Social Security Act

Rewrite Legislation Bill 2016

Supplementary Submissions

On behalf of the

Grandparents Raising Grandchildren Trust New Zealand

Te Tautoko i nga Mätua Tupuna, me nga Mokopuna.
Te Ao mai rano, aianei, a muri ake nei.
Supporting grandparents and grandchildren.
Our past, present and future

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18 July, 2016

Secretariat
Social Services Committee
Select Committee Services
Parliament Buildings
Wellington 6160

VIA Email to: Charlie.Mclean@parliament.govt.nz

Dear Committee Members

Social Security Act Rewrite Legislation Bill 2016

1. Thank you for the opportunity to make these **supplementary** submissions further to our main submissions on this Bill dated 22 June 2016, on behalf of the Grandparents Raising Grandchildren Trust (GRG) and its members.

2. These supplementary submissions focus on the operation of proposed Section 42 which replaces Section 28 and 29 of the Social Security Act 1964. Additionally, an amendment to the numbering of sub-sections to our proposed new wording for section 43 is referred to in paragraph 15 below.

3. In particular, Section 42 (1) states:

> **42 Supported child's payment: requirements**
> (1) This section applies if a child has no parent who is **willing and able** to—
> (a) **care for the child; or**
> (b) **provide fully for the child's support.**

4. The wording of proposed section 42 (1) and the highlighted words "willing and able" compares to the relevant text in section 29 which states:

> **29 Unsupported child's benefit**
> A person who is a principal caregiver in respect of a dependent child shall be entitled to receive an unsupported child's benefit in respect of the child if—
> (a) that person is not the natural parent, adoptive parent, or step-parent of the child; and
> (b) **because of a breakdown in the child's family,** no natural parent, adoptive parent, or step-parent of the child **is able to care for the child or to provide fully for the child's support; …**

5. Our main submission supports the decision to remove the "family breakdown" test because of our experience of the serious hardship and injustices too many applicants have faced following Work and Income's wrong assessments as to whether there has been a family breakdown.

6. The focus of section 29's family breakdown test is to ascertain whether *"the breakdown of a child's family involves the failure or collapse of the normal family dynamic which results in both parents being unable to fulfil the role of parent to their child."*[1]

7. This assessment takes what ought to be an objective view of the family dynamics as a whole to assess whether the parents are able to fulfil their parental obligations or not. For a variety of reasons, the application of this test in practice was problematic – particularly when the family dynamics often involved parents in disputes with the children's caregivers in the Family Court over the ongoing care arrangements, or where grandparent caregivers were reluctant to fully explain the extent of the family breakdown for fear of CYF involvement and a desire to eventually see the parents being able to resume care. In many cases, even where there were clear care and protection issues involved for the children, Work and Income staff readily accepted the parents' versions and ignored parenting and guardianship orders in existence that countered them.

8. It is accepted that there will always be instances where decisions are made in error that will have negative consequences for applicants affecting the children in their care. However, our concern is that there is a potentially new risk of that occurring more frequently with the wording of proposed new section 42 (1).

9. Compared to section 29, proposed section 42(1) now focuses the assessment on whether a parent is "willing and able" to care for the child OR provide fully for the child's support. On the face of it, this might appear quite straightforward, however from our perspective, there are a number of foreseeable problems with the assessment

[1] Social Security Appeals Authority, refer to: An appeal against a decision of the Benefits Review Committee [2012] NZSSAA 103 (20 December 2012)

of a parent's willingness and ability to care for a child or provide fully for the support of a child in practice. The most important of which is to question what standards will be applied to a parent's ability to fulfil what are a parent's obligations.

10. Furthermore, the requirement in section 42(1) to be willing and able to care for a child is not dependent upon their ability to also provide fully for the child. It is an either or proposition.

11. We recognise that this either/or proposition, as opposed to the requirement that the parent be both willing and able to care for **AND** provide fully for the child may be necessary to ensure that applicants who enter into convenient family arrangements for the care of children cannot access Supported Child Payments when they are in a position to care for the child but not provide fully for them and vice versa.

12. But in the absence of any minimum standard upon which to consider a parent's ability to care for OR provide fully for the child there is a risk that a parent may well make out to an assessor that they are "willing and able" to care for the child but because of their dubious or dangerous life choices continue to put the child at serious risk.

13. This risk where Work and Income staff and/or assessors too readily accept a parent's statements already happens in family meetings when assessing whether there has been a family breakdown or not. In our experience parents who are reliant on income support (e.g. Sole Parent Support) will often overstate their ability to parent the child who is in grandparent care in an effort to access more money to fund their lifestyle – which often involves a drug habit.

14. The Vulnerable Children Act 2014 requires every prescribed State Service to adopt a child protection policy. The Ministry for Social Development as the Ministry responsible for the implementation of the Social Security legislation is a prescribed State Service.

15. Our concern therefore is the recommendation that if section 42 is enacted as currently worded, this risk needs to be mitigated by:

(a) Strong recommendations from the Committee for the adoption of policy guidelines for Work and Income staff making assessments to comply with the Ministry for Social Development's adopted child protection policies, and particularly to consider the welfare and best interests of the child and the findings of the Family Court as to the status of care and who is legally entitled to care of a child when making assessments on applications for the Supported Child Payment. This needs to be supported by comprehensive training of front line staff and managers making these assessments.

AND

(b) The adoption of our proposed amendments to section 43 and the reduction of the 12-month likelihood of care rule in certain circumstances. See paragraph 2.32 of our main submissions. This is further supported by the fact that in cases where parenting and guardianship orders exist, a court has clearly made a determination as to what care arrangements are in the best interests of a child. Furthermore in accordance with the amendments to the Children Young Persons and Their Families Act 1989 (CYPFA) which took effect on 1 July 2016 per the Vulnerable Children Act 2014, all caregivers who have parenting orders made under section 48 of the Care of Children Act 2004 are deemed to be "permanent caregivers" under the CYPFA and therefore ought to be recognised in applications for the Supported Child Payment.

16. We therefore submit that sections 42 and 43 should read as follows: (Please note a correction to our main submissions to the wording of section 43, which should have stated the alternatives to section 43(c) as separate sub-sections (d), (e) and (f) instead of as sub-sections 43(c) (i), (ii) and (iii).

42 Supported child's payment: requirements

(1) This section applies if a child has no parent who is willing and able to—
  (a) care for the child; or
  (b) provide fully for the child's support.

(2) A person (P) is entitled to a supported child's payment for the child if—
  (a) P is an eligible caregiver of the child; and
  (b) either—
    (i) the child is both resident and present in New Zealand; or
    (ii) P has been both resident and present in New Zealand for a continuous period of 12 months at any time.

43 Who is eligible caregiver

A person (**P**) is an eligible caregiver if P is—

(a) aged 18 years or over; and

(b) not a parent of the child; and

(c) **likely to be the principal caregiver** of the child **for at least 1 year** from the date of application for the supported child's payment; or

(d) *is the principal caregiver in accordance with a Family (or High) Court order (including an interim order); or*

(e) *has agreed to become the principal caregiver following the exercise of any powers, duties or obligations conferred on the Chief Executive (or its representative) in accordance with the Children Young Persons and Their Families Act 1989;* or

(f) *is the principal caregiver while the child's parent or parents are serving a prison sentence or in prison on remand for a period exceeding four weeks*.

17. We respectfully seek the Committee's support for our proposals and recommendations for amendment to this proposed new legislation.

18. If the Committee requires any further information or clarification, please do not hesitate to contact **Kate Bundle** on the contact details below.

Yours sincerely,

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