

14 May 2004

Attorney-General

**LEGAL ADVICE:
FUTURE DIRECTIONS (WORKING FOR FAMILIES) BILL:
COMPLIANCE WITH NEW ZEALAND BILL OF RIGHTS ACT 1990**

1. We have considered the Future Directions (Working for Families) Bill (PCO version 5754/8) for consistency with the New Zealand Bill of Rights Act 1990 (the "Bill of Rights Act"). We understand that this Bill is to be considered by the Cabinet Legislation Committee at its meeting on 20 May 2004.
2. The Bill raises prima facie issues of inconsistency with section 19(1) of the Bill of Rights Act on the grounds of family status, marital status, sex, employment status and sexual orientation.
3. We consider that although the prima facie inconsistencies with section 19(1) of the Bill of Rights Act on the grounds of sex, marital status, employment status, and family status appear to be justifiable in terms of section 5 of the Bill of Rights Act, the prima facie inconsistency with section 19(1) on the ground of sexual orientation is not justifiable. The Bill is therefore inconsistent with section 19(1) of the Bill of Rights Act.
4. We have also considered a potential inconsistency with section 27(1) of the Bill of Rights Act (natural justice). However, we have concluded that no inconsistency arises in relation to section 27(1).
5. We recommend that you bring the Bill to the attention of the House of Representatives, as soon as practicable pursuant to section 7 of the Bill of Rights Act and Standing Order 264. A draft report for this purpose is attached for your consideration and signature, if you agree.
6. We have consulted with the Crown Law Office on this advice. Crown Law agrees with the conclusions we have reached. We have also consulted with the Ministry of Social Development and the Inland Revenue Department during the preparation of this advice on the policy objectives underlying the Bill and the justifications for the issues it raises in relation to the Bill of Rights Act.

Overview of the Bill

Policy objectives

7. The primary purpose of this Bill is to provide increased financial assistance and support to low and middle income families with dependent children according to their needs.

8. The changes to the way assistance is provided to this income group are in response to the findings of the *New Zealand Living Standards Survey 2000*¹ ("*Living Standards*") undertaken by the Ministry of Social Development. This survey revealed that families with dependent children have a higher likelihood of restricted living standards than single people or couples who do not have children. These initiatives will be put into effect over the next few years.
9. In summary, the overall intention of the Bill appears to be remedial in nature. That is, it seeks to ameliorate disparities in living standards between persons with dependent children and those without.

Summary of key initiatives

10. The Bill seeks to address the identified disparities in living standards between persons with dependent children and those without by making a number of amendments to the Social Security Act 1964 and the Income Tax Act 1994.
11. The Bill is intended to provide incentives for people in low and middle income groups to move into and stay in employment, by introducing a new form of financial support for those persons who are employed and who fall within this income group (called the "In-work payment"). It is anticipated that as people enter into and remain in the workforce they will have the opportunity to move into positions with higher levels of income. Working families will be able to receive the In-work payment as well as family support and other assistance such as the accommodation supplement.
12. The Bill is also intended to address difficulties in accessing affordable childcare. The unavailability of affordable childcare has been identified as one of the most significant barriers to employment for low and middle income families. Although childcare assistance is provided for under the special benefit provisions of the Social Security Act 1964², it is considered that these provisions should be specifically provided for in legislation to make childcare assistance more transparent and accessible.
13. In addition to changes to income support for working families, the Bill also makes changes to the accommodation supplement paid to beneficiaries and non-beneficiaries. These changes will enable persons on a benefit to earn more income before the abatement of the supplement comes into effect, and in the case of non-beneficiaries it increases the income thresholds so that people are able to earn more income while retaining eligibility for the supplement. These changes are intended to provide for greater incentives for persons to enter into and/or remain in the paid workforce.

¹ Ministry of Social Development (2002) *New Zealand Living Standards 2000*

² Section 61G of the Social Security Act provides the Chief Executive with the discretion to provide a person with a special benefit irrespective of whether he or she is already receiving social security assistance.

