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Report of the

# ATTORNEY-GENERAL

under the New Zealand Bill of Rights Act  
1990 on the Social Assistance (Future  
Focus) Bill

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*Presented to the House of Representatives pursuant to  
Section 7 of the New Zealand Bill of Rights Act 1990  
and Standing Order 261 of the Standing Orders of the  
House of Representatives*

1. I have considered the Social Assistance (Future Focus) Bill for consistency with the New Zealand Bill of Rights Act 1990. The combined effect of clauses 13 and 14 of the Bill appears to limit the right to be free from discrimination affirmed by s 19(1) of the Bill of Rights Act. These limitations cannot be justified under s 5 of the Bill of Rights Act. As required by s 7 of the Bill of Rights Act and Standing Order 261, I draw this to the attention of the House of Representatives.

### **The Bill**

2. The Bill amends a variety of social assistance legislation. Its stated objective is to create a fairer benefit system with an unrelenting focus on beneficiaries entering or returning to employment.
3. The effect of clauses 13 and 14 of the Bill is to apply a part-time work test with associated sanctions for non-compliance, to those in receipt of the Domestic Purposes Benefit-Solo Parent (DPB-SP) whose youngest child is 6 years of age or older. The Bill does not, however, apply the part-time work test to those in receipt of the Widow's Benefit (WB) or the Domestic Purposes Benefit-Woman Alone (DPB-WA).

### **Section 19(1) of the Bill of Rights Act (Freedom from discrimination)**

4. Section 19(1) of the Bill of Rights Act affirms that everyone has the right to freedom from discrimination on the grounds set out in the Human Rights Act 1993. By imposing a part-time work test on certain benefits (DPB-SP) but not others (WB, DPB-WA), clauses 13 and 14 of the Bill cause discrimination on three prohibited grounds: sex, marital status and family status.
5. First, women who are widows caring for dependent children can receive the WB whereas men who are widowers in similar circumstances are not entitled to the WB but can receive the DPB-SP. The introduction of the part-time work test for the DPB-SP for people caring for children over the age of six, but not the WB, means that widowers are subject to additional obligations and associated sanctions. This is a distinction based on sex.
6. Second, the introduction of the part-time work test for the DPB-SP, but not the WB, means that solo parents who have always been single or who have lost their partners through divorce or separation are subject to additional obligations and associated sanctions. This gives rise to a distinction based on marital status.
7. Third, the introduction of the part-time work test for the DPB-SP but not the DPB-WA means that an older, single person with the care of children is subject to additional obligations and associated sanctions for non-compliance compared to an older, single woman who no longer cares for children. This is because women who are over 50 years old and who have previously had the care of children for fifteen years or more (but no longer do) can receive the DPB-WA, whereas a person in similar circumstances who still has the care of children is eligible for DPB-SP. This gives rise to a distinction based on family status (having the care of children).

8. The disadvantage suffered by widowers, divorced or separated people, and older people responsible for the care of children is that they must look for and accept offers of suitable part-time work or risk sanctions whereas women on WB or DPB-WA would not be subject to these requirements.
9. The different treatment also stigmatises this group as less worthy of government support than widows and older women alone which itself perpetuates a stereotype of widows and older women as less capable of being economically independent.
10. I consider that by introducing a part-time work test for the DPB-SP but not the WB and DPB-WA, clauses 13 and 14 of the Bill limit the right affirmed by s 19(1) of the Bill of Rights Act.

**Is the apparent inconsistency justified in a free and democratic society?**

11. Where a provision poses a limit on a particular right or freedom, it may nevertheless be consistent with the Bill of Rights Act if it can be considered a reasonable limit that is justifiable in terms of s 5 of that Act. The s 5 inquiry is essentially two-fold: whether the provision serves an important and significant objective, and whether there is a rational and proportionate connection between the provision and the objective.<sup>1</sup>
12. The stated objective of the Bill as a whole is to create a fairer benefit system with an unrelenting focus on beneficiaries entering or returning to employment. While this is an important and significant objective, the different treatment of people on the DPB-SP compared to women on the WB and DPB-WA does not serve this objective because it does not create a fairer benefit system or encourage beneficiaries to enter or return to employment. Nor does it recognise the benefits of work for women on WB and DPB-WA. Expressed another way, the limit is not rationally connected to the Bill's stated objective. Nor do the distinctions appear to serve any other valid, non-discriminatory objective.
13. I conclude that by introducing a part-time work test for the DPB-SP, but not the WB and DPB-WA, clauses 13 and 14 of the Bill appear to be inconsistent with s 19(1) of the Bill of Rights Act and that this cannot be justified under s 5 of that Act.

Hon Christopher Finlayson  
**Attorney-General**

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<sup>1</sup> See *Hansen v R* [2007] NZSC 7; *Ministry of Transport (MOT) v Noort* [1993] 3 NZLR 260 (CA), *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 (CA) and *Moonen v Film and Literature Board of Review* [2002] 2 NZLR 754 (CA); and the Supreme Court of Canada's decision in *R v Oakes* [1986] 1 SCR 103.