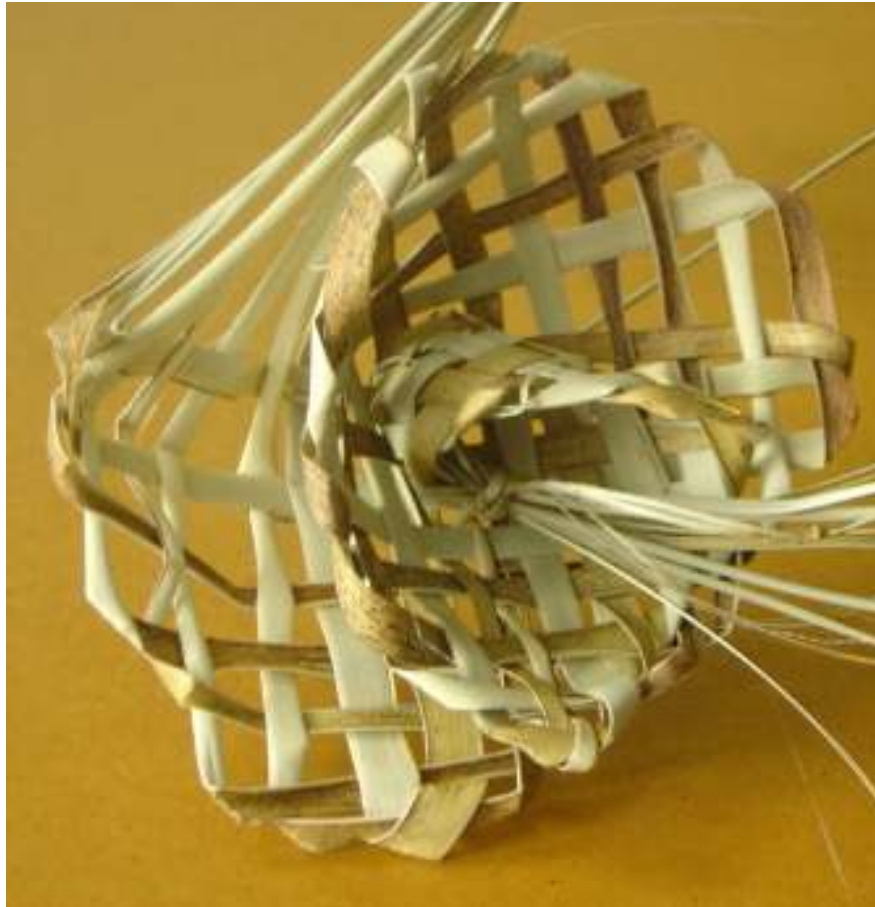


# The Unravelling of the Welfare Safety Net



**A brief history of the changes to  
New Zealand's social welfare benefit system from  
the 1991 benefit cuts to the proposed single core benefit**

A report prepared by  
Beneficiary Advocacy Federation of New Zealand Inc  
for Caritas Aotearoa New Zealand  
2008

# **Beneficiary Advocacy Federation of New Zealand and Caritas Aotearoa New Zealand**

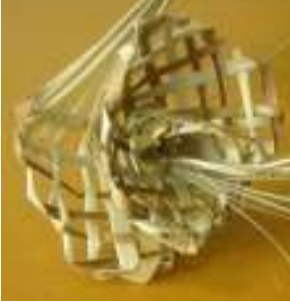
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**Beneficiary Advocacy Federation of New Zealand (BAFNZ)**  
PO Box 6533  
Wellington  
[bafnz@woosh.co.nz](mailto:bafnz@woosh.co.nz)

**Caritas Aotearoa New Zealand**  
PO Box 12-193  
Wellington 6144  
[www.caritas.org.nz](http://www.caritas.org.nz)

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**Foreword :** Lisa Beech, Caritas Aotearoa New Zealand  
**Report :** Tony McGurk, Beneficiary Advocacy Federation of New Zealand