14. Finally, the Bill would make changes of a more general nature to the social assistance system in New Zealand by simplifying benefit structures and consolidating the basic rates of benefits that persons who receive social security are eligible to receive.

Summary of Bill of Rights Act issues³

15. We consider that although the Bill makes distinctions based on sex, employment status, marital status and family status that *prima facie* appear to give rise to issues of consistency with section 19(1) of the Bill of Rights Act these distinctions appear reasonable and are justifiable.

16. However, the provisions of the Bill that relate to couples do not apply to same-sex relationships. In this respect, we consider that the Bill is inconsistent with section 19(1) because of the arbitrary manner in which it treats couples on the basis of their sexual orientation. Although this area of inconsistency across the social welfare system is to be addressed in the context of the Government's current work on the legal recognition of same-sex relationships, you have previously advised Parliament proposals for future reform that have yet to be realised, cannot justify existing inconsistencies.

17. We also consider that although the Bill amends the Privacy Act to enable the Commissioner for Inland Revenue to suspend tax credit payments prior to notifying the person of the decision, the provision appears to be consistent with section 27(1) of the Bill of Rights Act and the right to be heard.

SECTIONS 5, 19 AND 27(1) OF THE BILL OF RIGHTS ACT

16. The Bill gives rise to *prima facie* issues of inconsistency with section 19(1) of the Bill of Rights Act. Section 19(1) provides:

Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993.

17. In assessing whether discrimination under section 19 exists, we consider that the key questions are:

- i. Does the legislation draw a distinction based on one of the prohibited grounds of discrimination? and if so,
- ii. Does the distinction involve disadvantage to one or more classes of individuals?

³ A table identifying the provisions of the Bill that appear to give rise to Bill of Rights issues appears at the end of this advice.

18. If these questions are answered in the affirmative, we consider that the legislation gives rise to a *prima facie* issue of “discrimination” under section 19(1) of the Bill of Rights. Where a *prima facie* issue of discrimination arises, we consider whether the limit on section 19(1) of the Bill of Rights Act can be justified in terms of section 5 of the Bill of Rights Act.

19. The Bill also appears to give rise to issues of consistency with section 27(1) of the Bill of Rights Act. Section 27(1) provides:

Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.

20. A limit on a right can be justified where it meets a significant and important objective, and where there is a rational and proportionate connection between the limitation on the right and that objective.⁴

Specific areas of the Bill giving rise to discrimination issues

21. There are three aspects of the Bill that we particularly wish to draw to your attention. The first two issues concern social assistance initiatives and the other relates to the use of the term “spouse” in social security legislation.

Childcare assistance

22. Childcare assistance is currently a form of special assistance granted under a Ministerial welfare programme. The Bill moves childcare assistance provisions into the Social Security Act 1964 (the “Social Security Act”) to make the availability of financial assistance more transparent. Childcare assistance is intended to provide people on low and middle incomes with financial assistance to help meet their childcare costs with a view to facilitating their transition into paid employment.

Eligibility for Childcare Assistance

23. New section 61GA empowers the Chief Executive of the Ministry of Social Development to grant financial assistance to the principal caregiver of a dependent child of the prescribed kind and amount for the prescribed period in accordance with the prescribed criteria and other requirements set out in regulations made under new section 132AC.

24. A principal caregiver means the person who, in the opinion of the Chief Executive, has the primary responsibility for the day to day care of the dependant child, other than on a temporary basis.

⁴ *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9.

