



11 May 2010

The Chair
Social Services Select Committee
Parliament Buildings
P O Box 18041
Wellington 6160

SOCIAL ASSISTANCE (FUTURE FOCUS) BILL 2010

1. This submission is made by the Legislation Advisory Committee (LAC).
2. The LAC was established to provide advice to the Government on good legislative practice, legislative proposals, and public law issues. The LAC has produced and updates the Legislation Advisory Committee Guidelines: Guidelines on the Process and Content of Legislation (LAC Guidelines) as appropriate benchmarks for legislation. The LAC Guidelines have been adopted by Cabinet.
3. The terms of reference of the LAC include:
 - (a) to scrutinise and make submissions to the appropriate body on aspects of Bills introduced into Parliament that affect public law or raise public law issues:
 - (b) to help improve the quality of law-making by attempting to ensure that legislation gives clear effect to government policy, ensuring that legislative proposals conform with the LAC Guidelines, and discouraging the promotion of unnecessary legislation.

Defects of the Principal Act

4. The LAC has considered the Social Assistance (Future Focus) Bill 2010. It wishes to draw to the attention of the Select Committee the problematic character of the Social Security Act 1964, which the Bill in front of the Committee amends.
5. The Social Security Act has been amended on a large number of occasions. As a consequence it is difficult to understand. It is not accessible either to those whom it applies or those who are charged with administering it. Indeed it is one of the worst statutes on the books in New Zealand. The many amendments in the Bill before the Select Committee merely compound this issue.

6. This Act is in need of a complete rewrite in order to create a coherent, comprehensible and straightforward framework. Indeed, observations to this effect have been made in the Supreme Court.
7. We draw the attention of the Committee to the general principle that it is desirable that primary legislation be as specific as possible and makes it as clear as possible what people are entitled to.
8. Social welfare legislation deals with matters of the most fundamental importance in society. Whether the state provides support to its citizens, the form in which that support is provided, the extent of that support, the conditions on which it is provided, and the reciprocal obligations to be borne by citizens who receive it are issues that lie at the heart of the nation. These are questions that involve ethical, moral, and political judgments. They are about the quality of life itself, human dignity, self-reliance. They also involve decisions on the allocation of enormous resources.
9. These are questions of such critical importance as to be decided only by the democratically elected representatives of the people entrusted with responsibility for making those decisions on their behalf. The impact of the legislation is pervasive. It is probably fair to say that the areas of greatest concern and anxiety within most modern liberal democracies are about social services and support, health, education and security. The consideration that the legislative regime that defines and delivers state support requires constant change is a reflection of constantly changing values about what state support should be provided and how. This is both healthy and inevitable.
10. Individuals who receive income support, just like everyone else, need to be able to plan and organise their lives. Individuals who rely on such benefits and the people who advise them need to be able to look to the legislation to discover their entitlement. They must be able to rely on the information they find there. If changes to the legislation can be easily made that reliance is insecure. Change by regulation is liable to that vice. Changes to such entitlements should be the subject of Parliamentary scrutiny and control. Ease of change is not always in the citizen's interest.
11. For this important area of law to be predictable and certain, it is not enough for Parliament to indicate broad criteria and leave it to the executive to decide appropriate amounts and criteria for eligibility. Some flexibility may be appropriate for emergency relief because it will be difficult to foresee all possibilities. But here again it is difficult to see justification for the statute avoiding a reasonable level of specificity: the sums of money involved are not small.
12. The second reason for the Committee's view that delegated legislation is largely inappropriate in this field is that there is an increasingly well established tendency in New Zealand to spell out legal entitlements to benefits in primary legislation. To include as much as possible of the policy in this area in primary legislation best accords with this trend.

13. The Elizabethan poor law, itself a consolidating measure, dates back to 1601. It is remarkable in that, even now, it seems to be an excellent example of legislation that is clear and certain in its application. The same can be said of the Old Age Pensions Act 1898, which was New Zealand's first foray into this area. The passage of the Accident Compensation Act, in its first iteration in 1972 and indeed in all its later iterations, highlighted the need to be clear and specific with legislation that provides benefit entitlements. It would be undesirable to make the contrast between benefits under Accident Compensation and benefits under the Social Security Act spelt out in considerable detail in one instance, but not in the other. New Zealand has enacted several Accident Compensation Acts each one replacing an earlier statute. It ought to be possible to replace the Social Security Act at least once with a modern and accessible statute.

Delegation of legislative power

14. Clause 37 of the Bill provides for the introduction of new section 132K of the Social Security Act which enables regulations to be made relating to the advance payment of benefit payments. The regulations may include the manner and form of an application for advance payments, authorising the chief executive to require a beneficiary who applies for an advance payment to undertake a budgeting activity of a kind specified in regulations and prescribing the circumstances when this may be exercised, and specifying the budgeting activities, as well as other matters.
15. This provision does limit the regulations to a relatively specific and technical matter – advance payments of benefits. It is clear that specifying the types of budgeting activities and the manner and form of an application for advance payments are appropriate matters for regulations because they are relatively technical and lower order matters.
16. However, authorising the chief executive to require a beneficiary who applies for an advance payment to undertake a budgeting activity is introducing a new public power that affects individual rights and entitlements by regulations. This would allow flexibility, but it may be more appropriate for such a provision, which could have a significant impact on the financial circumstances of individuals, to be included in primary legislation.
17. The Committee wishes to be heard in support of its submission.



Sir Geoffrey Palmer
Chairman, Legislation Advisory Committee