## Foreword – Caritas Aotearoa New Zealand

***Systems of social insurance and social security can make a most effective contribution to the overall distribution of national income in accordance with the principles of justice and equity. They can therefore be instrumental in reducing imbalances between the different classes of citizens.***

*Pope John XXIII, Mater et Magistra, 1961*

Since the foundation of New Zealand’s social welfare system in the aftermath of the 1930s depression, New Zealanders have taken comfort from the idea of a “safety net” underpinning their financial security. The basis of this understanding has been a benefit system that ensures that no person goes without the minimum support needed for survival and participation in New Zealand society.

National Leader John Key, in announcing his party’s benefit policy in August 2008, said: “I think New Zealanders take it on trust that there will always be a safety net of social welfare benefits”. Similarly Minister of Social Development Ruth Dyson earlier this year told Church leaders that Labour remained steadfastly committed to providing the safety net of welfare assistance for the nation’s vulnerable.

However, beneficiaries and benefit advocates are sounding an alarm that the safety net is unravelling. Caritas believes many people are unaware of changes that have occurred in recent years. More disturbingly, it appears to us that, despite overall increased social spending, many of the changes are fundamentally at odds with the concept of meeting need.

While a significant portion took place during the 1990s, the trend continues to the present day. Some of the more recent changes are reminiscent of proposals made in the 1990s which failed then due to vigorous opposition, but have now been repackaged and presented as something new. The abolition of the special benefit in 2004 is the most obvious example.

Caritas needed more understanding of the historical background to make sense of current proposals for a “core benefit”. It seemed to us there were links between what happened under various administrations, both during the 1990s and following the change of government in 1999.

A lot of social security legislation is highly specialised, but after talking to beneficiary advocacy groups, we learned that our concerns were valid. Caritas asked the Beneficiary Advocacy Federation of New Zealand to explain recent benefit changes to the wider community sector.

The outcome is this report, **The Unravelling of the Welfare Safety Net**, which outlines how, since the 1991 benefit cuts, there has been a continual dismantling of key aspects of the “safety net”. This particularly relates to the loss of discretion in supplementary assistance – discretion that allows individual need to be met as it arises. In addition, a new cross-party focus on employment has replaced 60 years of consensus that the main purpose of social security should be about the meeting of need.

The phrase “safety net” was a key plank of the 1972 Royal Commission of Inquiry on Social Security, but our current welfare system has moved a long way from the vision the Commission saw as important to ensure the basic needs of all New Zealanders are met. During the recent years of New Zealand’s record low unemployment, with a drop in benefit numbers, many of us may have developed a sense of complacency about the benefit system, assuming that it will always be there in times of need.

The differences between Labour’s work-focused incentives and National’s “unrelenting focus on work” are mostly differences of degree. But the machinery for putting both sets of plans in place has already been established. Although Labour says it prefers the “carrot” of incentives to the “stick” of benefit sanctions, all the mechanisms for sanctions were actually put in place last year by the Social Security Amendment Act 2007.

More significantly, removing discretion by abolishing the special benefit and replacing it with the tightly prescribed temporary additional support (TAS) slipped by with little attention being paid to it, other than the protests of beneficiary advocates. An attempt in 1995 to do the same thing failed because of the fundamental nature of what such a change represented.

The 1972 Commission regarded a high level of discretionary supplementary assistance as being an indication that specific needs were being met. When benefits were cut in 1991, the then National government used the existence of supplementary support, such as the special benefit, as justification for saying that the benefit cuts would not cause hardship and that individual needs of every person could always be met. In 2008 this is no longer the case.

National has said it intends to reduce the number of recoverable benefit advances issued to beneficiaries to meet one-off situations of immediate need. This indicates that they also regard supplementary assistance, even in the form of “loans”, as an unnecessary added extra, rather than being an integral part of the “safety net within the safety net” of the broader social security system.

