



IHC submission: Social Security Legislation Rewrite Bill 2016

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**Trish Grant
Director of Advocacy
IHC New Zealand Inc
PO Box 4155
Wellington**

Tel: 04 472 2247

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1. Key points and recommendations

IHC makes the following summary points in relation to the Social Security Legislation Rewrite Bill

- We support a rewrite of the legislation to make it easier to understand and use
- We have continued serious concerns about the narrow approach of the welfare reform's investment approach and this being entrenched in the rewrite of Social Security legislation.
- Legislation, policy and practices need to better reflect the reality and complexity of people's lives.
- There needs to be better recognition that intellectual disability is life-long and support should be provided in ways that are respectful and value everyone's lives and contributions.
- Across government alignment and working with people with disabilities and their families and whanau and communities are of critical importance in the achievement of connected and cohesive supports and systems.

IHC recommends

- That the phrase "welfare dependency" be removed from Principle 2(e) and the wording be changed to better convey the obligation to provide appropriate supports and services for all in order to enhance wellbeing and find and sustain work.
- That a broader social investment approach be embedded in the Bill to support policy and practices that enable the realisation of people's rights to support for an adequate standard of living and for work.
- That MSD's efforts to address barriers to taking up more hours of paid work and improve the responsiveness and efficiency of services and systems be extended to investigate options such as a universal income exemption for people on the SLP and/or increasing the amount that people can earn before abatement rates start.
- That increased efforts be made to get better across government working and alignment and in working collaboratively with disabled people and their families and whanau, communities and service providers.

2. About IHC

IHC was founded in 1949 by a group of parents who wanted equal treatment from the education and health systems for their children with intellectual disability. The IHC of today is still striving for these same rights and is committed to advocating for the rights, welfare and inclusion of all people with an intellectual disability. We support people with intellectual disability to lead satisfying lives and have a genuine place in the community.

Through our charitable arm IHC raises awareness and advocates for the rights of over 50,000 people with intellectual disability at both a national and an international level. This includes an extensive advocacy programme, a one to one volunteer programme and the country's largest specialist intellectual disability library.

We support around 6,000 people with intellectual disability in IDEA services (IHC's service arm) that include residential care, supported living, home support,

employment and community participation and inclusion, support for families, specialist services, autism spectrum disorder (ASD) services, and through Accessible Properties (a subsidiary company of IHC) are New Zealand's largest non-government social housing provider.

3. Introduction

IHC welcomes the opportunity to submit on the Social Security Legislation rewrite Bill. The Bill repeals and replaces the Social Security Act 1964 and the Social Welfare (Reciprocity Agreements, and the New Zealand Artificial Limb Service Act) 1990 and proposes three new Acts – Social Security Act 2016, Residential Care and Disability Support Services Act 2016 and the Artificial Limb Service Act.

The stated purpose of the Bill is to make the legislation easier to use by enhancing clarity, coherency, and consistency. The Bill is presented as a tidy up that is essentially a rewrite with a small number of changes to support an investment approach and improve service delivery.

Our submission outlines IHC's support for the intent of the Bill to achieve an improved legislative structure and our concerns about some aspects of the investment approach that are reflected in the proposed changes. We highlight critical issues for people with intellectual disability and their families and whanau and make a number of recommendations for legislative, policy and practices that enable an effective and efficient social security system.

4. Overall response

IHC is supportive of a rewrite of the Social Security Act 1964 to improve clarity, coherency and consistency. The Act in its present form is hard to understand and use not only for Work and Income staff but for clients and their families. There is much to be gained from improvements that enable access to clear information and timely, efficient and effective processes and responses.

While primarily a rewrite to clarify and simplify there are "some policy changes to enable improvements to frontline practices and to align with modern service delivery". These include changes to support the government investment approach as a key feature of welfare reforms. This approach "applies a long-term liability perspective to the cost of the benefit system. It takes a systemic approach to investing in support and services where they will make the biggest difference to improve client outcomes and the overall liability"¹.

Since the introduction of the welfare reform agenda IHC has expressed strong concerns about the direction that some aspects of legislation, policy and practices have taken that have eroded our social security system and made it less 'social' and less 'secure'. We reiterate those strong concerns with regard to the entrenching of a narrow investment approach in the proposed changes in the Bill.

Our social security system should ensure that everyone gets the support they need to live good lives and reflect the values of interdependence, social cohesiveness and the common good. A critical component of an effective system is getting supports

¹ MSD regulatory statement, p.16

and services to those who need them in ways that result in improved outcomes. This entails decisions about the best use of resources and targeting. The problem with the narrow investment approach as currently articulated and applied is that it does not recognise or respond adequately to our interdependence or the reality and complexity of people's lives. The "unrelenting focus on work" and silences on the right to an adequate standard of living send messages of unequal valuing of citizens and their contributions. Far from the modernising that is sought there is potential to increase individual blame and stigma and hark back to the days of a charity model that creates categories of deserving and undeserving poor.