25. In providing for childcare assistance to be made available to eligible principal caregivers, the Bill distinguishes between:
- Persons who care for one group of dependents, namely children, and those persons who care for other categories of dependents; and
 - Persons who care for dependent children on a “full-time” basis, and those who have part-time responsibility for the care of dependent children.
26. Section 21(1)(l)(i) of the Human Rights Act defines the prohibited ground of family status to include "having responsibility for the part-time care or full-time care of children or other dependents". The Bill therefore draws distinctions between categories of persons within this ground.
27. We consider that it is unlikely that the provision of childcare assistance provides for any substantive disadvantage in either case as the provision of child-care has been developed as a response to issues that have been identified in the *Living Standards* report. No such similar issues were identified for either group in the course of completing the research undertaken to compile the report.
28. Part-time carers are unlikely to require assistance as they do not appear to be faced with comparable barriers to obtaining employment.
29. It might also be argued that the exclusion of those who care for dependent children part-time from eligibility for childcare assistance might be considered to indirectly discriminate against men involved in shared child-custody arrangements because men are more likely to have child-care responsibilities for weekends or equivalent "part-time" periods than are women. However, taking into account the fact that the income earning ability of men is greater than that of women, overall they are less likely to require the assistance provided by this policy. We are also aware that the intention in providing extra support to low and middle income families is to address issues of child poverty. The provision of childcare assistance to that member of the family who has primary care for the child is consistent with that aim. Accordingly, the extent to which disadvantage would arise appears arguable.
30. To the extent that the distinctions drawn in the eligibility criteria for the proposed childcare assistance do create disadvantage, we consider that they can be seen as constituting reasonable limits on section 19 for the reasons identified in the *Living Standards* report⁵.

⁵ See pages 109 -121 of the report

In-work payment

31. The Bill introduces a new In-work payment to replace the child tax credit. The payment is to be made to the principal caregiver of any dependent child. This payment comes into effect on 1 April 2006. The aim of the In-work payment is to provide more support to low to middle income families with one or both parents in the paid workforce. It is intended that the provision of such support will provide them with the necessary financial incentives to remain in paid employment. Parents who currently receive the child tax credit but who are ineligible to receive the In-work payment will continue to receive the tax credit. The payment will be worth a maximum of \$60 per week for families with up to three children and \$15 for each extra child.

Eligibility for in-work payment

32. The Bill sets out a number of criteria which must be met before a person may be assessed as being eligible to receive the In-work payment (refer to clauses 27 – 30). A person's eligibility is assessed according to whether they meet the following required criteria:

- Have principal care-giving responsibilities for the child, and;
- Are in paid employment for the required number of hours.

33. Sole parents will need to be in paid work of at least 20 hours per week and couples at least 30 hours a week between them to qualify for the payment. New Zealand superannuitants in work, and those receiving the parental tax credit, ACC weekly compensation (and who would have qualified for the in work payment at the time they had the accident), and those who are on paid parental leave also qualify.

34. A principal caregiver is defined in section KD2AA(2) of the Income Tax Act 1994 as follows:

“A person is a principal caregiver of a child if the person lives apart from another qualifying person for that dependent child and has the dependent child in his or her exclusive care for periods totalling at least one-third of the income year or, in the case of the parental tax credit, for periods totalling at least one-third of the entitlement period.”

35. These criteria draw distinctions based on a person's sex, family status and employment status.

Employment status

36. The Human Rights Act defines the prohibited ground of employment status as:

- Being unemployed (section 21(1)(k)(i) of the Human Rights Act); or
- Being a recipient of a benefit under the Social Security Act 1964 or an entitlement under the Injury Prevention, Rehabilitation, and Compensation Act 2001 (section 21(1)(k)(ii) of the Human Rights Act).

37. In considering whether the In-work payment disadvantages those in receipt of an income support payment, we have taken into consideration the *Living Standards* report. The report identified that families with dependent children who were in receipt of an income-tested benefit have a much lower average living standard than families who received market income⁶. The extra level of support provided only to those in work exacerbates this situation further. We consider that the provision of an In-work payment does cause disadvantage and is *prima facie* discriminatory on the grounds of employment status. We have therefore gone on to see whether the provision of the payment is justifiable in terms of section 5.

