

Home Education Foundation

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Enquiries & Complaints Services
Human Rights Commission
PO Box 6751
Wellesley Street
Auckland 1141

Dear Sirs,

Complaint: Human Rights Violations and Discrimination on the Basis of Employment in the Social Security (Benefit Categories and Work Focus) Amendment Bill

We wish to bring to your attention the human rights violations and discrimination contained in the New Zealand government's Social Security Amendment Bill.

Background

The Home Education Foundation (HEF) of New Zealand is a non-profit-making organisation serving the home educating community of New Zealand. We have twenty-seven years' experience supporting and advising home educators and advocating parental and educational rights in New Zealand and internationally.

We have been following the progress of the Social Security (Benefit Categories and Work Focus) Amendment Bill ("the Bill") for some months with great concern. The Bill seeks to reform New Zealand's benefit and welfare system by adopting more rigorous work-testing, especially for solo mothers, and also by requiring beneficiary parents to conform with certain "social obligations" which will compel their preschool children to attend an accredited early childhood education (ECE) provider, to be registered with a primary health care provider, and to attend all the core Well Child/Tamariki Ora checks. Another social obligation also requires the parents, unless exempted under section 21 of the Education Act, to ensure their children attend school. Finally, the Bill includes a 50% financial sanction for parents who fail to fulfil their "social obligations" paired with "intensified case management support" which according to the Ministry of Social Development's Reform Paper E may include CYF involvement and fraud investigation.

We believe that some or all of these provisions breach fundamental human rights. Accordingly, we are lodging this complaint on behalf of the beneficiaries of New Zealand who are most likely to suffer from the Bill. We believe that the actions of Minister for Social Development Paula Bennett and her colleagues in the government of New Zealand in supporting and seeking to pass this Bill constitute an attempted violation of human rights on the basis of employment status. We respectfully ask the Human Rights Commission to contact the New Zealand government with strong objections to the proposed human rights violations in the Bill and to defend the rights of beneficiaries with legal action if necessary.

The prior right to choose what education a child shall receive

Serving, Promoting and Strengthening the Home Education Community in New Zealand since 1986

The Social Security Amendment Bill threatens to violate the parental right to choose what kind of education a child will receive by limiting the choice of beneficiaries to accredited ECE providers, preventing them from educating their preschoolers at home, either with a programme or without one; or simply choosing not to begin educating their children until a later age, as with the Steiner programme.

The right of parents to choose what kind of education their children will receive is well attested by human rights instruments worldwide. We note that according to the Universal Declaration of Human Rights, this-right is a “prior right”—existing prior to any national or international legislation.

- The Universal Declaration of Human Rights (1948) Article 26 (3) - “Parents have a prior right to choose the kind of education that shall be given to their children.”
- The International Covenant on Economic, Social and Cultural Rights (1976) Article 10 (1) and 13 (3) 3— “The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.”
- International Covenant on Civil and Political Rights (1976) Article 18 (4)4 - “The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

The right is also mentioned in the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights, and the American Convention on Human Rights.

In New Zealand law, the right is entrenched in the Care of Children Act 2004, which provides that a child’s parents or guardians have the right to make decisions on important matters affecting the child, which include “medical treatment for the child”, section 16(2)(c), and “where, and how, the child is to be educated”, section 16(2)(d).

According to the Human Rights Commission’s website, the availability of home education in New Zealand is a legitimate educational choice under Article 26(3) of the Universal Declaration of Human Rights.

The right to choose home education and other forms of non-accredited ECE is increasingly recognised worldwide. In their submission (enclosed) to the Select Committee on the Bill, the South African Pestalozzi Trust stated, “Where human rights are concerned, we are convinced that the proposals are in serious contravention of several international instruments of human rights to which New Zealand is a signatory party, to the extent that they exclude or diminish the role of parents in decisions of such great significance for the interests of children.”

Countries such as Germany, which restrict a parent’s right to choose to educate children at home, are coming under increasingly heavy scrutiny from the international community. United Nations Special Rapporteur on Education, Vernor Munoz, made an official observation mission to Germany several years ago, and expressed concern that parental rights to choose home education were not recognised in that country.

