



28 September 2016

Submission to the Parliament on the Social Security (Stopping Benefit Payments for Offenders who Repeatedly Fail to Comply with Community Sentences) Amendment Bill.

## **Introduction**

1. This submission has been prepared by the Wellington Community Justice Project.
2. The Wellington Community Justice Project (WCJP) ([www.wellingtoncjp.org](http://www.wellingtoncjp.org)) is a student-led organisation at Victoria University of Wellington. The project, formed in 2010, has twin aims: to improve access to justice and legal services in the community; and to provide law students with an opportunity to gain practical experience. It pursues these goals by establishing community-based volunteer projects and working with other organisations that have similar goals.
3. The research for this submission was carried out by students Kate Slater (LLB/ BA), Georgia Kathleen Eva Petry (LLB/BA) and Peter Grierson (LLB/BA) as part of volunteer work for the project.

## *I Introduction*

1. This submission concerns the Social Security (Stopping Benefit Payments for Offenders who Repeatedly Fail to Comply with Community Sentences) Amendment Bill 2016.
2. On the whole, the Wellington Community Justice Project (WCJP) agrees with the purpose of this Bill. Indeed, as the explanatory note illustrates, offering an alternative management tool to the Department of Corrections would mean that offenders can avoid further criminal prosecution and that this would hopefully ease the burden on our courts.<sup>1</sup>
3. That being said, the WCJP believes there should be some amendments made to further improve this Bill and ensure it successfully upholds its specified purpose.

## *II Constancy with the Social Security Act*

4. This amendment is consistent with the overall purpose of Social Security Act. Since the introduction of this Act, there has always been qualifying factors placed on beneficiaries. In establishing the reasoning for social security and its qualifications it is essential to look at the purpose of the legislation.
5. The purpose of the Act is to:

“... provide for the payment of superannuation benefits and of other benefits destined to safeguard the people of NZ from disabilities arising from age, sickness, widowhood, orphanhood, unemployment or other exceptional conditions; to provide a system whereby medical and hospital treatment will be made available to persons requiring such treatment and further, to provide such other benefits as may be necessary to maintain and promote the health and general welfare of the community.”<sup>2</sup>

This purpose sets the wide goal of “general welfare within the community” through providing assistance to all those who could meet the required eligibility criteria. As society evolved so has

---

<sup>1</sup> Social Security (Stopping Benefit Payments for Offenders who Repeatedly Fail to Comply with Community Sentences) Amendment Bill 2016 (92-1)

<sup>2</sup> Social Security Act 1938, Long title.

social security, with changes reflecting the values of the current government in power.<sup>3</sup> The various reforms appear to implement a flexible system that allows benefits to be granted whilst reflecting the principles and purpose of the act.

6. The current focus of the Social Security Act is also outlined in sections 1B and B with the purpose of motivating individuals to seek self-reliance through moving from state dependence to independence.<sup>4</sup>

7. This Bill is therefore consistent with the general policy of motivating beneficiaries to comply with community based sentences, which is promotion of societal values.

8. The WCJP also supports the logical and plain structure of the proposed amendment, which will ensure that beneficiaries understand the obligations they are under. Sections 182-186 set out very clear sets of instructions and obligations on both the beneficiary and the Department of Corrections,<sup>5</sup> putting in place a reasonable timeframe and warning system as well. This is still well within the purpose of the Social Security Act that a reduction will be in place until the beneficiary complies with the terms of the community sentence.<sup>6</sup>

### *III Effectiveness*

9. The WCJP agrees that this Bill will increase the effectiveness of the Department of Corrections to enforce community services. Giving the Department of Corrections the ability to instruct the deduction of benefits of repeated offenders, would decrease pressure on an already burdened judicial system.

10. This does not overwhelm the role of a correctional officer since the simplistic wording of the amendment, and the insurance that both corrections officers and beneficiaries will know the procedure will decrease the amount of administrative work officers need to do and thus increase their effectiveness through giving them another tool to do their job.

---

<sup>3</sup> The National Government Reform, 2008.

<sup>4</sup> Ibid.

<sup>5</sup> Social Security Amendment Act 2016 (92-1), X.

<sup>6</sup> Social Security Act 1938, s183(2).

11. It has been repeatedly stressed that the sanction under section X will only be used as a method of last resort where all other options except prosecution have been exhausted. Within this context of an absolute last resort, the WCJP agrees that the apparent benefits are the avoidance of a lengthy court proceeding and the increased efficiency with regards the role of a correctional officer.

13. However, the social contract between the government and social benefit beneficiaries should be a mutual obligation. One apparent deficiency within the Bill is the lack of recourse that is available to beneficiaries to appeal decisions made by the Corrections Department. As such, the WCJP calls for an appeal framework to be put in place so as to provide beneficiaries with a transparent avenue of recourse.

#### *IV Removal of Offender's Benefit*

14. This Bill proposes two warnings for non-compliance before the removal of an offender's benefit.

15. There is no avenue for appeal during these warnings, and the benefit is only reinstated once the offender complies once again. With no avenue for appeal, this could mean that offenders who are unable to comply with their community service obligations for legitimate reasons will have their benefit removed. This then becomes a solution that does not remedy the actual problem, it also fails to investigate the issues or obstacles present in the way of complying.

