

Social Security (Fraud Measures and Debt Recovery) Amendment Bill 98-1

Oral Submission from the National Council of Women of New Zealand (NCWNZ) to the Social Services Committee:

Chairperson: Peseta Sam Lotu-liga, National Maungakiekie

Deputy-Chairperson: Melissa Lee, National Party List

Members Present: Phil Heatley National Whangarei; Jan Logie Green List;

Sue Moroney Labour List; Alfred Ngaro National List; Rajen Prasad Labour List; Mike Sabin: National Northland;

Good morning, my name is Wendy Zemanek and my colleague is Helen Reilly. We are both members of the National Council of Women Parliamentary Watch Committee.

You will have noted in our submission the concern about:

a) taking into account the beneficiaries' financial circumstances and the impact that on-going benefit repayments would have on their ability to support themselves and any dependent children and

b) International Conventions (such as the international Covenant on Economic Social and Cultural Rights (ICESCR) and the Committee on the Rights of the Child (CRC) having regard to the adequacy of the beneficiary's standard of living and the impact that debt collection would have on it and their dependent children.

We are concerned that the bill does not mention these matters.

Our responses to this bill reflect the fact that many of our members are experienced in helping, counselling and supporting beneficiaries.

So the comments we are making today reflect those actual experiences. Several branches and other organisations affiliated to NCWNZ were able to discuss the likely impact of the bill because of the fact that there was plenty of time for consultation after the bill was produced.

These responses come from 196 women altogether.

*** In regard to making the partner liable for repayments, we asked our members:**

1) whether they thought the proposed changes would impact unfairly on women and their families;

2) to give reasons if they thought these proposed changes would have an impact on protecting women and their families and

3) how these changes would impact on women who receive a benefit.

The responses were overwhelmingly that there would be considerable fear, stress and anxiety if beneficiaries were being investigated, which would impact on their children's quality of life. There could be violence or harm to the woman and the children.

However, some responders noted that it cannot be assumed it is only women who are bringing up the children, or that the partner is of the opposite sex.

Many did not think the proposed changes would protect women and children, but it was agreed that information should be shared between government departments and possibly gathered from schools and kindergartens.

Women may be committing fraud because of an abusive partner's demands, or for fear of the possible loss of the care of their children. Far from protecting the woman and the children, it could have the opposite effect of exposing her to threatening behaviour to "shut up and keep quiet."

One group wrote: "The most common fraud scenario is of a working man wanting to commence (or recommence) a relationship with the beneficiary woman. He wishes to retain his income for his own purposes while she continues to support herself and her family on her benefit. She can be coerced into doing this by actions such as threats of ending the relationship, having no live-in father for her children and/or domestic violence. Vulnerability and fear are relevant factors for the woman and her family."

On the positive side, the proposed changes could result in a man considering much more carefully before entering into a relationship if the possible consequences for him were prosecution, debt and a criminal record. The changes could also give the woman more leverage to decide *not* to enter such a relationship, with better outcomes for her and her family.

Shared consequences were seen as much fairer. The consequential debt to the woman would then be halved, thus having half the financial impact on the woman and her children.

There was a strong feeling that some women have learned that dishonesty is acceptable. Others pointed out that males do not always tell their female partners what they are doing.

People asked, "How do you get money back from people who have nothing?"

It should be noted that lack of social and writing skills, knowledge of and access to helping agencies, communication difficulties and intimidating circumstances can hinder applicants from providing accurate information to WINZ.

The overriding opinion of NCW members was that any hardship or impact from the proposed changes will fall on the children – as it already does!

The most positive approach would be for social workers to discover why the fraud took place in the first instance. Then the family involved could be given support and an opportunity to establish non-offending patterns of behaviour.

**** In regard to making the partner liable for the fraud, we asked if our members thought these proposed changes would impact unfairly on women and their families, or would help to protect them?***

The impact on the children was stressed in the responses. It was felt that the woman might face pressure from an abusive partner such as a threat of violence to the children. In addition, she might face the possible loss of the care of the children.