IHC welcomes the openness to trialling new approaches that has been signalled as a key component of supporting an investment approach. To maximise the potential benefits we hope that the results are fully reported on and available for independent public scrutiny. This applies equally to evaluations of the overall impact of the welfare reforms so that they are not dominated by targets such as the Public Service goal of a 25% reduction in benefit numbers without regard to the sustainability and quality of outcomes for wellbeing and work.

5. Social security and social investment

5.1 Principles

The Bill claims that "more support for investing in long-term outcomes for people needing or receiving financial assistance through the social security system has been added to the principles section." The rhetoric, however, is not matched by the reality as reflected in the principles or provisions of the Bill or indeed by the experiences of many in their interactions with Work and Income's administration of the Act.

Principle 2(e) speaks to helping "achieve the best possible outcome for people at risk of long-term welfare dependency (as defined in Schedule 2), MSD may identify appropriate assistance, support, and services, under this Act, for those people". The Bill does not recognise our interdependence or equally value the lives of all citizens. The labelling of people as being at risk of "welfare dependency" may, but not necessarily, open up opportunities for additional supports. Under current practices it may also result in increased control by and punitive sanctions from MSD for "those people" in ways that are detrimental to wellbeing.

People with intellectual disability are already subject to a multitude of labels that have been imposed on them by others, many of which position them as 'outsiders', 'a burden' 'tragic victims' or living a life that is 'not equally valued'. The addition of 'long term welfare dependent' will add yet another label and stigmatising term.

By definition intellectual disability is life-long as is the need for support to enable participation and inclusion. Nearly 98% of people supported by IDEA (IHC's service arm) who live in Ministry of Health funded residential care receive the full Supported Living Payment (SLP). The remaining small percent receive either a reduced SLP or are not on the SLP, mainly due to working and earning above the threshold allowable to receive the full benefit. Similar figures would be found for people living more independently, who live with their family or are supported by other service providers.

We repeat our concerns about embedding and entrenching the narrow investment approach of the welfare reforms. The government's use of 'big data' to profile and target raises questions about the ethics and effectiveness of this approach. While

there is a need for good data to inform decision making, policy and planning its use as the dominant driver is a blunt instrument. Treasury has recognised that making such linkages does not truly identify causes.

The wording of Principle 2(e) also begs the question – should not MSD be identifying and providing appropriate support, and services, to all people in order to achieve positive long term outcomes? The principles should reflect and embed that everyone is entitled to the support they need to live good lives in ways that enhance wellbeing.

IHC recommends that the phrase “welfare dependency” be removed from Principle 2(e) and the wording be changed to better convey the obligation to provide appropriate supports and services for all in order to enhance wellbeing and find and sustain work.

5.2 Getting the right social investment approach

While there have been significant advances in the lives of people with intellectual disability and their families and whanau in New Zealand discrimination and persistent disadvantages and disparities continue to be experienced. People with intellectual disability have significantly poorer health, education, social and economic outcomes than the general population. Too often they struggle to get equal access to opportunities and are unable to achieve the day-to-day rights of citizenship.

The underpinnings of a fair and effective social investment approach and social security system lie in valuing all citizens and enhancing wellbeing. These are reflected in the international conventions and treaties to which New Zealand is a signatory such as the United Nations *Declaration of Human Rights*, the *Covenant of Social and Economic Rights* and *Convention on the Rights of Persons with Disabilities* (CRPD). They are echoed in New Zealand law, strategies and policies such as the Bill of Rights Act, the Human Rights Act, and the New Zealand Disability Strategy. Central to an effective social investment approach is the promotion, safeguarding and realisation of rights to an adequate standard of living, social protections and to the provision of reasonable accommodations.

The rewrite bill is out of balance in reflecting a ‘real’ social investment approach and outlining MSD’s obligations to fully inform people of their entitlements and obligations, review and appeal procedures and to understand person’s situations in order to work with them to provide the assistance needed. This is illustrated in the weighting of obligations ascribed to individuals and those to MSD. Around 70 sections set out beneficiary obligations compared with just two that set out MSD obligations.

There are some particular issues for people with intellectual disability and their families that include providing information in accessible formats, taking the time to know and understand the person and their situation and ensuring support for decision making. This typically will involve families and others in support and advocacy roles in the person’s life who may also be the person’s agent being fully informed so that individuals are able to exercise their right to equal recognition before the law (CRPD Article 12).

