penalties, clearly merited a far more considered approach.

9 This markedly inadequate time for submissions is exacerbated by the deletion of key passages from the regulatory impact statements and accompanying Cabinet papers. On our count:

- 94 paragraphs have been removed in total (this does not include apparent substantial deletions at the conclusion of the documents, where calculation of paragraph numbers is impossible); and
- 16 further paragraphs contain deleted passages.

10 Where it is possible to identify the nature of the deleted material, the passages removed apparently cover such fundamental issues as:

- costing;
- risks;
- human rights implications;
- observations on the capacity of private sector "service providers"; and
- comment from other government agencies.

11 Given the attendant uncertainties of the proposed scheme, outlined in what remains in the regulatory impact statements from officials,[2] this level of deletion is extraordinary. 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.

The flawed policy background

12 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.

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[2] See, for example, the repeated references to significant constraints on accurate predictions due to the impact of "numerous external factors" in the regulatory impact statements.

13 We share the well-documented concerns expressed by other commentators as to the loaded composition and terms of reference for that Group.[3]

14 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.[4]
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> 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.[5]
>
> "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.[6]
>
> The result is the most distorted presentation of statistics I have ever seen in a government-sponsored document.[7]

15 In terms of these recommendations we endorse the views of the Child Poverty Action Group that:[8]

> 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.

16 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.

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[3] See, for example, Gordon Campbell, "On Paula Bennett's Decidedly Strange Welfare Panel", *Scoop*, 20 April 2010; "On Welfare-Bashing", *Scoop*, 9 August 2010; "On the Welfare Working Group's Latest Round of Welfare Bashing", *Scoop*, 26 November 2010; "On the Prelude to the Welfare Reform Package", *Scoop*, 22 February 2011; "On the Welfare Working Group Final Report", *Scoop*, 24 February 2011; and "On the Government's Plans to Americanise the Welfare System", Scoop, 15 August 2011. All available at http://gordoncampbell.scoop.nz

[4] Tapu Misa, "Welfare due for review – but this isn't it" NZ Herald 16 August 2010.

[5] Gordon Campbell, Ten Myths About Welfare: the Politics behind the Government's Welfare Reform Process", http://werewolf.co.nz/2011/02/ten-myths-about-welfare/

[6] John Armstrong, "Huge Numbers Only Part of Benefit Story" NZ Herald 14 August 2010.

[7] Ann Else, "What the Welfare Working Group Report Really Says" Scoop 16 August 2010.

[8] Donna Wynd and Susan St John, "Enlightening the Welfare Working Group", www.cpag.org.nz

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

17 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.

18 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.

19 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.

20 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.

21 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.

22 The basic theme triggering the changes is the argument 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".

23 "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.[9] 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.

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[9] 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.

24 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.

25 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.[10] 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.

26 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.[11] 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.

27 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 jobs at the New World supermarket in Ilam.[12] At its extreme point, by way of sanction, this legislation proposes to add young mothers, presumably carrying their one year old babies, to this queue.

28 The untested proposition of "dependency" is then 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:[13]

> 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.

29 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

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[10] Ministry of Social Development, Benefit Fact Sheets, www.msd.govt.nz

[11] In the mid-2000s, for example, unemployment benefits were approximately one quarter of those currently received.

[12] As reported on 21 September 2011, at www.stuff.co.nz

[13] Gordon Campbell, making the above point, in "Ten Myths About Welfare", http://gordoncampbell.scoop.co.nz

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.[14]

30 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 flawed use of statistics in the bill

31 The *Introduction* to the bill states, without further elaboration, that:

> Currently, there are nearly 330,000 working age people receiving a benefit in New Zealand – that's more than 12% of the working age population.

32 The proponents of the bill invite us to infer that this represents a pool of untapped available workers enjoying a "lifestyle choice". Yet, even ignoring the jobs crisis, when this raw figure is broken down, a very different picture emerges.

33 On the last available statistics covering the main benefits published by the Ministry of Social Development,[15] of those people represented in the statistics:

- 85,000 (over one quarter of the 330,00 cited) 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;[16]
- 60,000 (almost one fifth of the 330,000 cited) are receiving a medically tested sickness benefit, meaning that they are viewed by law as being temporarily unfit to work;[17]
- 60,000 (an almost fourfold increase under the current Government) are receiving an unemployment benefit, which requires recipients to be actively seeking work as a condition of entitlement; and
- 60,000 are receiving a domestic purposes benefit, mostly raising children alone, and already part-time work-tested (in the case of lone parents) once the youngest child reaches 6 years of age.

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[14] 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.

