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Rotorua Peoples Union

East Coast Advocacy Service

Beneficiary Advisory Service, Christchurch

Kaitaia Peoples Centre

Executive Summary

The Right to Social Security

The Right to Employment

The right to an Adequate Standard of Living

This submission identifies a number of issues which significantly hinder the effective operation of the current social security system. While the latest changes in the benefit system seek to simplify the system, the punitive aspects and social obligations requirements, introduce more complexity into an already complex scheme.

It is unfortunate that the social obligations introduced have the effect of enforcing negative stereotyping of those who receive social security assistance from the state. This is particularly so with the work-testing regime faced by single parents which reinforces the negative stereotyping of such parents as doing little worthwhile and freeloading off the state.

In fact the sole parent group traditionally spends only a relatively short time on benefit and has been very successful in regaining or obtaining employment.

Further the emphasis on work or work 'readiness' in terms of sole parents appears to undervalue the importance of parenting. It is parents and caregivers

who are best placed to determine when work is practical rather than a state bureaucrat.

Work-testing parents with children creates particular difficulties with sole parent families who struggle to support their children. Imposing monetary sanctions for failing a worktest can only jeopardise the well-being of the children involved in these families.

Recommendations suggested to improve the access to basic human rights are:

- (1) **Work-testing** -The emphasis on casting such a wide net for work-testing should be recast to an emphasis on training and skill enhancement. Work-testing should be abolished for sole parents and widows but strong voluntary programmes introduced for those who wish to seek employment.

The provision penalising a sole parent for having a further child while on benefit, should be repealed.

It should be retained for those seeking full-time work who have had appropriate quality training where required. Those placed into employment need to be monitored and assisted for at least 6 months to ensure the placement was suitable and appropriate.

- (2) **Social Obligations** – These provisions should be abolished. These reinforce again the negative stereotyping of people receiving social security assistance, as people who are inadequate parents who do not care for the health of their children and deny them the benefit of placement in formal childcare.

These provisions are based largely on myth and negative stereotyping of those in receipt of social security assistance.

- (3) **Sanctions** - Sanctions for work-test failures need robust statutory procedures with benefit reduction being the final stage. The onus should be on the Ministry to show a clear pattern of non-compliance before a sanction can be applied.
- (4) **Treatment of Income** - The abatement and income charging system should be simplified and properly tuned to encourage those who do find some sort of employment..

- (5) **Debt** - Measures must be adopted to substantially reduce the debt mountain faced by many receiving benefit assistance. Severely affects adequate standard of living.
- (6) **Access for those with disability** - Urgent work needs to be done by to recognise the difficulties faced by those with disability accessing the benefit system. Those with mental health issues have particular difficulty with little recognition or acceptance of their condition.
- (7) **Eligibility for medical benefits** - The new systems designed to determine eligibility for medical benefits urgently need to be changed to ensure natural justice and fairness. There is a lack of independence and transparency in the cancellation and refusal of these benefits that provide support to those with disabilities.
- (8) **Administration** - Case management needs to be reintroduced, in particular, case managers for those with disabilities need to have specific training for the role
- (9) **Review System** - The present internalised review system, has serious flaws in terms of natural justice and fairness. It should be replaced by a new review system, independent of the Ministry, similar to the process for reviews under the accident compensation legislation.
- (10) **Reclaiming the safety net** - The replacement of discretionary hardship assistance (special benefit) by a regulated hardship regime (temporary additional support) has further marginalised the poorest of the poor. Discretionary provisions should be reintroduced to patch up the social welfare safety net.
- (11) **One disability support system** - A process should be developed to integrate the medical social security benefits and the Accident Compensation system. There is no justification for discriminating against a person purely because they suffer disability through illness rather than accident. All should receive the same access to support and rehabilitation.

THE ISSUES

(A) Work-testing and (B) Sanctions

- (1) Recent changes to the Social Security Act have extended work-testing to more people in receipt of social security assistance. In particular work-testing has been extended to more sole parents
- (2) Employment can in many situations enhance a person's self-esteem and self-worth. Encouragement and assistance into suitable and appropriate employment is a beneficial objective. However concentrating the emphasis on work-testing as many people as possible, with a punitive sanctions regime in tow, fails to address the need for promoting skill development and enhancement.
- (3) There is a concern that an over-emphasis on work as being the only solution, could lead to inappropriate placements with disastrous results and actually act as a disincentive to work.
- (4) It seems to be an unpalatable waste of resources to work-test such a large number of people when unemployment is high and employment so limited.
- (5) The resources would be far better utilised by adopting strategies to train and upskill these people and enabling them to move into truly sustainable employment
- (6) During the early to mid 1990s, the department in charge of benefits, ran a very successful voluntary programme (Compass). This was designed to assist sole parents on the Domestic Purposes Benefit to obtain employment. The programme had high success rates of up to 70-80%.
- (7) Far more can be done with well-resourced voluntary programmes to enable sole parents to identify and develop (or modernise) their skills and ease back into employment when they feel able to do so without jeopardising their parenting role.

