

Social Security (Clothing Allowances for Orphans and Unsupported Children) Amendment Bill



Supplementary Submissions

[Presented by Kate Bundle, Trustee, Grandparents Raising Grandchildren Trust New Zealand

to the Social Services Select Committee Hearing

Wednesday 19 March 2014]

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



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Supplementary Submissions on the Social Security (Orphans and Unsupported Children's Clothing Allowance) Amendment Bill

1. Introduction

- 1.1 Thank you for the opportunity to make these submissions in support of this Bill on behalf of the Grandparents Raising Grandchildren Trust and its members, some of whom are recipients of the Unsupported Child's Benefit and the Orphans' Benefit.
- 1.2 Our Chair and Founder, Diane Vivian, has presented a supplementary submission that outlines some of the key statistics and demographics of our membership of grandparent and kin/whanau carers.
- 1.3 Considered in the cold light of day, these statistics do not paint a picture of the oft-held, warm and idyllic vision of what some believe it is like for grandparents and grandchildren living together.
- 1.4 By contrast these carers and their charges live daily on "struggle-street," in extremely difficult financial, emotional, psychological and physically challenging circumstances, where the parents are unable to care for their own children.
- 1.5 The reasons why these children are in grandparent or kin/whanau care varies widely as does the legal pathway through which they have come into their care. However in all cases to which this Bill would apply, there has been a family breakdown or death of the parents justifying the need for them to be cared for by kin/whanau other than their parents. Circumstances that could be identical to that of a child in foster/state care. Yet they are treated differently in terms of the support available to them.
- 1.6 Passing this Bill into law would bring our laws closer into line with what is equitable, fair and just, in circumstances where children and young people must be

raised by kin/whanau caregivers other than their parents with the support of the UCB/OB.

2. Anomalies in the System

- 2.1 A number of anomalies exist in our child welfare and social security system creating inequities between kin/whanau carers and foster carers. It is important to acknowledge these anomalies in the context of discussing this Bill because they highlight the substantial disparity that exists in the level of financial support available to the two types of caregivers who undertake the same role as principal caregiver to a child who cannot be cared for by his or her parents.
- 2.2 This Bill does not go far enough to meet the necessary needs of the vulnerable children being cared for by kin/whanau carers or align their rate of financial support and assistance to equal that available to foster carers. However it would make a considerable difference to the lives of many of our members and the grandchildren they raise and is an overdue first step to removing injustice.
- 2.3 These anomalies further highlight the discriminatory effect of the current law, contravening both section 19 of the Bill of Rights Act 1990 and Article 2 of the United Nations Convention on the Rights of the Child and, it is submitted, ought to compel the Committee to recommend that this legislation be passed. Or at the very least the Committee ought to recommend legislation aligning the financial support and allowances available to foster carers and UCB/OB carers so that they are equal and fair in all respects.
- 2.4 To illustrate the anomalies that exist, reference below is made in more detail to the:
- Eligibility for the Unsupported Child/Orphans Benefit at law
 - Pathways to placement of child/young person in kinship/whanau care
 - NZ Bill of Rights Act 1990, Article 2, United Nations Convention on the Rights of the Child and Ministry of Health v Atkinson [2012] NZCA 184– why it matters

3. Eligibility for the Unsupported Child/Orphans Benefit at Law

- 3.1 The key grounds for eligibility are as follows:
In the case of the **Orphan's Benefit**¹:
- The caregiver must
 - be the principal caregiver
 - each of the child's natural, or adoptive parents must be:
 - dead or cannot be found, or

¹ Section 28 Social Security Act 1964

- suffers a serious long-term disablement which renders him or her unable to care for the child, and
- The caregiver is likely to be the principal caregiver for at least a year from the date of application of the benefit.

3.2 Similarly, in the case of the **Unsupported Child Benefit**²:

- The caregiver must:
 - be the principal caregiver
 - not be the natural parent, adoptive parent, or step-parent; **and**
- **Because of a breakdown in the child's family** no natural parent, adoptive or step-parent is able to care for the child **or** to provide fully for the child's support; and
- The caregiver is likely to be the principal caregiver for at least a year from the date of application of the benefit.

3.3 According to the Ministry for Social Development's statistics as at 31 March 2013³ 8,614 carers were receiving the Orphan's Benefit or the Unsupported Child's Benefit for 12,069 children.

Of those:

- 8,270 (96%) of the carers were receiving the Unsupported Child's Benefit
- 6,073 (70.5%) of carers were aged between 40 and 64
- 1033 (12%) were 65 and over
- Almost half are of Maori descent
- Approximately 50% of carers are grandparents

3.4 The above figures demonstrate that for approximately 96% of carers; the child came into their care **because of a family breakdown**.