16. MP Mark Mitchell (Mr. Mitchell) mentioned that while there was no avenue of appeal, the two warnings are sufficient notice and the affected beneficiary may bring judicial review proceedings in respect of the department's decision. This seems largely reactive by nature as it only attempts to remedy the problem after the benefit has been removed. Providing an appeal option would allow the beneficiary to explain why they are unable to comply, thus creating an opportunity to remedy the issue of non-compliance before the benefit is being removed.

17. As discussed in the first reading, the moving of reporting point for people on community sentences from Nelson to Richmond resulted in a spike of non-compliance as many Nelson residents were unable to find transport for the 20 kilometre journey. This is because the Department

of Corrections have ceased providing transport for people with community service obligations. Had the proposed Bill been enacted before April this year, many Nelson offenders would have lost their benefits due to reasons beyond their control.<sup>7</sup>

18. Although beneficiaries have a responsibility to behave as they are being funded by taxpayers, the government should also be ensuring that it facilitates and encourage beneficiaries to behave and comply with their service – failing to do this would be breaking their side of the ‘social contract.’ For example, in situations where offenders cannot comply with community service for reasons such as transport, the onus should be on the government to provide adequate transport alternatives to ensure that offenders are able to comply with their community service.

19. Another solution suggested in the first reading, was to employ more supervisors to monitor, encourage and ensure that offenders show up to comply with their community service.<sup>8</sup>

20. The WCJP agrees on this point since this Bill should not be a replacement for parole supervisors or act as the only incentive needed to ensure compliance. The number of people who complies fully with their community service obligation is well below 50 percent. If this Bill gets passed, the government should also look to expanding the pool of parole supervisors so as to increase our low compliance rate with relations to community service obligations.<sup>9</sup>

## *V Disproportionate Discriminations*

21. While the WCJP supports the use of alternative measures to enforce compliance with sentences, it is imperative that these measures be equitable.

22. This bill exclusively targets offenders on benefits. Employment status, and specifically being the recipient of a benefit, is included as a prohibited ground of discrimination in s21(1)(k)(ii) of the Human Rights Act 1993. Freedom from such discrimination is protected under s19 of the New Zealand Bill of Rights Act 1990 (BORA). Furthermore, this targeted legislation contradicts the principle of equality before the law which is fundamental to our democracy. It creates a perception

---

<sup>7</sup> (10 August 2016) 716 NZPD

<sup>8</sup> (10 August 2016) 716 NZPD

<sup>9</sup> (10 August 2016) 716 NZPD

that the law is tougher on beneficiaries as those who are in paid employment will not lose income if they fail to comply.

23. This issue was recognised in the Attorney General’s report on the bill, which identified a prima facie breach of section 19 of BORA.<sup>10</sup> The report concluded that the breach fell within section 5 of BORA, which allows such limits on rights “as can be demonstrably justified in a free and democratic society”.<sup>11</sup>

24. Although there was inadequate reasoning given, the WCJP supports this conclusion but expresses serious concern with the apparent lack of consideration for other options or partner measures that could mitigate the rights breach and avoid negative perceptions of the law. In particular, the WCJP considers the argument that the welfare system is by definition discriminatory, do not excuse the use of similarly discriminatory sanctions to resolve a corrections problem.

25. As has been discussed there is clearly a need for measures with the effect that this bill aims to have, but it is important not to compromise basic rights and values in the process. The WCJP submits that the government should focus on alternative measures that would equally affect all non-compliant offenders rather than targeting those on benefits.

## *VI Impact on Dependants*

26. In determining a sentence, the Courts take into account the offenders economic circumstances, particularly in imposing community-based sentences.<sup>12</sup> The Courts will often give a community-based sentence where another sentence (such as a fine) could detrimentally impact the offender’s ability to provide for dependants, particularly children.

27. While this bill provides that If the offender were caring for a dependent child, their benefit could not be cut by more than 50 percent, this is insufficient to prevent the terms of the bill, stopping a benefit, from causing collateral harm to families of the offenders. The bill has been characterised as

---

<sup>10</sup> Christopher Finlayson, *Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Social Security Legislation Rewrite Bill* (Office of the Attorney-General, 2016).

<sup>11</sup> Bill of Rights Act 1990.

<sup>12</sup> Sentencing Act 2002 ss 8(h) and (i), 14(1), and 15(1)(b).

“using the stick”,<sup>13</sup> and this can be justified with respect to noncompliant offenders themselves, the harm to dependants as a result cannot be justified. A dependent child cannot control whether their parent, who’s benefit puts food on the table, complies with their sentence, yet they will suffer when that benefit is reduced or stopped altogether.

28. The WCJP submits that the protection currently in the bill – the 50% reduction cap, is inadequate in this respect.

## *VII Conclusion*

29. Overall, the WCJP supports the Social Security (Stopping Benefit Payments for Offenders who Repeatedly Fail to Comply with Community Sentences) Amendment Bill. There are a few aspects of the proposed Bill which are concerning, for which we have made relevant recommendations.

---

<sup>13</sup> Carmel, Sepuloni, (10 August 2016) 716 NZPD.