[15] The relevant *Benefits Fact Sheets* for the end of March 2011: see "research and publications" at www.msd.govt.nz

[16] 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.

[17] 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.

34 Then, stating the obvious, the Ministry of Social Development itself has observed that the rise in benefit numbers in some categories reflect economic conditions.[18] Against this, in her first reading speech, the Minister of Social Development asserted that the welfare system was "failing many New Zealanders". 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.[19]

The bill's failure to deal with poverty

35 The *Introduction* to the bill then states that:

> There are well established links between people receiving benefits and poverty, poor health, and many other poor social outcomes.

We agree.

36 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. [20]

37 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]

38 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]

39 As the Child Poverty Action Group [23]and the Alternative Welfare Working Group[24] 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.

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[18] Fact sheets, as above, note 8.

[19] Gordon Campbell, "On yesterday's welfare reform announcements", Scoop, 28 February 2012.

[20] OECD, *Divided We Stand*, 2011.

[21] As recently analysed in Michael Baker and others, "Social Determinants of health and outcomes in New Zealand", *The Lancet*, vol 379, issue 9821, p 1075.

[22] At page 4.

[23] In the suite of papers at www.cpag.org.nz

24 Alternative Welfare Working Group, *Welfare Justice for All*, December 2010, www.welfarejustice.org.nz

40 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.

41 But to return to the fundamental point, the jobs simply do not exist, a point glossed over both by the Welfare Working Group report [25] and by the proponents of the bill.

42 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.

43 This is utterly shameful.

Analysis of the bill's clauses

44 The extremely limited time for preparation of submissions 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.

Provisions increasing the age of eligibility for benefits

45 The increase in the age of entitlement to certain benefits is not rationalised either in the explanatory memorandum to the bill or the accompanying background papers.

Clauses 8, 9 and 10

46 We oppose clauses 8, 9 and 10 which raise the minimum age of entitlement to 19 in relation to, respectively, eligibility for a sole parent DPB, a family caregiver DPB, a sickness benefit (where the applicant has dependent children), and an unemployment benefit (where the applicant has dependent children).

47 This arbitrary and unheralded change lacks any viable policy basis and further discriminates against young people in breach of the New Zealand Bill of Rights Act 1990, on the basis of age and family status.

48 It is inconsistent also with other legislation conferring citizenship rights on young people, such as the right to vote and to enter into marriage or civil union.

Provisions relevant to the "youth package"

49 We reiterate that the limited time for preparation of submissions makes it impossible for an organisation such as ours to enter into a detailed clause by clause analysis of this bill. We record generally that many of the provisions clearly discriminate against young people on the basis of age and/or marital status, and

[25] Which gave the issue no extended treatment whatsoever.

thus potentially breach the New Zealand Bill of Rights Act 1990.

50 We also observe that programmes of demonstrated success in education and training for young people, such as the training incentive allowance and Community Max, have been arbitrarily abolished by the current coalition Government and its predecessor National-led coalition.

Clauses 18 and 19

51 In relation to clauses 18 and 19 of the bill, we strongly oppose the privatisation of welfare provision by placing the administration and delivery of the proposed youth payment and youth parent payment provisions in the hands of contracted private sector "service providers".

52 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:[26]

> [The] ability to win contracts (and retain them) will be based on how readily [contractors] reduce both the numbers on welfare, *and* the amount that claimants receive. The real "incentives" in this brutal process are (a) to make profit from other people's hardship (b) reduce the number of claims and (c) to reduce and/or deny entitlements.

53 Quite apart from the objection in principle, we note that the rushed nature of this legislation 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".[27] 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 young people, we find it utterly appalling that any doubt remains as to their capacity and capability.

54 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".[28] Those risks are about to be visited on some of the most vulnerable young people in our community and monitoring reports will not be possible until the risks have eventuated.

55 We also note that the legal status of the service provider's role remains unsatisfactorily unclear in a number of respects. It would seem that, except for the sections in the principal Act listed in clause 125G,[29] the actions or inactions of a service provider are not to be deemed as those of an officer of the department.

56 Yet the background papers suggest that the service provider will be tasked with

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[26] Gordon Campbell, "On the Welfare Working Group Final Report", 24 February 2011, Scoop, www.gordoncampbell.scoop.co.nz

[27] Office of the Minister of Social Development, *Further Policy Decisions on the Youth Package*, undated Cabinet paper, paragraph 113.

[28] Ibid, para 85.

