



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

**Submission of the
New Zealand Council of Trade Unions
Te Kauae Kaimahi**

to the

Social Services Select Committee

on the

Social Security Legislation Rewrite Bill

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Wellington

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Summary of Recommendations

- That the Select Committee's report back on this Bill is delayed to allow a sufficient period of consultation, consideration and adequate time for submissions on this Bill.
- That the addition of a new principle supporting the MSD social investment approach is withdrawn from this Bill because it does not have sufficient evidential backing, public support or ethical foundation to be the basis for a principle of the Act.
- That the provisions that are currently in the Act that are proposed to be re-located into delegated legislation remain in primary legislation.
- That work testing obligations and sanctions regime which do not apply currently to the emergency benefit are not introduced as conditions of a renamed exceptional circumstances benefit.
- That the rewrite of the Act presents an opportunity to review the provision workers face in being stood down from accessing benefits upon leaving employment.
- That the definition of 'suitable employment' in the Social Security Act, which is in breach of employment rights is changed to be consistent with international labour rights conventions.
- That the drug testing regime for beneficiaries introduced in 2012 is amended to be applied only where employment has known safety sensitivity requirements.
- That the CTU's support for the concerns of beneficiary groups urging for withdrawal of provisions in the Social Security Act that impose financial penalties for a solo parent if they do not name the parent of their child/ children is noted.
- There should be no ability in legislation to make financial deductions without consent.

1. Introduction

- 1.1. This submission is made on behalf of the 31 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With 320,000 members, the CTU is one of the largest democratic organisations in New Zealand.
- 1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 1.3. The strong relationship between employment and social security means that social security policy and legislation are fundamental concerns of the CTU. Unions have an important and critical role in the development of social security policies.
- 1.4. The CTU supports our affiliates: the Public Service Association (PSA), the New Zealand Nurses Organisations (NZNO) and FIRST Union who have made submissions on this Bill.
- 1.5. The Social Security Act 1964 (the Act) is one of New Zealand's most important and yet complex pieces of legislation. There is an acknowledgement that the Act is outdated, long, cumbersome and disjointed. The current Government has submitted at least three amendment Bills to the Act since its time in office, which have made it even more complicated, unwieldy and intensified the problems with the Act.
- 1.6. The CTU is concerned about the significant policy and political changes in the last eight years to our social security legislation and social policy. We submitted on the Social Security (Work Focus) Bill in 2010 and in 2012 on the Social Security (Benefit Categories and Work Focus) Bill and the Social Security (Youth and Work Focus) Bill. These Bills –outcomes of the Welfare Working group recommendations - brought major changes to benefit categories, work testing obligations and imposed new sanctions and drug testing requirements for beneficiaries.

- 1.7. We support the need for the Act to be well structured and for language to be accessible, easily readable and understandable for everyone: government agencies, community groups, beneficiary groups, trade unions and all the people who use the Act and apply its provisions.
- 1.8. The Bill states that some new provisions are added but that they are “policy neutral”. But this is not so. The Bill makes changes to current policy settings and some of these provisions are significant. It is misleading therefore to call the Bill “a rewrite” when it contains policy changes of significance.
- 1.9. The CTU does not, therefore, support this Bill progressing in its current form or within the timetable set because this Bill is more than a “rewrite”.
- 1.10. Providing submitters with just over four weeks to make submissions on this important legislation, with a 446 page Bill is unreasonable and undemocratic. This period of time does not provide for adequate analysis or comprehensive submissions. We are unable to make a full submission on this Bill within the time frame given. We are also concerned to find that the motion for the Select Committee to have a longer time to report back was voted against by the Government.
- 1.11. We understand beneficiary advocacy group are similarly concerned. Many beneficiary advocates know the social security legislation well. Omissions and errors are often found from submitters during the submission and Select Committee processes. It is disrespectful to their knowledge and experience and their work to rush changes to this Act, and it is a loss to the public and to good law making.

2. The Changes to Policy

- 2.1. The major policy changes in the Bill are adding a list of general principles; merging the orphan’s benefit and the unsupported child’s benefit into a “supported child’s payment”; changes to the supported child payment for a child under 14 to be paid a single rate of sole parent support; the renaming of the emergency benefit to the “exceptional circumstances benefit” with the discretion to apply work preparation

obligations and associated sanctions to people receiving that benefit; confirming that the maximum rate of the benefit is not to exceed that of the equivalent main benefit; introducing a power to make regulations specifying groups of beneficiaries whose benefit instalment can be redirected without their consent; and repealing provisions preventing both parents in split custody care situations from receiving sole parent support.

2.2. This CTU submission raises three major concerns beside the short and unacceptable time frame.

2.2.1. The proposed principles embed the Ministry of Social Development's (MSD) social investment model and approach into legislation.