38. We consider that the objective of the policy is to provide parents with the appropriate incentives to enter into and remain in the paid workforce. As the findings of *Living Standards* show, the most immediate means through which parents are able to improve living standards for families with dependent children is by entering the paid workforce. We consider that the objective is significant and important.

39. Such incentives are necessary to substantively improve standards of living. The state has a legitimate interest in ensuring that those on benefits are provided with the appropriate incentives to assist themselves in moving off state-provided social assistance. We note that the eligibility criteria for qualifying for the payment is set at a level whereby parents are able to qualify on the basis of part-time work or shared work. Furthermore, assistance is being provided to parents in the form of childcare to further facilitate their transition into the paid workforce.

40. At the same time, we are aware that extra assistance is going to be provided to those who are unable to find work in the form of increases in the rates of Family Support and the Accommodation Supplement. Family Support will increase in April 2005 by a maximum of \$25 per week for the first child and \$15 for every subsequent child, and will increase by a further \$10 on 1 April 2007. The increased levels of support will help address poverty concerns for these families

41. We therefore consider that the provision of additional government assistance to low and middle families through the In-work payment is rational and proportionate and justifiable in terms of section 5.

⁶ *Living Standards* page 111

Family status – principal care-givers

42. The fact that eligibility is also partly assessed by reference to the number of hours that a care-giver spends with the dependent child might also disadvantage those who have alternative arrangements relating to the care of their dependent child. The definition of family status contained in section 21 of the Human Rights Act includes part-time care of children.⁷
43. We understand that the requirement for primary care of children was included in the eligibility criteria in order to ensure that the integrity of child-care or child custody arrangements was preserved. In particular, there was a concern that possible eligibility for an In-work payment may have created an incentive for parents to alter shared custody arrangements in order to qualify for the payment. The creation of such an incentive would have been inconsistent with the intention of the policy.
44. We therefore consider that, even if the requirement for primary care of children in order to be eligible for the In-work payment does give rise to inconsistency with the right to be free from discrimination on the grounds of family status, such a requirement is a reasonable limit on the right.

Family status – child care responsibilities

45. However, the creation of an In-work payment for working families does appear to disadvantage single persons and couples who do not have responsibility for caring for children or persons who have responsibility for caring for other kinds of dependents and who are in similar income groups. It seems unlikely, however, that the ineligibility of such persons in relation to this payment causes disadvantage as this policy is designed to address a problem specific to working parents.
46. In 2002 the Ministry of Social Development published *New Zealand Living Standards 2000*. The report showed that 28 per cent of families with dependent children have either restricted or somewhat restricted standards of living compared to 17 per cent of families without dependent children. The provision of an In-work payment is therefore designed to address this disparity and also improve the living standards of this group.
47. Furthermore, persons without dependent children, irrespective of whether they are in receipt of an income tested benefit, may also be eligible for a special benefit or assistance to help them enter the paid workforce.
48. We therefore consider that the ineligibility of those without responsibility for the care of dependent children for an In-work payment is unlikely to give rise to disadvantage for couples or single persons who have no child care

⁷ We consider that the eligibility criteria for the receipt of an In-work payment might also be considered to indirectly discriminate against men involved in shared child-custody for the reasons set out in relation to child-care assistance. However, we do not consider that the policy causes disadvantage in this case either for the reasons advanced previously.

responsibilities. However, even if disadvantage were to arise from this distinction we consider that the distinction is a reasonable limit on section 19(1) for the reasons set out above.

Power to make regulations which draw distinctions on the prohibited grounds

49. Clauses 12 and 12A insert new sections 132AB and 132AC into the Social Security Act. These would authorise the making of regulations in relation to temporary additional support (cl.12) and childcare assistance (cl.12A). These authorising provisions would permit the making of regulations that include distinctions and determinations based on a number of the proscribed grounds of discrimination. For example, new section 132AB authorises the making of regulations that prescribe the amount of temporary additional support available to an eligible person based on whether the applicant has a spouse or dependent child.
50. While these provisions allow for the making of regulations that contain distinctions that correspond to certain grounds of discrimination, they do not expressly authorise the making of discriminatory regulations. Accordingly, these provisions should therefore be read consistently with the Bill of Rights Act.
51. We note that, given the scope of these authorising provisions, any such regulations made pursuant to the proposed sections would be vulnerable to challenge for *ultra vires* were they to contain inconsistencies with the Bill of Rights Act that were not expressly authorised by the empowering provision⁸.

