

3 March 2021

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Social Security (Subsequent Child Policy Removal) Amendment Bill

Purpose

1. We have considered whether the Social Security (Subsequent Child Policy Removal) 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 23369/1.8). 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 section 19 (freedom from discrimination). Our analysis is set out below.

The Bill

4. The Bill proposes to amend the Social Security Act 2018 and Social Security Regulations 2018 to remove the additional dependent child policy (commonly known as the subsequent child policy).
5. Under the current policy, if someone has another child while they are receiving a main benefit, work obligations are based on the age of their youngest non-subsequent child from the additional child's first birthday. This means that, in some instances, a parent is required to look for or enter work once their youngest child turns one or risk losing some of their benefit income due to sanctions.
6. The Bill includes an explanatory note on the policy underpinning the amendment. It explains that the application of the subsequent child policy can add further stress to the parent(s) and limit the extent to which they are able to interact with their child and to support their early development. It also explains that the subsequent child policy disproportionately impacts Māori and women, has contributed to increased complexity in the welfare system, and reduced flexibility for parents to spend time with their child or children.
7. The Bill contains two parts:
 - Part 1 makes substantive and consequential amendments to the Social Security Act 2018 and Social Security Regulations 2018 to remove provisions relating to the subsequent child policy.
 - Part 2 sets out transitional provisions related to the removal of the subsequent child policy.

Consistency of the Bill with the Bill of Rights Act

Section 19(1) – freedom from discrimination

8. Section 19(1) of the Bill of Rights Act affirms that everyone has the right to be free from discrimination on the grounds set out in s 21 of the Human Rights Act 1993, which includes sex and race. Legislation may give rise to discrimination under s 19(1) if it draws a distinction based on one of the prohibited grounds of discrimination and the distinction involves disadvantage to one or more classes of individuals.¹
9. While the current law does not directly draw a distinction on the basis of sex or race, it has been found, in practice, to disadvantage Māori and women.
10. The Bill repeals specific provisions that have been found to lead to disadvantage. In these circumstances, we do not consider that s 19(1) is engaged. Rather, we consider the Bill will improve consistency with the rights and freedoms affirmed in the Bill of Rights Act, including s 19(1).

Conclusion

11. 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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¹ See, for example *Atkinson v Ministry of Health and others* [2010] NZHRRT 1; *McAlister vs Air New Zealand* [2009] NZSC 78; and *Child Poverty Action Group v Attorney General* [2008] NZHRRT 31.