2.2.2. The change from the emergency benefit to the exceptional circumstances benefit is significant. It is not so much the change of the name but that the new benefit imposes work testing conditions and sanctions to a much wider group of people and to people already in difficult circumstances.

2.2.3. The proposed transfer of substantive provisions from the main Act into regulations that will allow for more discretionary powers and remove democratic oversight.

2.3. We endorse the call by FIRST Union whose submission details the effects of stand down periods on working people from provisions introduced into the Act. The Bill substantially reproduces the contents of s 60H of the Act and provides that workers who are either dismissed for misconduct or else "voluntarily" leave their employment are ineligible to receive a benefit for a period of 13 weeks. The rewrite of the Act presents an opportunity to review these provisions for workers who are being stood down from accessing benefits upon leaving employment.

2.4. We also want to affirm the concerns that beneficiary advocates are raising of the changes in this Bill to the Social Security Act that require a parent to name the other parent of their child, or if not, to face financial penalties. We note the concerns of beneficiary advocacies about the highly stressful and potentially

dangerous consequences of this provision in Section 70a of the current Act. This policy disproportionately affects women and Māori.

- 2.5. If it is accepted that social security policy changes are part of this Bill, then current provisions in the Social Security Act which are causing hardship and distress and are discriminatory must also be considered as part of the Select Committee's deliberation.
- 2.6. If there are to be policy changes from the passage of this Bill, then we expect that critical issues which we have submitted on in 2010 and 2012 - the suitable employment test and drug testing - are also considered by the Select Committee and are amended.

3. CTU Policy

- 3.1. The CTU has made submissions on amendments to the Social Security Act because of the importance we place in a strong social security system. Social security is a fundamental right to which every human being is entitled as recognised in the Universal Declaration of Human Rights.
- 3.2. New Zealand's social security system has been based on the acceptance of a state providing income protection that is adequate, universal and alleviates poverty during unexpected life contingencies: unemployment, old age, sickness, injury and for other significant social and economic reasons. This was the basis of the original social security legislation, the Social Security Act 1938 for which New Zealand was recognised as leading the world in welfare policy.
- 3.3. The primary purpose of the CTU is to advocate for working people and the importance of work in providing income and security for them and their families, enabling a good quality of life and achieving their human potential and aspirations. But work must be decent work and be fairly and justly rewarded and meet the standard of decent work as set out in international human rights conventions and International Labour Organisation (ILO) Conventions.

- 3.4. We recognise the value of unpaid work and that workers and citizens have periods of time in their life when they are unable to take on paid work for various and multiple reasons. Being out of the workforce is about the ebb and flow of life as well as peoples' and families' social and economic choices.
- 3.5. We support an investment-based approach in the sense of investing in people now so that they and those dependent on them have better lives, opportunities, employment and living standards in the future. But this must be distinguished from the insurance-based "investment" approach used in the MSD whose aim is cost-minimisation by focusing on "those most at risk of avoidable long-term welfare dependence, in order to minimise the long-term costs of welfare" which in practice means 'fiscal costs'. The latter has many risks with its focus on financial drivers because they are a poor proxy for the outcomes we desire in social benefits and meeting peoples' needs.
- 3.6. The CTU supports active labour market policies. These are based on helping employees through employment change by minimising their income loss, actively supporting them to attain new skills for attractive jobs with sustainable futures, and assisting them with individualised job search and placement, thus enhancing their future prospects as well as matching employee and employer skill requirements. Active labour market policies recognise that being out of work is usually not the fault of the employee, especially in a labour market which experiences frequent business closures and restructuring, rapid technological change, the impacts of climate change and globalisation, and increased use of precarious forms of employment. It assists societal and economic change in a positive way by ensuring that as far as possible working people and their dependents do not lose from change through no fault of their own.
- 3.7. Welfare policy must be based on a principled approach that is people-centred, supportive of learning and skills acquisition and maximises individual ability and capability. Punitive policies and sanctions that impose deprivation and cause hardship should not be part of our social security legislation or policy. Social welfare is a core function of the state and should not be privatised.

4. The Bill

- 4.1. The CTU opposes an approach to welfare that that forces people into work through work testing, imposes sanctions if people do not meet obligations including not accepting “suitable employment”. We are also very concerned about the inadequacy of benefit levels. This is the opposite of the sort of social security system that is needed when there are high levels of poverty, homelessness and unemployment and constant changes in employment. We are very concerned about an approach that is driven by the goal to remove people off welfare and benefits without any recognition of the social costs and implications of what is occurring to people who are “off the books”. A social welfare system based on such an approach will not improve peoples’ lives.
- 4.2. While we support the aims of the Social Security Act having better language, being more understandable and having a better underlying structure, we do not support the legislative changes that have been made resulting from the Welfare Working Group reforms that are being reinforced in this Bill.
- 4.3. This Bill proposes a new principle which is an opportunistic move to bring into the Act the social investment approach that is being implemented by MSD and to do so without open, democratic discussion and debate. It is a government operational policy which does not have sufficient evidential backing, public support and ethical foundation to be the basis for a principle of the Act.