People with intellectual disability want to work but have among the lowest participation rates in the workforce of any population group in New Zealand. The message given by the “unrelenting focus on work” to get people off benefits is that

not all contributions or types and amount of work are equally valued. People are placed in silos of those who:

- Can work more or less than 15 hours a week
- Are considered to have the capacity to work or who are permanently unable to work
- Are in the highly valued group of those who will have the most effort put in by MSD as they will get sufficient paid employment to no longer need a benefit.

Nearly three quarter of people in paid work who use IDEA Services are working less than 15 hours per week.

While people with intellectual disability on the SLP are exempt from many of the obligations imposed on other beneficiaries there are problems and dangers in the terms used such as permanently unable. Assumptions may be made that do not reflect people's aspirations, abilities, capacity and actions taken that close down opportunities for people to contribute and work. Conversely when people do not get the support they need to succeed or flexible responses to individual circumstances or are forced to take up unsuitable work failure experiences are built up in ways that are detrimental to wellbeing and the achievement positive outcomes.

IHC recommends that a broader social investment approach be embedded in the Bill to support policy and practices that enable the realisation of people's rights to support for an adequate standard of living and for work.

5.3 Improving Work and Income responsiveness and addressing inefficiencies

We acknowledge that MSD are taking steps towards a needed cultural change for Work and Income and building staff capacity and capability. A shift needs to occur from Work and Income doing things to people to working with people. There is a long way to go, however, and occurs against a history of negative experiences with Work and Income (or "WINZ" as the term a lot of people still use). The very thought of having to deal with Work and Income can cause fear and raise anxiety levels.

Work and Income has obligations to ensure people are receiving their full and correct entitlements, help people find jobs and efficiently administer benefit processes. This does not always happen. We hear about situations where Work and Income staff have not got accurate information because they have not asked questions in a way that the person can understand, have not recorded changes in income that individuals have provided and as a result not correctly adjusted abatement rates and have questioned whether someone has an intellectual disability because they have achieved success.

Already people with intellectual disability and their families/whanau are subject to multiple assessments and have to justify their interdependence in ways that the non-disabled and their families/whanau and non-beneficiaries do not have to. A better understanding of the social model and the person-environment interaction is required and of its application to assessment and the provision of support. We continue to hear reports of misuses and abuses where intellectual functioning is reduced to single score on IQ test, or precision given to a number on a standardised test that doesn't take into account the standard error of measurement. Best practice requires that a person's adaptive functioning is assessed in the context of the demands of

different situations and environments and be given the heaviest weighting in determining the level and type of supports that are needed.

IHC applauds MSD's efforts to simplify processes to make their systems easier to use and access. Considerable efforts are going into developing on line mechanisms in 'My MSD'. This approach has the potential for increased efficiencies and opening up opportunities for people to have greater control but there are also dangers that people with intellectual disability will be left behind and not be able to take full advantage of the benefits on offer. Sometimes designs are too complex, aren't in an accessible format or are too expensive for those on a limited income. These are compounded by the difficulty in accessing Work and Income offices and being able to get the face-to-face support that may be needed.

Differing criteria for eligibility and income exemptions and use of terms such as 'severe disablement' create confusion and inefficiencies and increase administration and compliance costs. Section 66A of the Act has received consideration in the discussion around the rewrite of legislation, particularly with reference to the provisions for 'total blindness'. There have been small numbers of people with intellectual disability who have been granted at MSD's discretion a "special exemption" as an "incentive to personal effort to disregard all or part of the income any severely disabled person has derived from such effort". IHC's experience has been that Section 66A is not well understood or used by Work and Income staff and requires considerable persistence from individuals and their families and advocates in order to access the benefits provided. In summary the income exemptions are inequitable, inconsistently applied and administratively inefficient.

Tinkering with options in some of the ways suggested such as a shift from MSD discretion to a possible power the Government may grant the Ministry through an Order in Council (New Zealand Government, 2016, p. 213) will not address the fundamental problems or increase efficiency. Better solutions are to be found by investigating options such as a universal income exemption for everyone on the SLP or raising the amount of money that people can earn before abatement rates kick in.

One of the biggest barriers to people with intellectual disability taking up more hours of paid work is the fear that they will be worse off financially and lose their entitlement to the SLP. Adopting and implementing different options will address some of the barriers faced and fears people have and better respond to fluctuating income from part-time and casual work. IHC acknowledges the efforts of MSD to work with disabled people and their families and the sector to address barriers to work for people on the SLP and get more responsive supports and systems in place.