Sexual orientation

52. The Bill contains frequent references to persons having a "spouse"⁹. We note that for the purposes of this Bill, the term spouse applies to persons who are married or who are living together in the nature of a marriage but not to persons living in a same-sex relationship¹⁰. Partners in same-sex relationships are therefore treated as being single. The use of the term "spouse" therefore draws a distinction on the ground of:

- "Sexual orientation"- which means a heterosexual, homosexual, lesbian or bisexual orientation (section 21(1)(m) of the Human Rights Act).

⁸ *Drew v Attorney General* [2002] 1 NZLR 58

⁹ The provisions that refer to the terms "spouse" are set out in a table attached to the back of this advice.

¹⁰ The definitions of the term "spouse" in section 63 of the Social Security Act and section OB1 Income Tax Act 1994 exclude persons living in same-sex relationships.

53. Under the Bill, the disadvantage on grounds of sexual orientation in some cases is sustained by persons in opposite sex relationships, in other cases, by persons in same-sex relationships.
54. For example, some provisions of the Bill financially advantage persons living in same-sex relationships because their partners' incomes are not taken into consideration or are considered in a distinct category when determining eligibility for different types of assistance.
55. Other aspects of the Bill give rise to disadvantage for same-sex couples through the non-recognition of their relationships. For example, eligibility for the In-work payment is based on whether the principal care-giver or the spouse of a principal care-giver is in paid employment. A principal care-giver in a same-sex relationship who is not working will be ineligible to receive the payment even if his or her partner is working the required number of hours because their relationship is not recognised.
56. We consider that the failure to recognise the status of same-sex relationships and the arbitrary manner in which it treats persons in same-sex relationships appears to be *prima facie* inconsistent with section 19(1) of the Bill of Rights Act on the grounds of sexual orientation. No substantive policy reason for the failure of the Bill to recognise same-sex relationships has been brought to our attention other than consistency with the existing social assistance regime.
57. We understand that the government is about to introduce legislation into the House that, amongst other things, rationalises the treatment of same-sex couples in social security and income tax legislation. This legislation will provide same-sex couples will generally be treated in the same way as opposite-sex couples. We are aware that some of the provisions in this Bill will not come into effect until 1 April 2006, at which time the remedial legislation is likely to have been enacted and come into force.
58. However, as you have previously advised the House on a number of occasions, different treatment of same-sex couples cannot be justified in terms of section 5 of the Bill of Rights Act on the basis of proposals for reform that have yet to be realised.
59. We have, therefore, concluded that the *prima facie* inconsistency with section 19(1) of the Bill of Rights Act on the ground of sexual orientation cannot be justified in terms of section 5.

Natural Justice: Adverse decisions and suspension of payments

60. Clause 40 of the Bill proposes to amend section 103(1) of the Privacy Act by inserting a new section 103(1B). Section 103(1B) will enable the Commissioner for Inland Revenue to immediately suspend or partially suspend the payment of a tax credit under subpart KD of the Income Tax

Act if the Commissioner becomes aware of a discrepancy in the information provided to the Department.