[29] Relating respectively to backdating based on error, duty to advise of change in circumstances affecting benefit entitlement and recovery of overpayments.

notifying Work and Income when, in their opinion, a young person has failed to meet an obligation:[30]

> [Only] Work and Income can stop a payment, but Service Providers will be the ones who are meeting with a young person regularly to ensure they are meeting their obligations.

57 The result is that a person airily described in the 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 young person without dependent children having their entire weekly income cancelled and to young parents having 50% of their weekly income cancelled.

58 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.[31] Following this pattern, we note that the background papers acknowledge that most of the final decisions around income support payments for young people (including sanctions) "will be based on recommendations from the young person's service provider".[32]

59 Our objections under clause 18 extend also to the proposed information sharing framework, which (as the Privacy Commissioner has observed[33]) is distinct from that in the Privacy (Information Sharing) Bill currently before select committee. We believe that it is repugnant to allow young people less favourable protection than others in relation to their personal information and potentially a breach of the New Zealand Bill of Rights Act 1990.

60 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 family breakdown (often, in our experience, involving abuse),[34] and medical records.[35] Once it becomes apparent to young people that such information will be disseminated in this way we believe that it could operate to deter them from making necessary disclosures.

61 Like others, we are also concerned that these measures may be utilised as a stalking horse to justify future privatisation of other welfare services, and incursions on privacy, just as the initial National Party manifesto commitment to limit the ability to

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30 Office of the Minister of Social Development, *Further Policy Decisions on the Youth Package*, undated Cabinet paper, para 65. The same analysis is then applied to "incentive payments" at para 68.

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 Office of the Minister of Social Development, *Further Policy Decisions on the Youth Package*, undated Cabinet paper, paragraph 103.

33 As recorded in the regulatory impact statements.

34 Office of the Minister of Social Development, *Further Policy Decisions on the Youth Package*, undated Cabinet paper, paragraph 143.

35 As above, paragraph 144.

impose "trial periods" to small employers was extended to all employers within one Parliamentary term.

62 Finally, we agree with the Catholic Archdiocese of Wellington when it criticised the bill on the basis that "at a time when current tax policy has given more money to the better off in society, those most economically and socially vulnerable are being ever more controlled" and expressed concern that the State would use scarce welfare funding to set up privatised training for beneficiaries.[36]

Clause 20

63 We strongly oppose the framework under clause 20, imposing a new support, obligations and penalty regime for 16 and 17 year olds without dependent children, but whose exceptional circumstances entitle them to the new youth payment, and for 16-18 year old parents whose circumstances entitle them to a youth parent payment.

64 We note the paradox that, in legislation purportedly aimed at encouraging "independence", young people are being made more dependent in managing their lives through delivery of payments to youth by redirection to accommodation and utilities, a payment card for food and groceries, and an "in-hand allowance" which can be forfeited like pocket money at the instigation of a private sector "service provider".

65 We find the payment card, introducing the equivalent of the stigmatising American "food stamp" programme to Aotearoa New Zealand, particularly objectionable. It further labels a vulnerable group already marked out unfairly by pre-election "dog whistle" references to young people spending benefit money on alcohol and cigarettes.[37]

66 As noted above, the accompanying harsh sanctions for non-compliance with the stringent obligations placed on those receiving the proposed payment ultimately include mandatory cancellation of weekly payments for a young person without dependants.[38]

67 Given the legislative condition that parents either will not or cannot provide for the young person, as the basis for entitlement to the youth payment,[39] how is such a young 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?

68 The sanctions also include a mandatory 50 percent reduction in weekly income, even where the person concerned is responsible for a dependent child.

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[36] Press release, "Safeguard families and protect the sacred role of parents", 28 March 2012, www.scoop.co.nz.

[37] Neither of which, of course, are legally available to people aged 16 and 17.

[38] Someone whose benefit is cancelled must reapply and faces a 13 week stand down before they can receive a benefit, or might receive a provisional benefit by participating in a six week "recompliance" activity.

[39] Proposed new section 129, definition of "exceptional circumstances".

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

70 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".[40] Exactly what do the proponents of this bill think amounts to "due" hardship for the child of a young 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 what default a "service provider"/ case manager perceives the young parent as committing?

71 In our view, this provision 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.

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

Clauses 28-33

73 We oppose the extension of mandatory work-testing for lone parents receiving the DPB, "women alone" receiving the DPB and widows receiving the widows' benefit.

74 Our opposition to this measure is based on three grounds.

75 The first is that 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.[41]

76 The second ground, reiterating an earlier point, is that when macro-economic

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[40] Office of the Minister of Social Development, *Paper B – Welfare Reform: Availability and Preparation for Work for Sole Parents, Widows, Women Alone, and Partners*, Cabinet paper, 15 February 2012.