Caritas knows the difficulties many beneficiaries have accessing supplementary assistance. Catholic agencies and organisations repeatedly bear witness to this – beneficiaries are frequently unable to gain their full entitlements unless they have a community representative or advocate at their side. And even in those circumstances, there are numerous reports of the buck being passed to frustrated community organisations forced to supply an eleventh hour back-up when the official systems fall down.

Let us be clear – Caritas is **not** saying that there is no role for Church and community organisations in providing for the wellbeing of our neighbours. But what we are saying is that government departments and agencies should not be able to shift **primary** responsibility for the meeting of basic needs. It has been commonplace now for almost two decades that Church and community organisations are expected to provide for people solely because their incomes are inadequate and the social welfare system is unable to meet their needs.

New Zealand Church Leaders commented on this in their 1993 Social Justice statement: *“Church and other community helping agencies tend to act as “ambulances” for people at the bottom of the cliff. Government elected by the people bears ultimate responsibility for safeguarding the basic well-being of all...In its choice of policies and by its direct support of the needy, government should act out the collective will that no citizen of our land experience a life deprived of life’s essentials.”*<sup>1</sup>

Catholic social teaching recognises that fulfilment of rights and responsibilities lies with all levels of society. But our tradition understands the government to have a particular responsibility to ensure that minimum conditions of human rights – including social and economic rights – are met.

The United States Catholic Bishops Conference expressed it this way: *“Social life is richer than governmental power can encompass. All groups that compose society have responsibilities to respond to the demands of justice....For this reason, it is all the more significant that the teachings of the Church insist that government has a moral function: protecting human rights and securing basic justice for all members of the commonwealth. Society as a whole and in all its diversity is responsible for building up the common good. But it is the government's role to guarantee the minimum conditions that make this rich social activity possible, namely, human rights and justice.”*<sup>2</sup>

In September 2008 the Catholic Church is considering the question of **Poverty in an affluent society** for its Social Justice Week focus. This comes in the midst of election debates about tax cuts and reducing government expenditure. In this context, we wish to restate the key Catholic principle that the needs of the poorest members of our society are always a priority. The way society responds to the needs of its poor through its public policies is the litmus test of how just or unjust a society it is, and how just or unjust its government.<sup>3</sup>

Mr Key said in August that it was important that people not become “entangled” in the welfare safety net. In our opinion, it is much more likely that New Zealanders will find in their time of need that the “safety net” simply no longer bears their weight.

**Lisa Beech**

**Caritas Aotearoa New Zealand, 2008**

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<sup>1</sup> New Zealand Church Leaders : *Social Justice statement*, 1993

<sup>2</sup> United States Bishops: *Economic Justice for all*, 1986

<sup>3</sup> New Zealand Church Leaders: *Social Justice statement*, 1993



*Beneficiary Advocacy Federation of New Zealand*

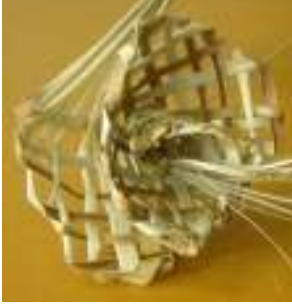


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### **Contents**

<b>I</b>	<b>INTRODUCTION AND SUMMARY</b>	<b>8</b>
<b>II</b>	<b>AN IDEAL MODEL: THE McCARTHY REPORT</b>	<b>11</b>
<b>III</b>	<b>THE 1991 BENEFIT CUTS</b>	<b>13</b>
<b>IV</b>	<b>GOVERNMENT'S RESPONSE TO INCREASED EXPENDITURE ON SUPPLEMENTARY BENEFITS: FURTHER CUTS</b>	<b>14</b>
<b>V</b>	<b>SOCIAL WELFARE REFORM BILL 1994</b>	<b>16</b>
<b>VI</b>	<b>NUMBER OF SPECIAL BENEFITS REDUCED BY OVER TWO-THIRDS</b>	<b>17</b>
<b>VII</b>	<b>ABOLITION OF THE SPECIAL BENEFIT AND INTRODUCTION OF TEMPORARY ADDITIONAL SUPPORT: THE REMOVAL OF THE SAFETY NET</b>	<b>19</b>
<b>VIII</b>	<b>SOCIAL SECURITY AMENDMENT ACT 2007</b>	<b>21</b>
<b>IX</b>	<b>SINGLE CORE BENEFIT</b>	<b>23</b>



