

**SOCIAL ASSISTANCE (FUTRUE FOCUS) BILL  
SUBMISSION OF  
WAITAKERE COMMUNITY LAW SERVICE**

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## SUBMISSION OF WAITAKERE COMMUNITY LAW SERVICE

### Introduction

1. Waitakere Community Law Service (“WCLS”) is a community law centre which was established to enhance the lives of people most in need and whose lives are impacted by unresolved legal issues. WCLS has a strategic mandate to monitor the effect of legislation on our communities and to anticipate the effect of proposed legislative changes. In this context, WCLS has a mandate to ensure that access to state social assistance is targeted and delivered in a manner that reduces social and economic exclusion.
2. WCLS’s bottom line in relation to the Social Assistance (Future Focus) Bill (“the Bill”) is that changes to legislation must have:
  - a. Net benefits (and preferably no negative impact) on our whanau and communities in terms of improving social and economic participation
  - b. A negligible risk that our whanau and communities will experience a decrease in social and economic participation
3. Waitakere Community Law Service (“WCLS”) supports some of the philosophical aspects underpinning the Bill. The key aspects that WCLS supports are:
  - A focus on a fairer system of social assistance; and
  - A focus on achieving social and economic well being.
4. WCLS believes the Bill in its current form will result in:
  - a. An unfair social assistance scheme

- b. A social assistance scheme that may not deliver the results the bill is designed to deliver; and
  - c. A scheme that carries considerable risk that social and economic participation will be undermined for a large number of vulnerable people, whanau and communities.
- 5. WCLS believes that while the intentions of the Bill are commendable the Bill in its current form carries two significant risks:
  - a. Firstly, the removal of existing rights and the extension of the sanction regime increases the risk that those who are already most vulnerable will, when things go wrong, experience further and more acute social and economic alienation.
  - b. Secondly, the extension of the work-test regime increases the number of vulnerable people whose social and economic well-being will be threatened if this Bill is not absolutely perfect or if poor administrative decisions are made (which they inevitably will be).
- 6. WCLS believes that these risks will materialise. Much of the work WCLS does relates to administrative decisions that have gone wrong.
- 7. WCLS believes that the Bill should be amended in the following ways:
  - a. Widen the Bill's "unrelenting focus on work" to include a focus on the social and economic needs of the whanau and community.
  - b. Ensure clear protections are provided for those most vulnerable

- c. Ensure that safeguards are included so that poor administrative decision making does not happen or, when it does, it is picked up before its negative effects are felt.
- d. Ensure that an employment sector strategy is implemented along with this Bill so that that all risks of return to work are mitigated.

### **Extending The Unrelenting Focus on Work**

- 8. The Bill's "unrelenting focus on work" needs to be widened. The Bill currently focusses on the primary beneficiary and their capacity for work. The Bill should require decision makers to look wider than primary beneficiaries. Social and economic well-being for a given person is made up of a complex matrix of factors, paid work being only one of those.
- 9. Furthermore, the social and economic well-being for a given person does not always lead to the social and economic well-being of the whanau or community. The whanau and community matrix is not severable from the individual.
- 10. Decision makers should look at the needs of the whole whanau and the capacity of the whanau to safely transition one of its members into work. Concepts such as "capacity for work" need to be extended to include the social and economic capacity of a whanau to tolerate a return to work for one of its members. This is particularly so where the people in question or their whanau members are particularly vulnerable (for example, women with violent ex-partners).

## Children and Youth

11. An analysis of how children and youth might be affected demonstrates the risks that come with a narrow focus on employment. We have read the submission on this Bill by *Child Poverty Action Group*. We endorse that submission in its entirety, particularly the careful rights based and empirical analysis provided through paragraphs [3-24]. We are indebted to *Child Poverty Action Group* for their careful analysis.
12. It is not reasonable, from the point of view of protecting children and building a strong future for those children, to expect their solo parent to find and keep employment when that parent experiences increased barriers to work. It is certainly not reasonable to expect it when there are inadequate safeguards. For example, there are currently no safeguards to ensure that a directive to work will not increase social exclusion or harm to the children.
13. The current Bill does not give adequate thought to ensuring the well-being of children whose parents are covered by extended work-test requirements or sanctions.
14. In the case of youth, under section 18 of the Bill, youth are no longer entitled to a development plan that, together with employment capabilities, serves to increase their social participation and improve their capabilities generally.
15. The stakeholders that we work with in our communities are unanimous in identifying their top priority for social change - they are concerned about their youth. Building a sound future depends on having strong youth. The changes to section 600 of the Social Securities Act deprive our youth of a potentially valuable asset - a right to raising their capacity generally. This approach denies the empirical reality that they have special needs and unique vulnerabilities.

### **Ensure Clear Protections For Those Most Vulnerable**

16. The Bill must be amended to ensure there are clear protections for those who are particularly vulnerable. Many members of our communities, such as women with violent ex-partners, people with physical and mental illness, young people and children, or people with dependents with high needs, already experience heightened social and economic alienation. These people need to have greater protection or exemptions written into the resulting legislation.

17. WCLS submits that the Bill must be amended to ensure the following:

- a. People with high needs are exempted from work-tests and punitive sanctions; or
- b. Concepts such as “capacity for work” and “suitable employment” are clearly demarcated and defined in relation to high need members of our community; or
- c. Both (a) and (b).

18. The current Bill takes a one size fits all approach to what are unique, isolated, and discretely different situations which call for tailored solutions.

19. WCLS submits that if the Bill does not provide specific exemptions or protections for vulnerable people or vulnerable whanau members there is a high probability that vulnerable groups will experience increased social and economic exclusions as a result of the Bill.