61. The Commissioner must either before or immediately after the decision to suspend, notify the person concerned of the decision to suspend. The Commissioner must also provide the person with reasons for the decision and notice of any other adverse action which the Commissioner proposes to take (new section 103(1B)(a)). The Commissioner must provide the person with 5 working days within which to show cause why the payment should not be suspended and why the proposed adverse action should not be taken (new section 103(1B)(b)).
62. We have considered whether new section 103(1B) raises issues of consistency with section 27(1) of the Bill of Rights Act. Section 27(1) affirms the right to the observance of the principles of natural justice in the making of a determination that affects a person's interests. We have given consideration to this issue because new section 103(1B) authorises the Commissioner to take steps to suspend a social assistance payment before he or she is provided with a full explanation as to the reasons for an apparent discrepancy. On the face of it, such an approach might be seen as inconsistent with the right to be heard.
63. We have come to the view that new section 103(1B) does not appear to be *prima facie* inconsistent with section 27(1) because we do not consider that the decision to suspend the payment is a "determination" for the purposes of section 27(1). The Court of Appeal in *Chisholm v Auckland City Council*¹¹ held that a determination for the purposes of section 27(1) must be of an adjudicative character. The decision of the Commissioner to temporarily suspend the payment in this context is not adjudicative in nature. It is an administrative decision. A person has an opportunity to be heard before the decision to suspend or take other adverse action is finally made. We also note that a person who objects to the decision to suspend or take any other adverse action may challenge that decision under the provisions of the Tax Administration Act 1994.
64. We have therefore concluded that new section 103(1B) does not appear to be *prima facie* inconsistent with section 27(1).

¹¹ *Chisholm v Auckland City Council* CA 32/02, 29 November 2002

CONCLUSION

65. The primary purpose of the Bill is to “make work pay” by supporting low and middle income workers who have children in order to improve their living standards.
66. We consider that the new initiatives contained in the Bill achieve the objectives of the Bill in a reasonable manner. Therefore, although we consider that the Bill appears to be *prima facie* inconsistent with section 19(1) of the Bill of Rights Act on the grounds of sex, marital status, employment status and family status, the distinctions made in the Bill on these grounds appear to be justifiable in terms of section 5 of the Bill of Rights Act. We also consider that the amendments to the provisions relating to adverse decisions under the Privacy Act appear to be consistent with section 27(1) of the Bill of Rights Act.
67. However, we do not consider that the different treatment contained in this Bill on the ground of sexual orientation can be justified in terms of section 5 of the Bill of Rights Act. Accordingly, we consider that the Bill is inconsistent with section 19(1) of the Bill of Rights Act.
68. We recommend that, as soon as practicable, you bring the Bill to the attention of the House of Representatives, pursuant to section 7 of the Bill of Rights Act and Standing Order 264. A draft report for this purpose is attached for your consideration and signature, if you agree.
69. In accordance with your instructions, we attach a copy of this opinion for referral to the Minister of Justice. We also attach a copy for referral to the Minister of Social Development and the Minister of Revenue, if you agree.

Allison Bennett
Principal Legal Adviser
Office of Legal Counsel

Margaret Dugdale
Policy Manager
Human Rights/Bill of Rights

cc Minister of Justice
 Minister of Social Development
 Minister of Revenue
 Copy for your information

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DISCRIMINATORY PROVISIONS

This table outlines the clauses that give rise to discrimination in the Bill. For the purposes of this assessment “Spouse” has the meaning set out in section OB1 of the Income Tax Act 1994 and section 63 of the Social Security Act 1964.