If the fraudster is the male partner, it is possible that the female may have been kept ignorant of the fraud.

Responses included: how do you prove when and if people are living together? How can you legislate what a relationship is - or what is a 'short term' or 'long term' relationship? If one of the partners disappears and does not help with the repayments, what happens to the other partner? Is she or he liable for the full amount?

In some cases, the pressure from the working partner on the beneficiary to lie and not be caught, may be greater if the partner knows he can also be prosecuted.

There was strong approval of the intention of protecting women and their families. Members noted that vulnerability and fear are major factors for them. It was felt that men might think carefully about entering a relationship that could lead to prosecution, debt and a criminal record if he ignored 'the rules'.

One of our branches noted that the process for application and when necessary re-application needs to be simplified and made more user-friendly for the applicant. This could reduce the incidence of deception.

There was particular concern about the violence that might enter homes under the stresses which could arise from the new legislation.

A major concern is the threat of making it a criminal offence. If a person has a criminal conviction for benefit fraud, that would count against her when trying to find employment, which would be counterproductive for a woman trying to become independent of a benefit.

One branch noted that publicity is demoralising. Children and families need to be protected by placing name suppression curbs on the media.

The suggestion was made that the beneficiary and the partner should have to sign an agreement before benefit payments began. A pamphlet could be provided, spelling out the penalties for defrauding the system.

In regard to beneficiaries being investigated without informing the person:

Some branches opposed this as they felt it was unfair. One group suggested that MSD should put out a consultation paper on this matter that would explain why it thinks it needs greater powers in this area.

The rules should be set out clearly and efforts should be made to ensure that beneficiaries understand both their rights, and the rules of being a beneficiary, so that no beneficiary could plead ignorance of what is expected.

An example was that when a partner moves in or family members come to stay, the time limit should be clearly set, as it is for the living alone allowance, so that there would be no penalty to the beneficiary.

Changes to the law on how MSD conducts investigations would need to show that existing powers are not sufficient. They would also need to be looked at in the light of the balance of power between the beneficiary's right to privacy and the Ministry's obligation to account for public spending.

The specific question needs to be: what sort of guidelines could/would be used when investigating suspected cases of fraud. Checks and balances should be in place to allow MSD to properly investigate suspected cases of fraud. But at the same time, there must be sufficient protection to protect the human rights and privacy of innocent individuals.

A suggestion was made that a pocket sized **Code of Conduct** could be written and distributed to beneficiaries (in plain English) so they would know exactly what was expected of them.

Investigators should be aware that people supplying information (eg family members, neighbours) could have a negative attitude towards the beneficiary.

MSD should not be able to canvas neighbours or relations or visit the children's school or place of work to investigate. They already share information with other government departments and this should be sufficient. Schools should be asked to provide a written statement rather than personnel entering the school for face to face interactions with staff.

One person wrote: "I have developed a list of guidelines in the light of an experience I had as a character witness for a woman accused of defrauding the MSD over many years. I was shocked at the harassment the investigated person was subjected to and the 'fishing expedition' type interviews with a range of people known to this person. The investigation took several years. In the end the MSD case failed and the accused person was found not guilty. In the meantime, she was incredibly stressed and one of her teenage daughters needed counselling.

Guidelines need to contain awareness of the vulnerability of beneficiaries living on a very low income and of the power imbalance between the Ministry and those who rely on the benefit for basic living. This is often quite different from employee/employer relationships for other types of fraudsters. Fear of gossip is an issue for beneficiaries so care needs to be taken in choosing who to listen to and who to speak to about suspicions.

Beneficiaries would like very clear information about fraud policies and aspects, such as what constitutes a 'relationship in the nature of a marriage'. Apparently this does happen, but some beneficiaries do not hear this message. This issue could be explored with beneficiaries to improve this process.