- (8) This would ensure a win-win for sole parent families whereby not only were the skills enhanced but when employment was appropriate, they could enter the workforce into a better quality job than they might have.
- (9) A new measure seeks to effectively penalise a person while having a further child while on a benefit. If this occurs when the youngest child is over 14yrs, then the person becomes subject to a full-time work-test after the child turns one year old.
- (10) This change is state enhancement of the negative stereotyping that people in receipt of a sole parent benefit would deliberately have a further child to avoid fulltime work testing (which occurs once the other child turns 14yrs old).
- (11) This is clearly discriminatory and is seems ideologically based rather than on any reliable evidence that could justify such a provision.
- (12) The same state enhancement of negative stereotyping of parents who receive social security assistance is also found in new provisions imposing 'social obligations' on such parents.
- (13) The provisions on social obligations require parents receiving social security assistance to ensure core health checks are carried out on their children under 5yrs, that they are registered at a medical practice and that children are placed into childcare from the age of 3yrs old.
- (14) This stereotypes people receiving social security assistance, as people who are inadequate parents who do not care for the health of their children and deny them the benefit of placement in formal childcare.
- (15) Even worse is that failures will result ultimately in sanctions reducing the rate of benefit.

- (16) While of course it is desirable that parents enrol their children in medical practices, have regular checks and have access to childcare if desired, applying a sanctions regime makes little sense.
- (17) Proper education and enhancement of parenting skills, through well-resourced voluntary programmes seems a more common-sense approach and one that is far more likely to succeed.
- (18) One would imagine that if the state persists with this policy it would introduce legislation to prevent any medical fees being charged in respect of a child under 5yrs and introduce free childcare.
- (19) In cases where work-testing has 'succeeded' in the person obtaining employment, a distinct failing of the current system is that there is no process to monitor the placement to ensure the placement is suitable and appropriate.
- (20) Even where the Ministry through their contracted agencies and work-brokers have placed a jobseeker into employment, there is nothing formally in place to monitor how the placement is doing, whether they are getting adequate support or whether the job proves ultimately to be unsuitable or inappropriate.
- (21) Given the lack of quality assessment following placement or a person moving into work, it is difficult to be confident that problems with the person's new employment would be identified and managed.
- (22) This could lead to high risk situations and possibly exploitation of vulnerable workers. If the state seeks to compel employment through work-testing, then it needs to accept responsibility at least in the initial stages, to ensure the employment that the Ministry says is 'suitable' is in fact suitable and appropriate.
- (23) The sanctions regime for work-test failure is complex and particularly punitive. The notion of reducing by up to 50% a sole parent's benefit for work-test failure seems draconian and self-defeating.

- (24) If a sanction was imposed and the family income reduced, the ensuing hardship would inevitably be greatest on the children involved. Benefit levels are barely adequate, certainly not generous. Any reduction in the benefit income would in most cases result in an inadequate level of income support.
- (25) The wisdom of such enhanced work-testing with punitive sanctions must be questioned in a time of high unemployment and a tight economy.

(C) **Treatment of Income/abatement**

- (26) The current income charging system has inherent disincentives to engage in employment and is confusing and inconsistent and fails to cope with the casualisation of the workforce
- (27) When a person on a benefit succeeds in obtaining part time employment, the income is charged at the gross income figure. So where the benefit abates by 70c for every dollar earned over \$80, the gross income reduces the net benefit figure rather than the gross benefit figure.
- (28) To add to the complexity, the employment income will usually be taxed at the secondary tax rate
- (29) Further employment expenses can only be covered under the Temporary Additional Support regulations which relate to hardship situations. Applications need to be made every 13 weeks and the take up for employment costs is inconsistent.
- (30) People with variable weekly income are often left not knowing how much a benefit payment will be week by week. This can leave families with insufficient income and incurring further debt.
- (31) Those who are self-employed face even greater problems as financial records are normally drawn up annually and based on the income tax year. Confusion is rife as to how income can be charged on a weekly basis without knowing the annual income figure.

- (32) There is a lack of clear policy in this area and a failure to train staff about the income charging methods. At the moment there are substantial anomalies
- (33) With the casualisation of labour, contracting out and the move to a low wage economy, it has become very common for those receiving social security assistance to obtain employment that is irregular, variable each week or in the nature of contract work.
- (34) The social security system has just failed to keep up with these changes and put policy and programmes in place to recognise the changing nature of employment and the problem of variable types of income.
- (35) The effect can operate as a hindrance or disincentive to working and obtaining an adequate level of assistance for such workers and their families.

