

**ADDITIONAL INFORMATION FOR THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD
FOR CONSIDERATION IN RESPECT OF THE THIRD AND FOURTH PERIODIC REPORT OF NEW ZEALAND
(CRC/NZL/3-4)**

56TH SESSION OF THE COMMITTEE ON THE RIGHT OF THE CHILD

Introduction

The purpose of this paper is to provide the United Nations Committee on the Rights of the Child with information additional to that contained in main NGO report on New Zealand *Children and Youth Aotearoa 2010* and the Working Papers that accompanied it. This follows ACYA's pre-session meeting with the Committee on 7 October 2010 and the release by the Committee of its List of Issues for the New Zealand Government to respond to (CRC/C/NZL/Q/3-4).

This paper summarises recent developments in the following areas:

- The potential impact of welfare reform on children
- Recent issues in the juvenile justice sector.
- The outcome of the Ministerial Review of Special Education services.

1. Potential Impact of Welfare Reform on children

As set out in *Children and Youth Aotearoa 2010*, the New Zealand Government established its Welfare Working Group to undertake "an expansive and fundamental review of New Zealand's welfare system" with a focus on "how to reduce long term benefit dependency".¹

The Welfare Working Group has now released its report *Reducing Long-Term Benefit Dependency: The Options*². In the main, the Welfare Working Group's report is concerned with reducing current entitlements and examining incentives (or disincentives) designed at minimising the numbers of people who qualify for a long-term social security benefit. This followed an extensive public consultation process. There is no mention in the report of the State's obligations under Articles 6, 18, 26 and 27 of the UN Convention on the Rights of the Child to support parents and families in the care of their children, provide for the child's maximum survival and development, and to enable the right of children to social security and an adequate standard of living.

Chapter 3 of the report is focussed on solo parents on social security benefits and accordingly has perhaps the greatest implications for children of beneficiaries. This chapter sets out 'options' for amendments to the current Domestic Purposes Benefit received by solo parents of children, with an emphasis on return of parents to full-time or part-time work as soon as possible.

The options set out for consideration include:

¹ *Children and Youth Aotearoa 2010*, p 27, paragraph 6.49

² Welfare Working Group, Institute of Policy Studies, Victoria University of Wellington, November 2010. The report can be accessed online at <http://ips.ac.nz/WelfareWorkingGroup/Index.html>

- requiring that a parent return to part-time work when their youngest child turns 3 (in alignment with the age at which a child is eligible for 20 hours free early childcare education) and full-time work when that child turns 6³
- Require that a parent return to part-time work when their youngest child turns 1 (in alignment with legislative parental leave protection)⁴.
- Provide for all solo parents through the Unemployment Benefit (rather than the more expensive Domestic Purposes Benefit), with reciprocal obligations and employment support.⁵
- Require that return-to-work obligations are tied to the age of the eldest child, rather than the age of any younger or subsequent children⁶.

All the above options require a reduction in current entitlements for solo parents. It is notable that current entitlements themselves have been amended recently by the enactment of the Social Security (New Work Tests, Incentives and Obligations) Amendment Act 2010, which has introduced much more stringent requirements regarding work-testing and stronger punitive sanctions for non-compliance, including a reduction of up to 50% to the benefit of a solo parent beneficiary who fails to comply with an employment plan requirement⁷.

In this context, the Welfare Working Group's report places some emphasis on the importance of childcare services. Options for childcare entitlements are therefore traversed in the report and range from permanent childcare support for solo parents, at the most generous end of the spectrum, to mere provision of support to assist a solo parent 'locate and arrange childcare as a part of case management'⁸. Within this context we note the recent announcement of funding cuts to the early childcare sector which will result in the top two bands of funding being removed for childcare centres with more than 80% fully qualified staff.⁹ Given the current funding climate, it is difficult to envisage that access to early childcare services will be meaningfully increased in the future. This poses questions as to the extent of childcare support likely to be available to solo parents who are required to work under future legislative reform.

There is also the context of employment legislation introduced by the current Government which erodes the rights of new employees. The Employment Relations Amendment Bill 2010 seeks to extend the application of 90 day trial periods, which remove the right of an employee to legally challenge an unfair dismissal, to all workplaces. In addition, the Bill seeks to remove the current legal threshold which provides that an employer's decision to dismiss an employee must be measured against an objective standard of that of the "fair and reasonable" employer¹⁰. Solo parents entering the workforce after the enactment of the Bill will therefore be entering a labour market where their job security, bargaining power and status will be substantially weaker than at present.

The Welfare Working Group's report also examines benefits available to young people aged under 18, such as the Independent Youth Benefit (IYB). In line with its general tone and aims, the report links benefit usage by young people with long-term welfare dependency¹¹ and proposes options ranging from compulsory education or training for recipients (which is largely the case currently) through to removal of benefit payments to young people altogether¹².