## I INTRODUCTION AND SUMMARY

1. New Zealand's social welfare benefit system has undergone significant change over the past sixteen years, much of which was largely unnoticed by the general public. The result to date has meant that we are left with a benefit system fundamentally different to the model of welfare outlined by the 1972 Royal Commission Inquiry into Social Security in New Zealand<sup>4</sup> (the McCarthy Report) as necessary to provide the most basic level of financial support to enable participation in the community by all members of society.
2. The Social Security Act 1938, introduced by Michael Joseph Savage, marked the beginning of welfare provision designed to provide a standard of living beneath which no person or family was expected to fall. The Social Security Act 1964 'consolidated and amended' the 1938 statute and continued to provide a comprehensive safety net until the early 1990s.
3. Throughout that decade the then National government embarked on an ongoing programme of reducing the availability of as much benefit assistance as it could. The benefit cuts of 1991 were followed by a gradual but consistent campaign of removing or reducing the level of many important forms of assistance, particularly in the area of supplementary benefits which ironically an increasing number of people began to rely upon as a result of the reduction in main benefit levels.
4. A number of different methods were used, including the tightening of operational policy both at local and national levels, and slicing off whole categories of assistance that had been available through the various programmes and directives that are under the direct control of the Minister, both of which could be done without the scrutiny of Parliament.
5. A number of attempts at legislative change were made, some were successful, others were not. Proposed legislation that did not make the statute books was often due to the level of concern around what was perceived as being too heavy handed.<sup>5</sup> Nonetheless, attacks on income maintenance policies continued through a combination of changes to administrative practice and ministerial fiat. Where legislative change provided the only avenue, the method of disguising what was sometimes large scale reform within unrelated Bills was adopted in order to minimise

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<sup>4</sup> Report of the Royal Commission of Inquiry, *Social Security in New Zealand*, March 1972 (the McCarthy Report).

<sup>5</sup> For example, Social Welfare Reform Bill 1994; Social Security (Conjugal Status) Bill 1997.



community outrage. The aim appeared to be to pass the legislation with as little detection as possible.<sup>6</sup>

6. At the same time the government began actively 'marketing' the benefit system in a way that created the illusion that welfare provision was adequate and that simply increasing benefit take-up rates would address problems around individual need. The glossing up of the delivery arm included describing benefits as 'products', beneficiaries became 'customers' and the then NZ Income Support Service (formerly the Department of Social Welfare) began calling itself a 'business'.
7. The 'marketing' of benefit assistance, however, did not include informing people about the systematic dismantling of the statutory mechanisms governing what was legally available. In addition, the 1990s saw attempts at inflating the level of benefit fraud, both in the statistics and and by way of a media campaign, that had the effect of presenting receipt of a benefit as synonymous with criminal activity. This, together with the active marketing of benefits, was aimed more at the general public than at beneficiaries, and created a perception that welfare spending was out of control. It also served to legitimate the regular chipping away of the safety net that was going on in the background.
8. The Labour opposition were opposed to the moves that were often decribed as US-style reform. However, since 1999 the Labour government have continued with the decimation of what is undoubtedly one of our most important pieces of social legislation, and ironically in the precise areas it so vehemently opposed when in opposition.<sup>7</sup> It has also added the tactic of resorting to strenuous litigation to either overturn decisions of the Social Security Appeal Authority or the courts that have been made in favour of beneficiaries, or defending decisions that are clearly wrong in law. The effect of judicial decisions made in favour of the beneficiary are often removed by way of legislative amendment.
9. One of the most significant changes this government has been responsible for was the removal of the special benefit. The provision had existed as a flexible tool to ensure that a person's income was sufficient to meet essential outgoings, and was representative of the safety net that was described in the McCarthy Report as an essential part of any social welfare system.
10. The recent Social Security Amendment Act 2007 has removed further legislative cornerstones. For example, the introduction of a statutory purpose and set of principles that are heavily work-focused has had the effect of replacing the meeting of need as one of the statute's main