[41] Estimate of numbers from the Office of the Minister for Social Development, *Paper B – Welfare Reform: Availability and Preparation for Work for Sole Parents, Widows, Women Alone, and Partners*, 15 February 2012, paragraph 18.

conditions improve and governments respond appropriately, employment becomes a sustainable outcome and substantial numbers of DPB recipients have entered employment without the imposition of a work-testing regime. Entry into the paid workforce in this manner is more likely to be the result of a considered approach resulting in more settled employment outcomes.

77 The third ground relates to the predictable negative results of work-testing beneficiaries receiving the DPB or widows' benefit whose youngest child is aged 5 or over. We agree with the Green Party[42] that:

- The policy denies these parents, who are in the best position to assess the needs of their child(ren), the choice as to how they balance childcare responsibilities with paid employment.
- Many parents will find it difficult if not impossible to obtain quality and affordable childcare, particularly during school holidays, with significant ensuing risks that children will be left at home alone.
- The "work first" approach, coupled with the abolition of the training incentive allowance, risks parents being moved into precarious low paid employment, with associated negative implications.
- A new applicant for a DPB, often in the aftermath of a traumatic separation, will be faced with the work test if their youngest child is 5, adding to the stress that newly-separated people already experience.
- Regardless of the poorly promoted exemption where a sole parent leaves a relationship because of violence, tightening the work test creates a real risk that women will stay in violent relationships rather than face the harsh sanctions for inability to meet work test requirements (including losing 50% of support when they have a dependent child).

78 We agree also with the Catholic Archdiocese of Wellington, that this legislation and its associated policy devalue the role of parents as care providers. For example, as one aspect of work-testing, decisions on what is an appropriate and safe child-care arrangement will effectively be removed from the control of the parent and placed in the hands of a case-manager. Like the Church, we acknowledge and support the many parents who are able to engage in paid work whilst raising children but also acknowledge that "[forcing] lone parents and young parents into any form of employment does not allow for the range of circumstances that some parents face".[43]

79 For reasons elaborated below, it is not an answer to say that aspects of this policy are discretionary and can be left to the judgment of case managers.

Clause 34

[42] *Overview of the Social Security (Youth Support and Work Focus) Amendment Bill*, www.greens.org.nz

[43] Press release, "Safeguard families and protect the sacred role of parents", 28 March 2012, www.scoop.co.nz

80 We emphatically oppose clause 34, which proposes that parents who have an additional child whilst receiving a benefit will be required to meet work test obligations once their new-born child turns one year of age.

81 We agree with the Green Part that "[this] will effectively force such parents to place a child into childcare from the age of 12 months, and that this is likely in some cases to be detrimental to the parent-child bonding and relationship and to the child's development, and in most instances will preclude the choice of breastfeeding past the age of 12 months".[44]

82 It is no answer to argue, as the background papers do, that the one year period aligns with the extended one year period for statutory parental leave. First, parents taking advantage of that provision do so by choice and are presumably in a position to ensure safe and good quality childcare for their child. Second, in order to take advantage of the one year parental leave provision, significant savings or other income must be available to the parent(s), since the bulk of that leave is unpaid. Third, a high proportion of parents taking parental leave are in a relationship with the other parent, who is able to share responsibilities once parental leave expires.

83 Again, for reasons elaborated below, nor is it an answer to say that aspects of this policy are discretionary and can be left to the judgment of case managers. This is particularly true of the discretion around applying the new rule where parents have been off a benefit for a "short" time before conceiving or giving birth to an additional child.

Clauses 35 - 41

84 To the extent that these largely mechanical clauses reinforce those elements of the bill which we oppose, we oppose them also.

Discretionary application of some provisions in the bill

85 At various points, the background papers argue that some of the harsher elements of this bill might be ameliorated, where appropriate, by sensible use of any available discretion by "service providers" and case managers, applying policy guidelines. Examples are the discretion over what amounts to an open-ended definition of "suitable employment" for purposes of work-testing[45] and application of the "subsequent child" policy where the child was conceived or born after a beneficiary left the benefit.[46]

86 We strongly disagree.

87 First, we note that some of the harshest elements in the bill, such as the sanctions on young people, remain mandatory.

88 Second, even where discretion remains, as an advocacy organisation we are confronted daily with the shortcomings of a complex social security scheme being

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[44] *Overview of the Social Security (Youth Support and Work Focus) Amendment Bill*, www.greens.org.nz

[45] Social Security Act 1964, s 3.