Practical effect	Proscribed ground	Who is disadvantaged?	Clause
Childcare assistance will be provided to persons who care for one group of dependents or children and persons who have care for dependent children on a “fulltime” basis, but not those who have part-time responsibility.	Family status	Persons without children, persons who provide principal care to other dependents and persons	9 (New 61GA) Criteria for entitlement to childcare assistance.
Eligibility for childcare assistance is based on extent to which person has responsibility for childcare. Men are more likely to have child-care responsibilities on a part time basis, which would make it unlikely they would be eligible.	Sex	Men (indirectly)	9 (New 61GA) Criteria for entitlement to childcare assistance.
Partners in same-sex relationships are not recognised. Therefore they are not subject to the same consideration and restraints as a person in an opposite sex relationship. The test depends on whether a spouse receives a benefit or tax credit; the kind and amount of benefit or tax credit received by a spouse; and whether a spouse is lawfully or unlawfully in New Zealand.	Sexual orientation “Spouse”	People in opposite sex relationships	12 (New 132AB (1)(a) and (1)(d)(i)) Calculation of temporary additional support
Partners in same-sex relationships are not recognised. Therefore they are not subject to the same consideration and restraints as a person in an opposite sex relationship. Cash asset limits may be higher or lower if applicant has a dependent spouse.	Sexual orientation “Spouse”	People in opposite sex and same sex relationships depending on set levels	12 (New 132AB (1)(e)(i)) Calculation of temporary additional support.
Allowable costs, cash assets and chargeable income of a partner in a same-sex relationship is not taken into consideration when assessing eligibility. Therefore they are not subject to the same consideration and restraints as a person in an opposite sex relationship.	Sexual orientation “Spouse”	People in opposite sex relationships	12 (New 132AB (3)) Calculation of temporary additional support.
Income of partner in a same-sex relationship is not taken into consideration when assessing eligibility. Therefore they are not subject to the same consideration and restraints as a person in an opposite sex relationship.	Sexual orientation “Spouse”	People in opposite sex relationships	12A (New 132AC (1)(a)(i) and (1)(c) and 132AC (2)) Eligibility criteria for childcare assistance.

When former section 61G applies to a person their spouse may not apply for or be granted temporary additional support under s 61G. Same-sex partners would both be eligible.	Sexual orientation "Spouse"	People in opposite sex relationships	16 Calculation of temporary additional support.
Income of partner in a same-sex relationship is not taken into consideration when assessing eligibility. Therefore they are not subject to the same consideration and restraints as a person in an opposite sex relationship.	Sexual orientation "Spouse"	People in opposite sex relationships	19 (New KD 2(6B)(b)) Calculation of family credit abatement.
Married couples income tested at a different level than a those who are single when determining threshold for abatement.	Marital status	People in opposite sex relationships	19 (New KD 2(6B)(a) and (b)) Calculation of family credit abatement.
Same-sex partner's income not taken into account which allows couple to retain more income than opposite sex couples.	Sexual orientation "Spouse"	People in opposite sex relationships	28(3) (New KD 2(6) (b)) Calculation of full year abatement.
Single people are subject to a lower income threshold when determining eligibility for full year abatement.	Marital status	People in opposite sex relationships	28(3) (New KD 2(6) (a) and (b)) Calculation of full year abatement.
Only principal caregivers are eligible for an In-work payment. Persons without children, those who care for other dependents that are not children, and those who care for children on a part-time basis are ineligible for the in-work payment.	Family status	Persons without children, persons who provide principal care to other dependents and persons who provide part-time care to children	29 (New KD2AAA) Eligibility criteria for In-work payment.
Men with part-time custody will be ineligible for the in-work payment. In-work payment will be provided to persons who care for one group of dependents or children and persons who have care for dependent children on a primary basis, but not those who have part-time responsibility.	Sex	Men (indirectly)	29 (New KD2AAA) Eligibility criteria for In-work payment.
In-work payment is only available to those in paid employment for a certain number of hours per week.	Employment status	Beneficiaries and the unemployed	29 (New KD2AAA 1(d),(e)) Eligibility criteria for In-work payment.
If the partner of a principal caregiver in a same-sex relationship is a employed because the employments status of that partner is not recognised same-sex couples in this situation ineligible for the In-work payment.	Sexual orientation "Spouse"	People in same sex relationships	29 (New KD2AAA 1(d)) [Pursuant to subsections 5, 6 and 7 of that section]. Eligibility criteria for In-work payment.
If the partner of principal caregiver in an opposite-sex relationship is a beneficiary the principal caregiver will be ineligible for the In-work payment.	Sexual orientation "Spouse"	People in opposite sex relationships	29 (New KD2AAA 1(e)) Eligibility criteria for In-work payment.