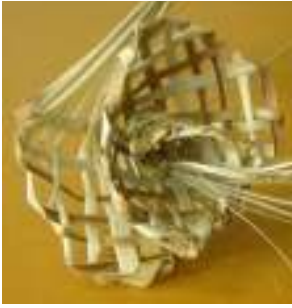
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<sup>6</sup> An example was extending the work-test to domestic purposes beneficiaries with benefit sanctions of up to 50%. The change was part of a fairly large Finance Bill in 1996, half of which contained significant changes to the Social Security Act and was considered by the Finance Select Committee.

<sup>7</sup> For example, the introduction in 1996 of income status to the tax system was opposed by Labour on philosophical grounds, yet Labour went on when in government to exclude beneficiary families from accessing aspects of the tax credit system under the working for families legislation. Attempts to remove the discretionary aspects of the supplementary benefit system were opposed by Labour in 1994/95, yet it then abolished the special benefit which represented the last resort discretionary safety net provision within our current social welfare legislation.

concerns. Further changes have cut across long-standing principles of good administration and administrative fairness, and others have given the executive arm of government the ability to make binding rules that can override the principal legislation, raising significant constitutional concerns.

11. The Social Security Amendment Act 2007 is regarded by government as a stepping stone towards a single core benefit, which is said to be planned for 2009/10. The proposal is being promoted on the basis of a need to create a simpler and fairer benefit system. It assumes that complexity within the current system would be reduced by replacing most of the main benefits, such as invalid's, domestic purposes, sickness, widow's and unemployment benefits, with a single benefit containing one set of criteria.
12. However, the perceived need for a single benefit is based on a misunderstanding of how the current framework is intended to operate and a lack of recognition of how current problems have arisen. In particular, the proposal fails to recognise that the complexity is not within the main benefits at all, of which there are relatively few. In reality the complexity comes from the increased expectation that people must apply for the range of supplementary assistance or "add-ons" just to meet everyday costs, which is a direct consequence of the move from "targeted welfare" to "tight targeting", introduced by the benefit cuts in 1991.
13. A single core benefit will bring further complexity because of the need to introduce another tier of "add-ons" that recognises differences in general need, as the current main benefits reflect, such as unemployment, caring for children, sickness, disability and so on.
14. This paper will provide a brief history of relevant changes to the benefit system from the benefit cuts in 1991 through to this government's plans to introduce a single core benefit. It will be argued that the need for a core benefit is ill-conceived, and that reforms over the past 16 or 17 years have resulted in the removal of fundamental principles based on the meeting of need that have underpinned social security legislation since 1938. These changes, together with the recent removal of the special benefit, has left New Zealand with the exact opposite of the blueprint for a welfare system the McCarthy Report set out as necessary to ensure the basic needs of those on the lowest incomes are met. As a result, we no longer have the public safety net that has characterised our social security benefit system since the introduction of the Social Security Act 1938.
15. It is acknowledged that over the past 16 years various criteria have been relaxed and one or two categories of assistance have been added. However, such changes have been relatively minor, but more importantly have been inconsequential as far as countering the ongoing erosion of the basic principles of the legislation and the framework that has left us in the predicament we are currently in.