### **Ensuring There Are Sound Safeguards Against Poor Administrative Decision Making**

20. The Bill must be amended to ensure there are adequate safeguards around the proper exercise of administrative power. The removal of existing rights, the extension of the sanction regime, and the extension of the work-test regime have two implications:
- a. The power of the state to make decisions that negatively impact on a person or that person's whanau is increased;
  - b. More people are exposed to that power.
21. Furthermore, the extension of state powers and the erosion of rights is targeted directly at those who are most vulnerable. If the Government is intent on extending state powers and sanctions in this way this step must be counterbalanced by greater safeguards.
22. Much of WCLS's core business involves helping people who are experiencing the negative impacts of the poor exercise of power. Much of that work relates to the poor exercise of the state's administrative functions. There is no doubt that under the proposed Bill two significant risks will materialise:
- a. Breaches of natural justice will occur in making of administrative decisions (that is, procedurally poor decisions will be made); and
  - b. Administrative decisions with drastic consequences for individuals, their whanau, and the community will occur (that is, substantively poor decisions will be made).
23. WCLS will now turn to address two examples where we have concerns in relation to the exercise of administrative function. The risks evident in those examples exist in all other aspects of the Bill where the reach of directives or sanctions are extended.

### Extension of Work-Tests For Sickness and DPB

24. People receiving sickness and domestic purposes benefits are more vulnerable than those already subject to work-tests. Typically, they experience more acute forms of social and economic exclusion. WCLS submits that extending the work-test regime to these groups is tolerable **only if** there are additional, legislative safeguards to ensure administrative powers are exercised appropriately.
25. All too often those administering the Social Security Act, for example, make poor administrative decisions. The decisions are poor in the sense that breaches of natural justice have occurred. It goes without saying that often those decisions result in dire consequence for those affected – poorly considered decisions result in poor outcomes.
26. Under the current regime and under the Bill the decision as to what is “suitable work” is entirely at the discretion of the chief executive. WCLS submits that the current work-test regime already places too much discretion in the hands of administrative decision makers. Extra safeguards are already required under the current regime. To extend the powers of the state further, particularly to include even more vulnerable people, demands that greater safeguards come with it.

### Negotiated Job Seeker Agreements

27. The current proposal in the Bill to remove the negotiated aspect of a job seeker agreements places too much discretion in the hands of administrative decision makers. The present right to negotiate the job seeker agreement means that (in theory) the job seeker has a level of agency in the process. In theory, this level of agency ensures there is an opportunity for a job seeker to express the social and economic needs of both themselves and their whanau. In turn, because the agreement is negotiated, there is at least an increased likelihood that the decision maker

will take those needs into account. This in turn mitigates against the risk that poor decisions will occur and that social and economic exclusion will not occur.

28. Removing the right to negotiate the job seeker agreement removes a check on the proper exercise of administrative powers. This increases the risk that a breach of natural justice could occur. For example, relevant circumstances could easily be overlooked and not taken in to account by decision makers; poor evidence (such as ambiguous doctors certificates) may be used as the basis for decision making; proper opportunities to be heard (which is implicit in the right to negotiate) may not be given.

#### Mechanisms For Safeguarding Good Decision Making

29. It is critical that adequate safeguards are written into legislation to ensure that good decisions are made and the negative impacts of poor decisions are mitigated. WCLS submits the following safeguards should be included in an amended Bill:

- a. Clear definitions and exemptions for vulnerable groups;
- b. A clear legislative statement that decision makers are obliged to consider wider social and economic factors relevant to specific individuals, including factors relating to the capacity of the whanau to support an individual in to work;
- c. A legislative obligation to develop robust quality control mechanisms and to conduct qualitative audits of administrative decisions;
- d. Quick and readily accessible independent oversight of decision making, together with adequately funded information and

advocacy services to ensure that oversight is accessible and robust;

- e. A legislative requirement to ensure that BEFORE a decision is implemented (such as a direction to a vulnerable person to under take a work-test or which sanctions them) rights of review (and rights to independent oversight) are adequately explained and an opportunity to access those rights has been provided.

### **Ensure A Sector Wide Strategy To Mitigate Risks**

- 30. It is critical that if people are being more actively transitioned into work there are adequate employment sector safeguards to ensure those people do no suffer hardship.
- 31. There are numerous examples where people being transitioned into work are placed at risk. For example, solo parents are more likely that a single person with no dependents to require sick leave. The Holidays Act permits 5 days sick leave after 6 months of continuous service. Solo parents will children are highly likely to require extra time off work to care for their children. That need will often arise before sick leave entitlements exist.
- 32. A second example of risk is around adequate remuneration. The minimum wage is not adequate for many people to care for families on. Nor is it adequate for many people who are sick or disabled and who may have extra expenses. The Bill must carry additional obligations, both in terms of the Social Security act and in employment sector legislation to ensure the risks of returning to work are properly mitigated.

### **Summary**

33. WCLS believes that if this Bill is not amended and if its progress in to legislation does not follow a careful, multi-partisan, sector wide path then it will fail to bring about social and economic well-being to many. Furthermore, it will increase social and economic alienation for many, and will increase negative down stream affects, such as crime, illiteracy, and poverty.
34. The current measures proposed by the Bill put vulnerable people at risk of further alienation. The Bill puts unreasonable demands on vulnerable people and exposes the most vulnerable - our children, our sick, our victims of violence- to further harm. The narrow focus of this Bill – its unrelenting focus on work – is not sufficient to deliver social and economic well-being. The very real fact is that poor administrative decisions will be made and the Bill will deliver hardship to the victims of those decisions.
35. WCLS urges the Government to slow the path of this legislation. We urge the Government to broaden its scope of its enquiry and to take a long-term, whole of government approach to raising social and economic well-being.
36. WCLS would like to speak to this submission.

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