[46] Proposed new section 60GAF.

administered by inadequately trained case managers who are themselves under pressure not to be seen as overly generous with entitlements.

89 We note in passing that at least case managers are bound by a Public Service Code of Conduct and associated employment-related constraints, as opposed to the contracted "service providers" on whose judgment they will come to rely where young people are concerned.

90 In terms of what discretion remains, an attempt at uniform administration of policies and procedures throughout the Ministry's offices is made by electronic distribution of policy, which incorporates instructions and rules of guidance.[47]

91 The policy guidelines are crucial to an understanding of how decisions are made by the Ministry. It is relatively common for the guidelines to diverge from the legislation in significant respects, particularly by reducing the ambit of available discretion. Since redaction to computerised form, the guidelines have become extremely generalised in many respects.

92 An unusual – if not unique - feature of social security administration has been a generalised tendency to ignore Court and Tribunal decisions in which the departmental policy has been found to be in error. In other words, internal policy guidelines have not been changed to reflect rulings as to what the law requires.

93 The most notable example is the department's failure to reflect the Court of Appeal's judgment on the relevant principles to apply to questions of marital status in *Ruka v Department of Social Welfare*,[48] leading to the well-known conclusions of the *Joychild Report*.[49] Even today these principles are being ignored in cases that we have dealt with in recent years.

94 The problem with inaccurate policy guidelines has been exacerbated in practice by the "case management" approach to social security administration introduced in the 1990s. Prior to this, separate units within departmental offices dealt with each different type of benefit and built up a degree of expertise in relation to the relevant requirements.

95 For example, when the Minister for Social Development claimed in her first reading speech that young people had been left to "fend for themselves", the assertion was disingenuous. The Minister ignored the fact that an earlier National Party Government had disestablished specialist units within the department with the function of helping young people on what was then the independent circumstances allowance. The administrative proposal for a new youth services support unit, which will largely act as a conduit to private "service providers",[50] does nothing to alleviate this concern.

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47 The internal guidelines are available online at www.msd.govt.nz/manuals and procedures/.

48 [1997] 1 NZLR 154 (CA).

49 Frances Joychild, Report to the Minister for Social Services, *Review of Department of Work and Income Implementation of the decision in Ruka v Department of Social Welfare*, 2001.

50 Office of the Minister of Social Development, *Further Policy Decisions on the Youth Package*, undated Cabinet paper, Appendix B.

96 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.

97 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.

98 These problems were revisited in the 2000 *Hunn Report*[51] 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.

99 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).

100 Such examples are commonplace in our experience.

101 It is of acute concern that this flawed system is now about to extend to decisions made under the new "youth package"[52] and the extension of work-testing.

Review and appeal

102 We observe that the bill alters the framework for reviewing decisions under the Social Security Act 1964. Proposed section 125G provides for certain decisions made by contracted "service providers" to be reviewable, by deeming them to be officers of the department for certain purposes.

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

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[51] Donald Hunn, *Report of the Ministerial Review into the Department of Work and Income New Zealand*, 2000.

[52] Where, as noted, the design of a proposed youth services support unit doers nothing to alleviate our wider concerns,

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.[53]

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 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.[54]

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[53] 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".

[54] *Daniels v Chief Executive, Department of Work and Income* [2002] NZAR 615, in which, again, a year had elapsed initially,

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 young mother whose youth parent payment has just been reduced by 50 percent on the basis of a contractor's perception that she has defaulted on obligations under the legislation.

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. 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.

111 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.

112 To take timeliness as just one issue, it is plainly nonsensical, and extraordinarily stressful for clients, that adverse decisions on issues that 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.[55]

113 Linking this with our concerns as to sanctions, by way of example, in one recent case the Ministry of Social Development imposed a 13 week stand down on the basis that the appellant had become "voluntarily unemployed" where 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 Authority did not rule in his favour until almost a year after his original application for an unemployment benefit was unlawfully denied.[56]

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

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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.

[55] A survey of Appeal Authority decisions delivered in December 2012 indicates delays of up to two years between a benefit review committee decision and delivery of a decision by the Appeal Authority.

[56] *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). In case it is thought that this was the result of an isolated mistake by a case manager, the process for dealing with such claims needs to be reiterated. 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 legally untenable claim that a worker who had been dismissed had in fact chosen to become voluntarily unemployed would then have been considered by the Ministry's legal staff in the context of the appeal.

Summary and conclusion

115 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.

116 Contrary to its Title, the bill does nothing to create jobs or training opportunities for those who are able to work and does nothing to support young people to independence. Rather, it 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.

117 We urge the select committee to reject this bill.