³ Option 3.1.2, *ibid* p 57

⁴ Option 3.1.3, *ibid* p 55

⁵ Option 3.1.4, *ibid*

⁶ Option 3.1.5 *ibid*

⁷ Section 60Y(1)(b) Social Security Act 1964

⁸ *Reducing Long-Term Benefit Dependency: The Options*, Welfare Working Group, November 2010, Executive Summary p 8

⁹ Reported in New Zealand Herald, 1 December 2010 http://msn.nzherald.co.nz/news/article.cfm?c_id=1&objectid=10691167

¹⁰ Section 103A Employment Relations Act 2000

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¹¹ *Reducing Long-Term Benefit Dependency: The Options*, Welfare Working Group, November 2010, p 93 and 94

¹² *ibid* p 94

Comment by the Children's Commissioner on the Welfare Working Group work programme and report

The Children's Commissioner, Dr John Angus, has issued a public statement outlining his concerns about options proposed in the report including his unease at a proposal that would make a solo parent's benefit contingent on their child's attendance at school and health clinics, stating *"this seems to penalising children for the sins of their parents."*¹³

He was also critical of options which would require work-testing of solo parents from the age their child turns 1, or work-testing of solo mothers from the birth of their child if they already had children and was receiving a benefit, stating *'I have concerns about the options that would reduce benefit levels or take other punitive measures for women who have another child while on a benefit. I cannot see how this could lead to good outcomes for any children in such a family.'*¹⁴

It is also notable that the Welfare Working Group has not attempted to analyse the impact of benefit reform within a framework guided by the state's obligations to children under the UN Convention on the Rights of the Child. A child rights perspective or impact analysis is entirely missing from the report. As the report is likely to form the basis of legislative reform to follow, this is a concerning omission.

Consideration of the Convention was certainly put to the Working Group prior to the release of its report. In his submissions to the Welfare Working Group as part of the public consultation process, the Children's Commissioner submitted:

"The importance of taking children's interests into account should be clearly reflected in the principles underlying the Working Group's review and the benefit system itself. The principle that paid work is fundamental to well-being needs to sit alongside the principle that supporting children and young people to get the best possible start to their lives is an investment. Any economic modelling should take into account the opportunity cost of not supporting children and their care.

Such an approach an approach to the welfare system is consistent with New Zealand's obligations under the United Nations Convention on the Rights of the Child...This suggested approach is also consistent with that recommended by the OECD Ministers in 2005...In the 2009 report, "Doing better for children", the OECD concluded that New Zealand needs to take a stronger policy focus on child poverty and child health.

*Taking children's interests into account will require that any options or proposals made by the Working Group each have an explicit analysis of the impacts on children's material well-being and wider well-being over time. As an adjunct to this, recommendations about research or evaluations should include impact on children."*¹⁵

The Children's Commissioner also made a number of recommendations¹⁶, including:

- That any options for reform of the welfare system should specifically identify the short and long-term impacts on children.
- Welfare support that affects children should aim to maximise their well-being and as a minimum alleviate poverty.
- That the government's obligation to support parents and families in raising their children is recognised and considered an investment
- That the welfare system should be more flexible and better reflect the value of caring and supporting children well
- That the principle of the best interests of the child should guide all decisions affecting children at both a policy level and in assessing individual cases.

¹³ Reported in New Zealand Herald, 2 December 2010, accessed on-line at http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=10691459

¹⁴ *ibid*

¹⁵ The Children's Commissioner, Submission to Welfare Working Group, 21 September 2010, paragraphs 15-19

¹⁶ *Ibid* paragraph 11(a)-(l)

- That any changes made to the benefit system should be monitored and evaluated to measure whether they do improve the circumstances of children.

Recommendations

Of all reform due to take place over the next year, the Government's legislative response to the Welfare Working Group's report is likely to have the largest direct impact on children. As noted in *Children and Youth Aotearoa 2010*, there has been a significant increase in the number of children supported by a caregiver whose main source of income is a benefit – from 199,108 in June 2008 to 230,642 in December 2009¹⁷.

We therefore recommend that the Committee consider making detailed inquiry into the New Zealand Government's intentions regarding welfare reform and the potential impact of such reform on children. Particular lines of inquiry could include:

- Why were the obligations of the New Zealand Government under the UN Convention on the Rights of the Child missing from both the Welfare Working Group's report and the terms of reference under which the Group worked?
- In light of the Welfare Working Group's report and any future reform to the social security sector, how does the New Zealand Government intend to meet its obligations under Article 3 of the Convention to ensure that in all actions by social welfare institutions that the best interests of the child are a primary consideration in any action concerning a child?
- Pursuant to its obligations under Articles 18(2) and (3) of the Convention, how does the New Zealand Government intend to develop services to ensure that appropriate child-care assistance is provided to those solo parents who are required to re-enter the workforce?
- Pursuant to its obligations under Article 26 of the Convention, what steps will the New Zealand Government take to ensure that any future legislation recognises the right of every child to benefit from social security and that those benefits, where appropriate, be granted?