4. Pathways to Placement in Grandparent, Kin/Whanau Care

- 4.1 The actual route to grandparent/kin/whanau care varies even amongst those who receive the UCB where there has been a family breakdown.
- 4.2 For some there will have been Child Youth and Family (CYF) involvement and the application of the Children Young Persons and Their Families Act 1989 (CYPF Act), but for many the route is via informal family agreements where care has been instigated due to a recognition that a child is at risk. For others, it is via the Family Court process to obtain orders under the Care of Children Act 2004 (COCA) (or its predecessor the Guardianship Act 1969).

² Section 29 Social Security Act 1964

³ Sandy Biggs, Work and Income New Zealand, Presentation to 3rd National Grandparents Raising Grandchildren Trust NZ Training Conference, 5-6 March 2014.

- 4.3 In all cases where the UCB is paid, there has been a “family breakdown” sufficient to satisfy the test of eligibility in section 29, which has been defined as follows:

“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.”⁴

- 4.4 In these circumstances, were it not for the grandparent or kin/whanau carers stepping in to care for these children, **there would be no alternative but to place the children in foster/state care.**

- 4.5 This fact is important when you consider the level of services and support that is available to the caregivers of these children when compared to foster carers, who also take on the care of children in similar circumstances where there has been a family breakdown.

► **Informal Care or Care Orders Under COCA /Guardianship Act**

- 4.6 Where there has been no involvement of CYF, typically the only means of financial support available tagged for the care and support of the child is the UCB or OB.
- 4.7 Even so, in many cases the ongoing needs of the child/ren in grandparent or kin/whanau care extend far beyond that for which children in normal circumstances would require because of the circumstances leading them into care⁵. For example these include the abuse, neglect or trauma they have suffered in the care of their parent(s), or they may have ongoing physical or mental disabilities and/or behavioural problems or attachment disorder requiring specialist and professional input at considerable financial cost.⁶
- 4.8 For these children and their caregivers there is very little support for their ongoing day to day needs available beyond the UCB or OB, yet they have the same level of need as the child in foster care.

⁴ Social Security Appeals Authority, refer to: An appeal against a decision of the Benefits Review Committee [2012] NZSSAA 103 (20 December 2012)

⁵ Judith Morris: *Understanding attachment issues in children affected by breakdown of primary parent relationships, abuse and neglect*. [2009] In a clinical population, such as referrals to a Child and Adolescent Mental Health Agency, about 50% of children have disorganised attachment, categorised as Reactive Attachment Disorder exhibiting trauma responses when suffering overwhelming anxiety

⁶ Ibid at p.9 “Children with serious attachment problems need skilful nurturing and strategic management of behavioural problems and perhaps also individual psychotherapy – and these elements need to be brought together in an integrated treatment programme.”

► Care Orders or Whanau Agreements Under the CYPF Act

4.9 The CYPF Act is the cornerstone of the State's involvement or oversight of a child or young person's life when there are circumstances warranting the State's involvement. Since its inception 24 years ago considerably more children who cannot be raised by their parents are instead raised in grandparent or kin/whanau care, rather than in foster or state care institutions. In this respect, the Act is working and is to be applauded as the research on foster versus kin care clearly shows that there are better longer term outcomes for children in kin care than in foster care.⁷ However the pathway to resolving the longer term care of children in kin/whanau care under the Act causes inequities with discriminatory effect against kin/whanau as discussed below.

4.10 The object of the CYPF Act⁸ is to

*“promote the well-being of children, young persons, and their families and family groups by [inter alia] **assisting** parents, families, whanau, hapu, iwi and family groups..”*

4.11 The principles⁹ guiding the powers conferred under the Act; include *“the principle that, wherever possible, the relationship between a child or young person and... their family... **should be maintained and strengthened.**”*

4.12 Section 13 of the Act is particularly relevant as it sets out the guiding principles to be applied in circumstances where **children are placed in care and are deemed to be “in need of care and protection”**¹⁰. These principles include those that are pertinent to the financial assistance and support necessary to provide care for these children within the wider family/whanau and are stated as follows:

- **the primary role in caring for and protecting a child or young person lies with the child's or young person's family, whanau, hapu, iwi, and family group, and that accordingly—**
a child's or young person's family, whanau, hapu, iwi, and family group **should be supported, assisted,** and protected as much as possible¹¹
- **where a child or young person is considered to be in need of care or protection,** the principle that, wherever practicable, **the necessary assistance and support should be provided to enable the child or young person to be cared for and protected within his or her own family, whanau, hapu, iwi, and family group.**¹²