In his words, “Distance learning methods and home schooling represent valid options which could be developed in certain circumstances, bearing in mind that parents have the right to choose the appropriate type of education for their children, as stipulated in article 13 of the International Covenant on Economic, Social and Cultural Rights.”

More recently, US judge Lawrence O. Burman heard the appeal of a German home educating family, the

Romeikes, seeking asylum . In his favourable decision, Judge Burman identified the parental rights to choose education as “basic human rights that no country has a right to violate.”

Under the Bill, beneficiary parents will be compelled to send their children to an accredited ECE provider. There is no provision for parents who wish to choose an unaccredited education for their children. Their right to choose the education of their preschool children will be violated, and the damage is compounded by the astonishingly harsh sanctions imposed on them if they should decide to continue educating their children at home. Instead of an opt-out procedure for home educators, the Bill envisages a fifty per cent benefit sanction escalating into CYF involvement and fraud investigation.

This will cause terrible harm to beneficiaries who for one reason or another are unable or unwilling to fulfill the “social obligations” in the Bill.

The best interests of the child

The Bill also threatens to violate New Zealand’s obligations to make decisions regarding children in the best interests of the child. Under the United Nations Convention on the Rights of the Child, Article 3, “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

The best interests of children are seriously compromised by the Bill. While there are some arguments that ECE benefits children, there is no doubt that some children simply are not ready to attend ECE at the age of three. Even parents who would prefer their children to attend ECE occasionally need to care for a child at home if the child finds it too traumatising to attend ECE. We believe that it is in no child’s best interests to be torn, screaming and protesting, from her parents before she is ready and that parents need the power to make decisions for the wellbeing of their children.

In other cases the parents will be willing and able to provide their child with a much higher quality of ECE than available at their local provider, whether personally, through a family member or friend, or with an unaccredited programme. We believe it is no child’s best interests to be forced into an accredited ECE programme when better options are available and that parents need the freedom to provide the best available early childhood learning in the venue of their own choice.

There is no provision for parental discretion in such situations in the Bill. The best interests of the child will be ignored.

Many organisations have also expressed concern in their submissions that families failing to fulfil the social obligations will be subjected to a fifty per cent benefit sanction, arguing that it cannot possibly be in the best interests of any child to be denied even the basic support of a benefit.

The right of a woman to care for her family/whanau

After twenty-seven years of supporting and counselling home educators across New Zealand, the HEF is confident in saying that the ideal career of many women is to care for and teach their own children at home. It is no surprise that many women’s groups have expressed their concern with the Bill’s relentless work focus provisions for sole mothers.

According to the Beneficiary Advisory Service, the work focus provisions of the Bill “will impact heavily on young women who are caring for an infant” and the resulting stress and anxiety will pose a risk to both mother and child.

The Auckland Women’s Centre “considers that it is a crucial component of the well-being of our society that extra restrictions and difficulties are not enshrined in legislation that will result in limiting a sole-mother’s ability to provide dedicated, quality parenting to their children.” Domestic work, they argue, forms “a normal part of many women’s lives rather than a deviation from male patterns of employment.”

The Psychological Society of New Zealand also found this work focus troubling. “There are many of those who live in Aotearoa/NZ who contribute in alternative ways e.g. a young Maori woman called to care for her sick kuia, voluntary activities for children within a church or a person with a disability acting as an advocate.”

Te Whaingā Wahine, a national network advocating the rights of Maori women, argued that the amendments will compromise the rights of Maori women to care for, protect, and make decisions in the best interests of their tamariki, mokopuna and whanau.

The Women’s International League for Peace and Freedom also believed that the work focus provisions would disadvantage women. “It will create extra stress for people who should be work exempt because they are caring for children. The care of children is not given due importance and this amendment appears to be a punitive measure for those who dare to have another child when they are on a benefit.”

We believe that this Bill will cause serious disadvantage for women, including mothers who will be reluctant to leave dangerous relationships and lose their rights over their children by going on a benefit.

Discrimination on the basis of employment

Under Section 19 of the New Zealand Bill of Rights Act 1990, discrimination on the grounds of employment status, including on the grounds of being on a benefit, is prohibited. This section prohibits any law or policy which treats a group or person differently by reason of a prohibited ground, as a result of which the different treatment results in material disadvantage, and no reasonable justification is provided for the discrimination. Employment status, including being in receipt of a government benefit, is one of the prohibited grounds of discrimination under the Act.