A practical suggestion was to encourage people to keep all documents relating to their benefit and any other income.

So finally, to sum up all these statements, the focus of all proposed legislation should always be the effect on the children involved.

Thank you for the opportunity to present this oral submission and to pass on our members' concerns. We hope that some of the many suggestions included will be taken up.

Wendy Zemanek and Helen Reilly
National Council of Women Parliamentary Watch Committee

Matters raised by other submitters

NZ Federation of Business & Professional Women (BPW NZ)

Mike Sabin, who is an ex policeman, stated that the fact people are being investigated suggests they cannot be totally trusted.

BPW submitter believes that everyone should be assumed to be innocent until proved guilty. She asked what percentage of money has ever actually been recovered from benefit fraud.

Jan Logie said the Greens had three serious concerns about the Bill in its current form: the extension of MSD/WINZ powers, the likely stigmatism of those being investigated and ignoring the presumption of innocence. The Greens support, in essence, that both people in

a relationship should be responsible for repaying the money obtained by fraud, but they should be informed that they are being investigated.

Sue Moroney queried what sort of protections there would be for victims of a violent relationship in this matter.

Salvation Army (SA)

SA is concerned that the Bill in its present form will increase the numbers of disenfranchised people, but supports, in principle, the need to recover money that has been defrauded.

For most of the people they deal with, their biggest debt is to government bodies.

SA is concerned about the women in domestic violent relationships and believes that the WINZ body investigating the fraud need to take a holistic approach, particularly in considering the impact upon children.

20,000 NZ children currently have parents in jail.

SA is concerned that the investigations should be speeded up out of respect for people's security.

SA wonders what happens if the investigating agency gets things wrong and/or makes mistakes. This could lead to the people being investigated having to prove their innocence.

Rajen Prasad queried when does a relationship become a relationship.

SA representative replies that when a couple move in together and share household expenses, but she admitted that it is a problematic issue.

Alfred Ngaro has years of experience working in NGOs and is aware of the problems. He says that the government does not want the relationship to become a blunt instrument. Official agencies take the time to match up the data before they say a couple is in a relationship.

Peseta Sam Lotu-liga believes the matter of defrauding comes down to an 'intent and purpose' issue.

SA explains that when people go to the WINZ office, they are often angry and do not represent their concerns clearly.

Sue Moroney asks if the SA has evidence that the current powers of the MSD are not working?

SA No

Sue Moroney queries why the MSD is seeking greater powers.

Jan Logie has concerns about the burden of debt on the beneficiaries who are trying to pay back the debt. This Bill will reduce their income. Can the SA give an example of how people get desperate to put a meal on the table when they have no money? The SA must see lots of evidence of the effect of this on children.

SA would support a clause in the Bill that specifically protects children and human rights.

Mike Sabin asks what the SA would add to the Bill. Who should carry the onus of proof about what is going on in a relationship?

NCW (Wendy Zemanek)

NCW appreciated having sufficient time between the introduction of the Bill and the due date for submissions. It gave NCW time to canvas the members and the responses received represented 196 women.

Melissa Lee appreciated NCW's comments in both the written and oral submission. She wonders what kind of effect there would be on the children of beneficiaries who defraud WINZ? Would they be likely to understand and see the poor behaviour of their parents which goes unpunished.

Wendy Zemanek suggests that children generally grow up believing that what happens in their home is normal.

Rajen Prasad suggests that young children (4 or 5) would not think in terms like this.

Sue Moroney refers to the written submission which, as she understands it, refers to the MSD, under the terms of the proposed Bill, being duty bound to investigate suspected fraud. The Bill, NCW suggests in its written submission, removes discretion from the MSD to take into account the vulnerability of the children whose parents are being investigated. Sue Moroney would like to know if the two relevant statements were included in the Bill, would NCW support it.

Wendy Zemanek replies that she did not have a copy of the written submission with her and cannot speak directly on behalf of NCW about this.