2. Juvenile Justice Issues

The commencement of the Children, Young Persons and Their Families (Youth Court Orders and Jurisdiction) Amendment Act on 1 October 2010 has seen 15 young people sentenced to the new longer custodial "supervision with residence" orders under s283(n) of the Act¹⁸. The new legislation has doubled the length of these orders, only available to a Youth Court, from a maximum custodial period of three months to a maximum of six months. In these cases, it has been reported that the young people elected to be dealt with under these provisions in order to avoid a possible transfer to the District Court for sentencing. ACYA is not yet aware of any 12 or 13 year olds who have been dealt with under the new legislation.

The longer residential orders will undoubtedly place some pressure on the numbers of beds available for young people in secure residential facilities, which may in turn lead to an increase in both the numbers of young people detained in police custody and the duration of stays in police cells.

This indeed appears to be occurring. In correspondence to ACYA dated 10 November 2010, the Principal Youth Court Judge has stated:

"There is also renewed pressure on CYF residential bed space and Police cell numbers are again on the rise. This is of significant and enduring concern. I had thought that the situation was largely under control and that Police cell numbers had dropped to an acceptable level. But the trends do not look encouraging. There are

¹⁷ *Children and Youth Aotearoa 2010*, p 25, paragraph 6.35

¹⁸ Reported in *Court in the Act: Newsletter of the Youth Court of New Zealand*, Issue No 50, November 2010, page 2

*complex reasons behind this apparently, but I am optimistic the problem can be cured by administrative solutions.*¹⁹

Recommendations

We therefore recommend that the Committee make the following inquiries of the New Zealand Government:

- In light of renewed pressure on beds available in secure residential facilities, what measures has the New Zealand Government taken, or intends to take, to ensure that numbers of young people detained for lengthy periods in police cells do not rise?
- As part of any measures to reduce the numbers of young people subject to police cell detention, does the New Zealand Government intend to introduce any legislation to prohibit the long-term (over 24 hours) detention of young people in police cells? If not, why not?

In addition, the Court of Appeal has recently ruled in *Pouwhare v Queen*²⁰ that the specific youth justice sentencing principles under s208 of the Children, Young Persons and their Families Act 1989, do not apply to any young person being sentenced in the District or High Courts after transfer from the Youth Court under s283(o) of that Act. Instead, the young person will be subject to the Court's general sentencing obligations under the Sentencing Act 2002. The judgment has implications as to New Zealand's obligations under Article 40.3 of the Convention. The Committee may therefore wish to make the following inquiry of the New Zealand Government:

- In light of the recent Court of Appeal decision that the sentencing principles of the youth justice system do not apply to young people sentenced in District or High Courts, what measures does the Government intend to take to ensure that it is meeting its obligations under Article 40.3 to promote the establishment of specialised laws and procedures for children recognised to have infringed the penal law?

3. Review of Special Education

On 20 October 2010, the Government released its report following the Ministerial Review of Special Education (see paragraph 7.15 of *Children and Youth Aotearoa 2010*). The changes proposed are not radical and can be seen as more of a realignment, or enhancement, of the present system. Positive proposals include:

- Additional funding is being made available to expand the programme of funding available to students verified as having High or Very High Needs under the Ongoing Reviewable Resource Scheme (ORRS)²¹.
- Direction of new funding for an additional 1000 students aged between 5 and 8 who require individual support upon entry to school²².

The Cabinet Paper setting out the proposed changes notes that the proposals will contribute to New Zealand's commitments under the UN Convention on the Rights of Persons with Disabilities²³.

However, despite the expansion of ORRS funding, the Review does not address the circumstances of students with moderate special educational needs, particularly those students with behavioural disorders. As noted in *Children and Youth Aotearoa 2010*, approximately 40% of students subject to exclusion from New Zealand state schools had identified special educational needs²⁴.

The Committee therefore may wish to make the following inquiries of the New Zealand Government:

¹⁹ Principal Youth Court Judge A J Becroft, letter to ACYA, 10 November 2010

²⁰ [2010] NZCA 268

²¹ Cabinet Paper, page 2, paragraph 7, accessed <http://www.minedu.govt.nz/NZEducation/EducationPolicies/SpecialEducation.aspx>

²² Ibid

²³ Ibid page 8 paragraph 43

²⁴ *Children and Youth Aotearoa 2010*, page 30, paragraph 7.16

- What measures does the New Zealand Government intend to take to reduce the numbers of students with special educational needs from being excluded from school?
- What additional measures, if any, does the New Zealand Government intend to take to ensure that students with special education needs who do not qualify for individual resource assistance, are provided with appropriate support at school?

John Hancock
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