(D) The state debt mountain

- (36) The debt owed by those receiving social security assistance is increasing at an alarming rate.
- (37) A substantial amount is debt owed to the very Ministry charged with ensuring an income support safety exists
- (38) Once a significant debt is established, the person has to try and repay the amount while often only receiving the basic level of state support. For those in hardship it becomes overwhelming and are often left with severely inadequate net income.
- (39) This has a ballooning effect. While trying to reduce or pay state debt, their disposable income is reduced even further which can lead to increasing personal debt such as rent, power or phone arrears, bank charges for failed a/ps or repayments on vehicles and essential items.

- (40) The level of some state debt is disturbing. Some people would never be able to repay the debt if they lived for 100 years. Such a case was that of *Harlen v Ministry of Social Development* (2012) NZAR 491
- (41) The appellant had been found to have lived in a marriage type relationship for some years without advising the Ministry. She was convicted of benefit fraud and served a term of imprisonment. The Court noted that she had gained little from the relationship.
- (42) The Ministry then pursued her for the debt of \$120,000 being the total benefit paid to her. Following release she was granted a benefit for caring for a dependent child.
- (43) Her state debt renders it highly difficult to improve her situation and she is paying it off at a small amount each week from her benefit. The debt will never be repaid. In effect the state services its own debt however the danger is that in recovering its debt, the person is left with an inadequate level of income for them and their family.
- (44) Added to Ministry debts for some people, are Court debts, child support debts and Inland Revenue debts. This in addition to personal debts such as loans. In times gone by it would have been very, very rare for a person to take out a loan for living expenses. Now it is seen commonly by those working in this area.
- (45) The problem is that the state agencies have no integrated plan to deal with the debt mountain. Rather collection units within such agencies are encouraged to maximise recovery by tight repayment regimes rather than being encouraged to holistically analyse each case and consider the wellbeing of those having to pay.
- (46) While of course, the integrity of social security and other state schemes must be maintained, it is just as important that people have an adequate income to live on.

- (47) Writing off procedures that might allow the remainder of a debt to be written off after a period of regular and reliable repayment, could be part of such a plan. But under the current system, families basic needs are being detrimentally affected by deductions from their income which leaves too little to live on.

E - Access for those with disabilities / G - Cancellation of medical benefits

- (48) The myriad of complexity within the current social security system is difficult for most people to deal with. However those with disabilities face even greater hurdles.
- (49) In 2007/8, the Ministry of Social Development instituted a new system where those seeking or renewing a medical benefit would have their applications referred to an in-house unit of medical professionals called regional health advisers (including regional disability advisers). They are employees of the Ministry.
- (50) Such advisers are generally not registered medical practitioners but usually registered health professionals such as nurses, physiotherapists etc.
- (51) While every initial or renewal application is usually supported by a person's own doctor, the RHA can and quite often do, reject or not follow the doctor's opinion. Very commonly this would mean an application or renewal is then declined by the Ministry.
- (52) The RHAs never see the client but are able to make recommendations (that are almost inevitably followed) that can effectively refuse or cancel medical benefits by a consideration 'on the papers'.
- (53) Not only is the client never be seen by the adviser but the adviser's opinion is almost always not seen by the client until after the entitlement decision is made by the Ministry.
- (54) This system inherently breaches natural justice and is unfair to the client who is not involved in the decision-making process.

- (55) The Ministry has a significant number of clients with disability yet very few strategies are in place for them to more easily access entitlements. Further case general staff have very little specific training in how to manage clients with disabilities.
- (56) A particularly troubling area is clients with mental health issues. There is very little recognition of their special needs and the challenges they face. Such clients can present well but they need to be dealt with by staff who understand that there is much more beneath the surface.
- (57) In the drive to work-test large numbers of additional people, there is a real risk that the needs of people with disabilities may not be fully understood and lead to failed placements and disastrous results.
- (58) As a start people with disabilities should be case-managed rather than left to the vagaries of the present system where they may have to deal with a new staff member each time they visit or contact the Ministry.

(G) Administration

- (59) The benefit system is growing increasingly complex. While the current system of people seeing staff members randomly (no actual case manager) may be more administratively efficient, it certainly is not more beneficial for its clients.
- (60) Essentially at every visit, the person has to relive their history every time with a different staff member. There is no opportunity to build working relationships or for a staff member to become familiar with a client's overall situation. This can lead to inconsistency in the provision of benefit assistance.
- (61) It is also a daunting prospect for some who have to constantly re-explain their circumstances and situation at every visit. Dealing with a case manager who is aware of the client's overall situation is much better placed to provide advice and assistance.

(62) With the plethora of work-testing one would have thought that to make the best quality decisions, a case manager with a working knowledge of the client's background and circumstances would be the best person to make them.

(H) **The Review System**

(63) Currently where a decision on benefit entitlement is challenged, the person concerned can apply for a formal review of decision to a Benefit Review Committee established under s10A of the Social Security Act.