⁷ Refer Literature Review, A View Over Time – Jill Worrall, 2009

⁸ Section 4, Children Young Persons and Their Families Act 1989

⁹ Section 5, CYPF Act

¹⁰ Sections 14 and 67, CYPF Act

¹¹ Ibid; 13(b) (i)

¹² Ibid; 13(d)

- 4.13 Indeed some grandparent carers are/or have been in receipt of “board payments” similar to those received by foster carers, however these are typically of short duration and in some cases precede the transition to the UCB/OB at which point the extra assistance for expenses such as clothing and school costs terminates.
- 4.14 Service and support orders¹³ are also **theoretically** available in some cases to financially assist or pay for the cost of services necessary for the assistance and support of the child or young person, whether they are in foster or grandparent or kin/whanau care.
- 4.15 We are also aware of situations where CYF have contributed to the legal costs to support a grandparent or kin/whanau caregiver’s application for a parenting order through the COCA or the previous Guardianship Act process in order to remove a child from a situation of risk. Again, however, once parenting orders have been obtained in favour of the grandparent/kin carer, the financial support from CYF is terminated.
- 4.16 So it is clear looking at section 13 above, that where the CYPF Act applies there is a pathway for the State to provide the additional support to kin/whanau carers necessary for the care of that child. However in practice, the support that could be made available to kin/whanau carers is either non-existent, difficult for grandparent and kin/whanau carers to access via CYF or far from adequate to meet the child’s necessary needs.
- 4.17 Ironically it is because the grandparents and kin/whanau carers step up to care for these children and give them a safe, stable and loving environment in which to live; that at some point the children are typically deemed – either by the Court or the Chief Executive, to **be no longer “in need of care and protection”**. The effect of that decision is that all of the “support” (if any) from CYF that existed in the beginning of the crisis leading to their placement in care, falls away leaving the grandparent or kin carer with the responsibility to try and meet all of their grandchild’s needs on just the base rate UCB or OB.
- 4.18 By contrast, the child that remains in foster/state care and under the jurisdiction of the CYPF Act, continues to receive all of the benefits and services available under that legislation, which includes the extra clothing allowance, the subject of this Bill.

¹³ Sections 86 and 91 CYPF Act

5. Discriminatory Effect

- 5.1 The anomalies that exist in our child welfare and social security system discriminate against children in grandparent, kin/whanau care. This contravenes Article 2 of the United Nations Convention on the Rights of a Child, which requires the State to ensure children's rights are protected by the Convention without discrimination, irrespective of who their caregivers are.¹⁴
- 5.2 The Convention goes further to oblige the State to take all appropriate measures to ensure children are protected against such discrimination.¹⁵
- 5.3 More significantly, the discriminatory effect of the anomalies in the system constitute a breach of section 19(1) of the New Zealand Bill of Rights Act 1990 (Bill of Rights) which states:
- “Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993.”*
- 5.4 Section 21(1)(l) of the Human Rights Act 1993 prohibits discrimination on the grounds of family status; as in this case having the responsibility for the full-time care of children¹⁶ and being a relative of a particular person¹⁷.
- 5.5 Recently the Court of Appeal, in *Ministry of Health v Atkinson* [2012] NZCA 184 held that disabled adult children cared for by kin/family carers were being treated differently to non-family carers and materially disadvantaged by virtue of their family status. A policy that payment to carers providing certain disability support services would only be funded by the Ministry if provided by non-family carers was found by the Court to be discriminatory and in breach of section 19.
- 5.6 The Court further held that the Ministry's policy did not constitute a reasonable limit to the right to protection against discrimination in section 19 in this case as it was not a limit that could be demonstrably justified in a free and democratic society.¹⁸

¹⁴ UN Convention on the Rights of the Child 1990

Article 2.1 States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

¹⁵ **Article 2.2** States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

¹⁶ Human Rights Act 1993 – Section 21(1)(l)(i)

¹⁷ Ibid – Section 21(1)(l)(iv)

¹⁸ Test applied in section 5 of the New Zealand Bill of Rights Act 1990

- 5.7 In similar circumstances, grandparent and kin/whanau carers' inability to access the same level of financial support and allowances as made available to foster carers, is discriminatory causing material disadvantage to the children being raised in grandparent/kin/whanau care.
- 5.8 We challenge the committee to consider this Bill in the light of the anomalies in our system and consider the question: is it fair in our society for a child being raised by its grandparent to be denied access to the services and financial support it needs and would receive if it were in foster care, only because it is being raised by a grandparent?