In their submission to the Committee (enclosed), the New Zealand Law Society stated,

“The Law Society considers that the imposition of the specified social obligations on a group of parents in New Zealand who receive particular types of state support (being income-tested social security benefits) when other New Zealand parents are not subject to such obligations raises serious issues of discrimination.”

The Law Society demonstrated that since the specified social obligations would be imposed upon a group (beneficiaries) on the basis of a prohibited ground (being in receipt of a government benefit), the first element of prohibited discrimination is satisfied.

To satisfy the second element of material disadvantage, the Law Society noted the following disadvantages arising from this different treatment:

- The social obligations “risk stigmatising parents and their children, which is in itself harmful”. They suggest that beneficiaries “do not voluntarily attend to their children’s early education or health care” and that they “need legal obligations and sanctions that other parents do not to ensure compliance.”
- The sanctions regime “has the potential to be punitive”, although the Law Society notes the low evidence available on how effective financial sanctions may be to enforce social obligations.
- The sanctions regime “leaves substantial discretion in the hands of the Chief Executive” by giving the Chief Executive power to levy the sanctions unless the parents have a “good and sufficient reason” for not complying. “There are no examples of what such a reason might be.” The Law Society questions whether this amount of discretion is appropriate in the circumstances.
- The sanctions regime reduces a family’s benefit by 50%; this is a material disadvantage. “The deduction of social security benefits by any proportion, let alone 50%, will have significant consequences on children and their parents, in families living in poverty...It runs the risk of subjecting children and parents to significant disadvantage in that parents will lose the ability to support themselves and their children at the most basic level.”

Accordingly the Law Society expressed its view that the proposed social obligations would create material disadvantage for beneficiaries and unless this could be justified, the social obligations would be likely regarded as prima facie discrimination under section 19 of the Bill of Rights.

We would add that parents' loss of the basic human right to choose what kind of education their children shall receive is another material disadvantage, one that can never be justified.

The HEF conducted informal research into the individual submissions on the Bill and found that the overwhelming consensus among private submissions was that the social obligations were discriminatory and would stigmatise beneficiaries.

A Patricia Dobbs argued, "You are considering a law which will forcibly remove young children from their parents, based on their income...I believe this plan boldly infringes upon human rights." A Chantelle Potroz stated, "The implication of the bill is that beneficiaries do not see to the necessary health needs of their children...It is a stigma for beneficiaries, rather than a social good for all." We enclose a sheet of quotations from some of the submissions and encourage the members of the Human Rights Commission to look for themselves and see how strongly the vast majority of submissions make this point.

These sentiments were echoed in the submissions of the Auckland Women's Centre ("Social obligation requirements take away the rights of parents to choose what is best for themselves and their families"), religious organisations such as the New Zealand Council of Christian Social Services ("It is discriminatory to require benefit recipients' children to attend early childhood education when other children are not subject to this requirement"), and the submissions of several law centres.

According to the Dunedin Community Law Centre, "These proposals imply that beneficiaries are bad parents who do not know what is best for their children... This message suggests that anyone who operates outside of what is deemed to be the 'norm' is somehow a social deviant. Rather than focusing on norms, the focus should be on barriers to education and healthcare."

The Waitakere Community Law Service also identified the discrimination involved in the Bill. "Such a requirement also seems to infer that those parents who receive a benefit are less able to provide preschool education than those not in need of such financial assistance. We believe that such an inference appears to be discriminating against parents who are beneficiaries on the basis of their employment status which is a prohibited ground of discrimination under the Human Rights Act 1993."

The remaining question is whether these human rights violations are justified.

Unjustifiable nature of the violations

The New Zealand Law Society stated that it had "carefully considered the reasoning offered in the advice prepared by the Ministry of Justice for the Attorney-General on whether the discriminatory treatment is justified, and respectfully disagrees with the conclusion reached that the discriminatory measures are demonstrably justified." In their submission the Law Society applied the following established tests to demonstrate that the discrimination is unjustified:

- The social obligations do not serve a purpose sufficiently important to justify curtailment of the right not to be discriminated against; i.e., if fulfilment of the social obligations are important enough to warrant coercion of beneficiaries, then why not apply them indiscriminately to all New Zealanders. The HEF begs leave to point out that stripping parental rights from all New Zealanders is not the correct way to address the human rights violations in the Bill.
- The imposition of the obligations is, the Law Society considered, rationally connected with better child education and health outcomes. The HEF would not concede this point.
- The imposition of the social obligations on beneficiary parents impairs their right to be free from discrimination on the grounds of employment status, to a greater degree than is reasonably necessary for

sufficient achievement of the purposes of better childhood education and health.