5. The Principles

- 5.1. The proposed principles (cl 4) state:

4 Principles

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

- (a) work in paid employment offers the best opportunity for people to achieve social and economic well-being:
- (b) the priority for people of working age should be to find and retain work:

- (c) people for whom work may not currently be an appropriate outcome should be assisted to prepare for work in the future and develop employment-focused skills:
- (d) people for whom work is not appropriate should be supported in accordance with this Act:
- (e) to help achieve the best possible outcome for people at risk of long-term welfare dependency (as that risk is defined in Schedule 2), MSD may identify appropriate assistance, support, and services, under this Act, for those people.

- 5.2. While all but (e) are lifted from the current Act, the assumption that paid employment is the best outcome for all is deeply flawed. Employment will not always be appropriate or right for people's circumstances at given times or for some people. There can be many and valid reasons why people are not in paid employment. And work is not available for all as clearly demonstrated by 144,000 people in March 2016 being unemployed (up 10,000 on the previous quarter) – and 279,300 jobless (up 11,600 over the year). The position of 'work first' disregards the value and importance of unpaid work including caring for children and other dependents.
- 5.3. The focus on paid work – at any cost, it seems – and a work testing and sanctions regime - forces people into low quality and precarious work because people do not have other options. The research is very clear that moving into paid work is one of the most effective ways to improve health and social outcomes for beneficiaries but *equally as clear* that the conditions of work are critical to these outcomes (Marmot, 2010). Moving beneficiaries into insecure, low-paid and unsatisfying work may lead to worse results (particularly health) than continuing unemployment (Johri, 2005).
- 5.4. The principles in the Act should be about the purpose of social security which is to support people in hardship and ensure access to income and support in times of economic and social insecurity.
- 5.5. While the CTU is supportive of investing in people to gain and sustain employment in good jobs, it is an entirely different matter to embed the still experimental MSD "investment model" into the principles of the Act. The MSD model which applies an

actuarial approach to welfare is under trial still (and if it is not, it should be) and it should not be embedded into legislation.

- 5.6. The model is now coming under much needed public scrutiny. In one of the first analyses of the model, Simon Chapple found that there are many problematic aspects of what he describes as the “forward liability” model being applied in the welfare system. He concluded (Chapple, S, 2013) that “the forward liability model has not been carefully unpicked and reasonable alternatives to this model have not been acknowledged, let alone examined in detail”.
- 5.7. An analysis by CTU Policy Director and Economist, Dr Bill Rosenberg, considers the approach imbalanced and with flawed assumptions because it only focusses on the cost to government and not on any other benefits. Rosenberg describes it as a recipe for reducing government expenditure and states “the fundamental flaw with this procedure is that it look only at costs to the government and at nothing else. No measure of benefits is part of the MSD approach. Minimising fiscal liability is therefore a policy to minimise public expenditure rather than maximise welfare” (Rosenberg, 2015).
- 5.8. The annual reports commissioned by the Ministry of Social Development on the “investment approach” almost completely fail to assess the benefits of policies and welfare payments.
- 5.9. The Productivity Commission too expressed concern in the Social Services Inquiry report stating that “slavish application of an investment approach based purely on costs and benefits to government might lead to perverse outcomes” such as not discouraging obesity, as early deaths from obesity are likely to reduce future fiscal costs from health expenditure (New Zealand Productivity Commission, 2015, p 231).
- 5.10. Colin James comments that the approach has opened a new way of thinking about policy but the approach “is limited by excluding asset building from the formal calculations of costs (investment) and benefits (James, C, 2015).

5.11. The critique of the “investment approach” is now growing but there has been no involvement of the non-governmental sector as it has been pursued and implemented. There has been no independent evaluation of the model. Without public understanding and confidence in this approach, there are good reasons why it should not be put into the principles section of an important Act. Principle 4 (e) should be withdrawn.

6. The Emergency/Exceptional Circumstances Benefit

6.1. The Bill proposes that the emergency benefit is renamed to the exceptional circumstances benefit to reflect that it is for people who genuinely need assistance but do not qualify for a statutory benefit. The Bill introduces discretion for MSD to apply work obligations, part time work, and sanctions to a person receiving this renamed benefit. These are not a condition of the current benefit. The Bill is using the renaming of the benefit to change the benefit conditions.

6.2. Emergency or exceptional circumstances are by their very definition unexpected. Work testing obligations and sanctions do not fit the purpose of a benefit which has a purpose of alleviating severe hardship in times of emergency.