(64) The Committee consists of two Ministry staff members and a community representative appointed at the pleasure of the Minister. They usually have no formal qualifications and are provided limited training by the Ministry.

(65) The current Act is already complex and legal issues can be complex and complicated. It is fair to say that the review system has failed to keep step with the steady stream of more and more complex provisions.

(66) Most committees struggle to understand the law and the legal principles involved and understand even less the intricacies of the current legislation.

(67) The review system appears, and often is, distinctly lop-sided. To the person taking their review, the process seems biased and unfair to begin with.

(68) The review system is antiquated and outdated. It needs to be clearly independent and transparent to ensure access to justice and that people receive the correct entitlements.

(69) If reviews were contracted to a company involved in dispute resolution, the cost would be low as that organisation would already have the venues and reviewers. This means a negligible capital cost.

(70) This system is broken and it needs to be transformed into a robust and efficient system that ensures people receive the correct entitlements, and adequate income support through a fair and independent review system.

(I) **Reclaiming the safety net**

(71) New Zealand had, for many years, a benefit called ‘special benefit’. This was a discretionary benefit designed as the ‘safety net’ of the social security scheme. The object of the discretion was to ensure that the recipient was provided an adequate level of income to survive.

(72) By its discretionary nature, special benefit could be tailored to meet the basic needs of the recipient. The first stage was to deduct ‘allowable costs’ from a person’s total income (usually all benefits received) – Figure A. The remaining figure was compared with an amount the Ministry determined a recipient needed to pay for food, power and clothing – Figure B

(73) The special benefit was provisionally the amount of the difference between Figure A and B. There was a further discretion to pay the special benefit at a higher or lower rate.

(74) The description in (72 and 73) shows why this was considered the safety net of the benefit system.

(75) In 2004, the state announced that the special benefit was to be abolished and replaced with a non-discretionary regulatory regime called Temporary Additional Support(TAS). This would take effect from 1 April 2006. Those in receipt of special benefit at that date would be grandparented and continue to receive special benefit while they qualified.

(76) Not only was discretion removed but an upper limit was placed on the rate of TAS that could be paid. The rate could not exceed more than 30% of the principal benefit paid.

- (77) So if a benefit rate was \$220 a week, then irrespective of the person's financial position, the maximum weekly TAS payment could not exceed \$66. The limit was mandatory though a person with high disability costs in excess of the maximum could see the maximum increased rate by 30% of their additional disability costs
- (78) The obvious anomaly was – how could somebody already needing major hardship assistance already, possibly meet the other 70% of the disability costs. The question really answers itself.
- (79) Essentially TAS involved the same kind of formula used for special benefit except it was more prescriptive and removed any discretion.
- (80) The adoption of TAS has created significant holes in the social security net and practitioners working in this field, report that a far greater number of clients end up with a net income well below the amount necessary to adequately sustain themselves and their families.
- (81) TAS does not allow the Ministry the vital discretion to tailor the hardship assistance to meet the basic needs of the client involved. The costs permitted are also more restricted. For instance special benefit could assist with access costs of a non-custodial parent however TAS does not recognise this as an allowable cost.
- (82) The importance of access by non-custodial parents to their children is usually a necessary and important thing for the children concerned. To deny a person assistance for access costs when they do not have sufficient income to meet all of those costs, further distances non-custodial parents from their children.
- (83) This is inconsistent with the principle of social inclusion that the social security system is supposed to support

(1) **One disability Support System**

- (84) Under the current system, if a person suffers disability by accident, they can obtain a substantial amount of support under the Accident Compensation Scheme which covers treatment, support and rehabilitation for both earners and non earners.
- (85) One such support is that a person who is earning at the time of their accident and is incapacitated by the effects of that accident, is entitled to weekly compensation at a rate of 80% of their pre accident income. This payment continues until the person can return to employment (if possible) or they turn 65 years.
- (86) This payment is unaffected by unearned income or income of any spouse.
- (87) However if a person becomes unable to work through sickness, there is little in the way of any rehabilitation or support except for the basic benefit rate which will invariably be significantly lower than the 80% they would receive if injured by accident.
- (88) The accident compensation scheme is administered by a different agency and treatment is provided when needed rather than having to wait on the public health waiting list which is the fate of those who suffer disability through illness
- (89) Further other assistance provided under the accident compensation scheme is much greater than by the state's social security system. For instance if death is by accident, the funeral grant payable is over three times the amount payable under the social security regime.
- (90) From a practical point of view, it would make far more sense for all disability to be administered under 1 scheme irrespective of the cause of disability.
- (91) Rehabilitative support and entitlements for people suffering disability could then be provided in a uniform and consistent manner rather than it is at present, which is solely dependent on how the disability occurred.