In supporting the last point, the Law Society spent several pages demonstrating

- with regards to the social obligation to ensure children attend school: No evidence exists on the truancy rate for children of beneficiaries. Legal mechanisms already exist to ensure that children are enrolled and attending school.
- with regards to the health care obligations: Evidence shows that only 0.2% of New Zealand children received no Well Child Checks at all. The obligations, if targeted at Maori and/or Pacific families, breach the principle that “one cannot achieve indirectly that which cannot be done directly”—this is still race-based discrimination. There are “other ways of achieving greater levels of compliance that do not require imposition of legal obligations with punitive financial sanctions on a whole group of parents.”
- with regards to the social obligation to enrol in and attend ECE: Evidence shows that New Zealand enrolment in ECE is relatively high, and barriers including cost, lack of available ECE, and transport difficulties can account for the non-attenders.

Against this the Law Society showed a lack of evidence that beneficiary parents as a group fail to participate in health and education services and concluded that the human rights violations in the Bill were unjustified.

The HEF is naturally concerned with another barrier to participation in ECE and state-sponsored health care—the fact that many parents make informed and responsible decisions to give their children a different, unaccredited early education together with a more holistic or natural approach to health care. These parents are convinced that they have discovered an alternative which will enable them to give their child the best early education or health care available to them. Since it is the education and well-being of their children at stake, these parents will not be easily convinced to go with a second-rate or even a damaging option. The mother who chooses to keep her pre-schooler at home in a stimulating learning environment because she does not believe her child is ready to be left in daycare should not be penalised by a 50% sanction. Indeed we believe that those parents most dedicated to responsible parenting and most likely to stand by their decisions will undergo the most onerous sanctions, the most disproportionate material disadvantage, for the least possible justification.

Accredited early childhood education, for example, may not be the best option available to parents of pre-schoolers. Substantial evidence supports the benefits of a strong parent-child relationship in the home above the often traumatic experience of ECE attendance. Some of the evidence on this was collected by New Zealand’s Dr Sarah-Eve Farquar in her 2008 paper “Assessing the evidence on early childhood education/childcare”, which concluded,

“The best evidence does not show that good quality ECE is better necessarily than care within the family or has a greater impact on children’s achievement and other outcomes...It may be that if unbiased information on potential risks and the size of benefits is given to parents in a timely manner, then parents can make more informed choices and manage risks to better advantage their child’s development.”

Home education of pre-schoolers, among other programmes, should not be removed from the choices available to responsible and informed parents merely on the basis of their employment status. According to the Ministry of Education’s statement when cancelling routine reviews of home educators, such parents are “low risk”—in other words, they tend to educate their children at least as well and regularly as registered schools. Home educators on a benefit will suffer an unusually great disadvantage if they are forced to remove happy, secure, and well-educated pre-schoolers from their loving family to the impersonal care of an ECE provider. This will be traumatic for the whole family—the parents and siblings as well as the child himself.

Conclusion

The Social Security (Benefit Categories and Work Focus) Amendment Bill breaches a number of basic human rights, including the right of parents to choose what kind of education their children receive. The way it breaches these rights gives rise to discrimination on the grounds of employment, and this discrimination is completely unjustified especially insofar as it will tend to cause material disadvantage to responsible parents who have found superior alternative education and health care for their children.

We ask the Human Rights Commission to take the most serious possible view of these human rights violations and make every effort to represent the rights of beneficiaries to the New Zealand government, including through legal channels if necessary.

Yours faithfully,

The Home Education Foundation of New Zealand

Per:

Barbara Smith
National Director

Enclosures:

1. Submission of the Auckland Women's Centre
3. Submission of the New Zealand Law Society
7. Assessing the evidence on early childhood education/childcare, paper by Dr Sarah-Eve Farquar
8. Quotes collected from submissions on the Social Security Amendment Bill