6.3. Placing those sorts of requirement or giving discretion to apply them will be likely to cause greater hardship and stress at times of difficulty. It ignores the adverse conditions and difficulties that many people are facing in the current labour market and in the social and economic climate in New Zealand. The sanctions regime is causing hardship and deprivation to already disadvantaged people and reinforces the stereotypes and misconceptions that people are on benefits because of their own personal failures and bad decisions.

6.4. If it is renamed, the exceptional circumstances benefit should retain the current conditions.

7. From the Act into Regulations

7.1. This Bill removes a number of current provisions into delegated legislation/ regulations. The explanatory note in the general policy statement, under legislative

features, states that detail and administration is more appropriately located in delegated legislation to provide an appropriate degree of flexibility and responsiveness to changes in society.

- 7.2. Regulations have a lower level of democratic scrutiny because they do not have to be taken through Parliament. They can be amended without any opportunity for public input, comment or submission. The accepted rule is that substantive matters of policy should be in the primary legislation while administrative matters and processes are acceptable in regulation. Analysis by Auckland Action Against Poverty have identified that the Bill contains 31 regulation making provisions.
- 7.3. There is an important issue in this Bill therefore about what should be in delegated legislation and it is undemocratic and undesirable to move these provisions into regulations. We recommend that provisions specifying entitlements that are currently in the Act are not moved into regulations.

8. The Definition of Suitable Employment

- 8.1. The CTU is the designated Workers Organisation for New Zealand at the ILO and in that role we are concerned with the observation of ratified ILO Conventions by New Zealand. Work and Income's current test of suitable employment is not in accordance ILO Convention 44 which holds that industry and local standards for terms and conditions of employment must be taken into account in deciding whether employment is suitable. This problem is made even more acute by the sanctions being imposed when individuals fail to take up "suitable employment".
- 8.2. There is no guidance for Work and Income staff as to how they should weigh or apply these tests. This leads to significant discretion as to how the test is applied. Missing from Work and Income's list of factors is the requirement that the job has 'no less favourable wages, terms and conditions than reasonably expected in the occupation type and region.' This is a broader concept than 'wages' and failure to include it is a breach of New Zealand's international obligations.

- 8.3. The CTU recommends changes to the definition of “suitable employment” in the Social Security Act as put forward in our 2012 submission on the Social Security (Benefit Categories and Work Focus) Bill to read “**suitable employment** in relation to a person, means employment that the chief executive is satisfied is suitable for the person to undertake for a number of hours a week determined by the chief executive having regard to the employment required to satisfy the work test for that person (*considering the person’s individual circumstances and whether the offer of employment is on terms and conditions no less favourable than those usually offered for the type of work in the region*).”
- 8.4. If the definition of suitable employment is not clarified (by statute, regulation or guidance to Work and Income staff) the CTU is considering making a representation to the ILO Governing Body for their consideration.

9. Drug Testing Requirements in the Act

- 9.1. Also in our submission on the Social Security (Benefit Categories and Work Focus) Bill (New Zealand Council of Trade Unions, 2012) we expressed our concerns about the introduction of drug testing for beneficiaries. Sanctioning beneficiaries for casual drug use has costs, may worsen outcomes for beneficiaries and puts significant stress on already stretched health resources. We are concerned that pre-employment drug testing is being misused in relation to non-safety-sensitive vacancies.
- 9.2. The Ministry of Health gave sharply critical advice to the Minister of Health at the time regarding the proposed drug testing of beneficiaries ¹ and outlined extremely serious concerns with the proposal. In other words, the proposal would waste health resources for no likely overall gain in health or welfare outcomes. Ministry of Health officials recommended that the Minister of Health seeks the Minister of Social Welfare’s approval to trial alternative approaches.

¹ Paper available at: http://fyi.org.nz/request/advice_on_drug_testing_beneficiar

- 9.3. Given the Ministry of Health's expertise in these matters and the real risks they identify we ask again that the Select Committee reviews the drug testing provisions and promotes other options such as education and explores the barriers to drug treatment.
- 9.4. This Bill appears to be tightening up rules around test and sanctions for failing a drug test. The CTU asks that the Select Committee call for a review of how this policy is operating including the quality of drug tests and the treatment and rehabilitation that is available to beneficiaries with drug dependency conditions.
- 9.5. The CTU recognises the rationale for drug testing of potential employees in safety-sensitive roles where impairment may put other workers or the public at greater risk although we note that a positive result is not at all synonymous with impairment. We submit that the criteria applied before a job is listed with a drug test requirement are investigated and, if the criteria do not exist or are too lax, then the requirement of safety sensitivity should be added.

10. Other Issues in the Bill

- 10.1. Clause 421 of the Bill would enable regulations that permit benefits to be redirected to suppliers of accommodation, energy, water etc without the beneficiary's consent. Beneficiary advocate groups, while saying that redirection with consent can be a useful tool, oppose this. We agree. There should be no ability in legislation to make financial deductions without consent.

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