IHC recommends that MSD's efforts to address barriers to taking up more hours of paid work and improve the responsiveness and efficiency of services and systems be extended to investigate options such as a universal income exemption for people on the SLP and/or increasing the amount that people can earn before abatement rates start.

5.4 Alignment across government and working with communities

Our social security systems and supports for income and work are linked to and dependent on the work of other government agencies such as those dealing with health, education, children, young people and families, housing, employment and business. Getting cohesive, effective and efficient processes and responses to enable improved outcomes also requires government to work collaboratively with civil

society and community agencies in the design, planning, implementation and review of policies and practices.

There are a number of barriers that exist to getting a good alignment across policy and practices. This disconnect is clearly illustrated in initiatives and trials such as those for enhanced individualised funding, Choices in Community Living and Enabling Good Lives that aim to increase flexibility, choice, control and self-direction for people with disabilities and their families. The ability of such initiatives to achieve their intended outcomes have been limited by complex and disjointed rules and regulations, burdensome procedures and differing eligibility criteria that add more complexity and bureaucracy. The practicalities of what counts as income and people and their families employing support staff have yet to be adequately addressed.

Once again we recognise MSD's efforts to trial different ways of working and remove barriers to work for people with disabilities. To be successful these need to be undertaken in collaboration with disabled people and their families and service providers to genuinely co-design, implement and review. There is a need to move beyond a narrow focus on paid work in open employment to consider and adequately fund a wider range of ways for people to contribute through paid and unpaid work, in open employment, micro and social enterprises, cooperatives, self employment and volunteering. This also includes creating a wider range of pre-employment and internship opportunities for young people.

Recent research² has identified work environment-related factors in obtaining and maintaining work for people with intellectual disabilities. There include

- *Employers decisions and opinions* - concerns about safety, productivity and attendance which most employers concede can be mitigated by having the right support systems in place. Employers found employees with intellectual disability to be highly motivated and eager to learn and the culture in their businesses strengthened by dismantling of stereotypes and biases
- *Job content, requirements and performances* – there is a concentration of jobs in certain areas such as food and cleaning. While these are valuable jobs they don't necessarily represent the potential of employees or lead to career development. To address these issues training and support is essential for employers as well as employees.
- *Interaction and workplace culture* – these referred to interactions, inclusion, social support and participation that were identified as relevant aspects for obtaining and maintaining work. The best employers created opportunities for all employees to collaborate with each other, promoted flexible working arrangements, implemented diversity practices and team-building activities so social inclusion was nurtured.
- *Support by job coaches* – this covers the support provided by employment services and supported employment providers for employers and employees in finding and setting up work, structuring the work day, establishing routines, suggestions for adaptations and accommodations and education with co-workers on how best to communicate with colleagues. People in these roles also provided help with some of the difficulties that may arise such as not being able to read or write, interpersonal conflicts as a result of mis-reading social cues, or transport issues.

² J. Ellenkamp, E. Brouwers, P. Embregts, et al. (2016). Work environment-related factors in obtaining and maintaining work in a competitive employment setting for employees with intellectual disabilities: A systemic review. *Journal of Occupational Rehabilitation*, 26: 56-69.

IHC recommends that increased efforts be made to get better across government working and alignment and in working collaboratively with disabled people and their families and whanau, communities and service providers.

6. Conclusion

We thank you for taking the time to read our submission and consider our recommendations. We hope the Social Services Select Committee will take the opportunity of the rewrite to embed a broader social investment approach that enables fairer and more effective and efficient processes and responses.

IHC wishes to appear before the Committee to make an oral submission.

Bibliography

Alternative Welfare Working Group. (2010). *Justice for All*.

American Association on Intellectual and Developmental Disabilities. (2010). *Definition, Classification and Systems of Support (11th edition)*. Washington DC: American Association on Intellectual and Developmental Disabilities.

American Psychiatric Association. (2013). *Diagnostic and Statistical Manual of Mental Disorders*. 5th ed. Arlington, VA: American Psychiatric Association.

Ellenkamp, J. J., Brouwers, E.P., Embregts, P.J. et al. (2016). Work environment-related factors in obtaining and maintaining work in a competitive employment setting for employees with intellectual disabilities: A systemic review. *Journal of Occupational Rehabilitation*, 26: 56-69.

Hon Chris Finlayson (March 2016). *Report of the Attorney-General under the New Zealand Bill of Rights Act on the Social Security Rewrite Bill*.

New Zealand Government. (2016). *Social Security Legislation Rewrite Bill*.

Ministry of Social Development (25 May 2015). *Regulatory impact statement: Policy changes proposed as part of the Rewrite of the Social Security Act 1964*. Wellington: Author