

20 March 2023

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Child Support (Pass On) Acts Amendment Bill

Purpose

1. We have considered whether the Child Support (Pass On) Acts Amendment Bill (the Bill) is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. We have not yet received a final version of the Bill. This advice has been prepared in relation to the latest version of the Bill (PCO 24527/2.14). We will provide you with further advice if the final version includes amendments that affect the conclusions in this advice.
3. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with s 19 (freedom from discrimination). Our analysis is set out below.

The Bill

4. The government currently retains child support payments made to sole parents on a main benefit to offset the cost of the benefit.
5. In March 2022, Cabinet agreed to pass on child support payments paid via the Department of Inland Revenue (Inland Revenue) to sole parent beneficiaries, and to treat these child support payments as income when determining entitlement to a benefit or other assistance. These changes were agreed to take effect from 1 July 2023. Passing on child support payments for sole parent beneficiaries is an important step in overhauling the welfare system and removing differential treatment as other beneficiaries (such as re-partnered beneficiaries) are not required to have their child support payments retained. It is said the change will improve the financial position of more than half of all sole parent beneficiaries, and support the government's efforts to reduce child poverty, improve child well-being, and improve the overall fairness of the welfare system.
6. The Bill amends the Child Support Act 1991 and the Social Security Act 2018 to enable this change.
7. The Bill also removes the requirement for sole parent beneficiaries to have their child support assessed and collected by Inland Revenue, instead allowing voluntary or private arrangements to be agreed between parents. It also enables child support payment information-sharing between Inland Revenue and the Ministry of Social Development as well as other ancillary amendments to support this policy change.

Consistency of the Bill with the Bill of Rights Act

Section 19 – Freedom from discrimination

8. Section 19(1) of the Bill of Rights Act affirms the right to freedom from discrimination on the grounds set out in the Human Rights Act 1993 (Human Rights Act). It is generally unlawful to treat people in comparable circumstances differently on the basis of a prohibited ground, unless the difference is justified. The prohibited grounds include family status which means, among other things, “having the responsibility for part-time care or full-time care of children or other dependants”.¹
9. Discrimination under s 19 of the Bill of Rights Act arises where:²
 - a. there is differential treatment or effects as between persons or groups in analogous or comparable situations based on a prohibited ground of discrimination; and
 - b. that treatment has a discriminatory impact (it imposes a material disadvantage on the person or group differentiated against).
10. Currently, caregivers receiving an Unsupported Child’s Benefit (UCB)³ are also required to have child support assessed and collected by Inland Revenue, and the government similarly retains the child support to offset the costs of the benefit. The Bill does not amend any of these provisions relating to UCB, and as such creates a distinction in the way child support is treated between sole parents and caregivers who are not parents. The Bill arguably creates intra-ground discrimination as it could be seen to draw a distinction between those who have the responsibility for part-time care or full-time care of children or other dependants (i.e., family status).
11. Nevertheless, we do not consider the provision gives rise to discrimination because it does not impose a material disadvantage on a comparable group. We consider the UCB and the sole-parent benefit to be sufficiently different in purpose. UCB payments are paid to the caregiver of a child whose parents are unable to care for them. The UCB is intended specifically to cover the cost of caring for a child and is not affected by the income of the caregiver. In contrast, the sole-parent benefit is intended to cover the needs of the beneficiary and their whānau as a whole, rather than a specific child, and the level of support provided is determined based on the income of the parent and their family circumstances more generally. The objective is to support the household, rather than the child. Given that UCB serves the same function as child support, i.e., the maintenance of a specific child, it is perhaps more reasonable to retain the child support than where the benefit being offset is directed at the wider whānau.
12. The UCB may in fact be more analogous to the Foster Care Allowance (FCA). Both FCA and UCB are paid to caregivers supporting a child whose parent is unable to care for them, but FCA applies to caregivers looking after children in state care, whereas UCB applies to caregivers looking after children outside the state system. Child support may be collected on behalf of children in state care (at the discretion of Oranga Tamariki) but is not passed on to caregivers receiving FCA. Instead it is given to Oranga Tamariki as the receiving carer. If child support were to be passed on to UCB caregivers as is proposed for sole-parent beneficiaries, this has the potential to create its own discrepancies in the level of financial support that children receive depending on whether they are in state care or outside it. We

¹ Human Rights Act 1993, s 21(1)(l).

² *Ministry of Health v Atkinson* [2012] NZCA 184, [2012] 3 NZLR 456 CA at [55].

³ The Unsupported Child’s Benefit is a weekly payment made by the Ministry of Social Development to support the care and wellbeing of a child or young person who is unable to live with their parents or usual caregiver because there has been a family breakdown. The benefit is not means tested, but adjustments may be made if a young person is earning or financially independent.

note that Oranga Tamariki is conducting further work on the financial assistance provided to caregivers of children who are unable to be cared for by their parents through the UCB, the FCA and the Orphan's Benefit.

13. Should this Bill be found to limit the right to be free from discrimination we consider that, having regard to the degree of deference that is appropriately allowed to the government when dealing with complex social policy issues, the limit could be justified in terms of section 5 of the Bill of Rights Act.

Conclusion

14. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



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