## II AN IDEAL MODEL – THE McCARTHY REPORT

16. To put the concerns in context, it is necessary to understand the legislative framework and how the social security system generally was intended to operate. The framework was outlined in the McCarthy Report as necessary to provide adequately for the poorest in society.
17. The Social Security Act envisages three “tiers” of benefit. The purpose of each tier and the relationship each has with the other are important when attempting to make sense of what has happened over the past 16 years, and to see how we have arrived at the dangerous and unprincipled position that the concept of a single core benefit represents.
18. The first tier includes the main or categorical benefits such as the unemployment, sickness, domestic purposes or invalid’s benefits. First tier benefits are designed to meet general need and are paid at across the board rates according to category and family size.
19. The second tier refers to benefits paid to meet ordinary costs but which differ from individual to individual. Examples of second tier benefits include the accommodation supplement and the disability allowance.
20. The third tier includes benefits designed to meet emergency need or address situations where a person has unusually high costs. Special needs grants, the special benefit, temporary additional support, advance payments of benefit and recoverable assistance payments fall within the third tier. Second and third tier benefits are sometimes referred to as supplementary assistance.
21. Most third tier payments are discretionary or have a discretionary element which means there is no guarantee a person will receive the payment. Eligibility depends on the merits of each individual application. The criteria are regarded as tighter than other benefits and limits as to the level and frequency are clearly prescribed, although such limits can usually be exceeded in what are considered to be to “exceptional circumstances”. Third tier assistance, particularly the special benefit, has been described by some as “the safety net within the safety net”.
22. The 1972 McCarthy Report illustrates the differences between the main or standard benefits and supplementary assistance:<sup>8</sup>

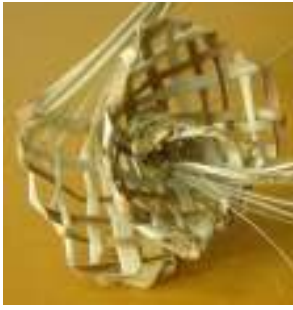
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<sup>8</sup> Report of the Royal Commission of Inquiry, *Social Security in New Zealand* March 1972; chapter 25 (the McCarthy Report).

*“It may be that if the level of the standard benefits is raised...then some of those at present receiving supplementary assistance will no longer need it. But we must stress again that the standard benefits cannot meet all special cases. Indeed, the existence of a reasonably large number of supplementary assistance grants can be a sign of the health of a categorical system, by indicating that the general level of benefits is not unnecessarily high, or that special cases are receiving full and sympathetic treatment. What degree of recourse to supplementary assistance may indicate that standard benefit levels are inadequate is perhaps a matter of judgment but a very high figure could certainly be one indication that the situation should be carefully examined.*

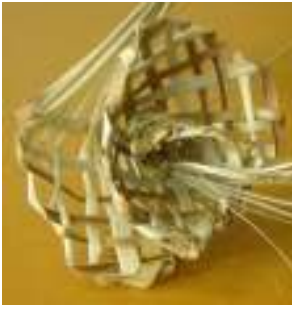
*The supplementary assistance scheme is a necessary and desirable feature of our social security benefit system. It gives to the administration of welfare policy a flexibility which no amount of refinement of categories or eligibility criteria for standard benefits can otherwise offer. Nor will any adjustment of standard benefit levels remove the need for it.”*

23. The Royal Commission regarded the relationship between the various tiers of benefit as crucial to maintaining a benefit system that had the ability to respond to different types of need effectively and efficiently. From 1991 onwards the government adopted the exact opposite approach, and marked the beginning of the unravelling of the safety net.



### III THE 1991 BENEFIT CUTS

24. The benefit cuts introduced in 1991 saved approximately \$1.3 billion per year. Each of the main benefits apart from NZ Superannuation was reduced by 10% to 25%. As a result, and in combination with the introduction of market rents for state house tenants and increased user charges, more and more people were having to rely on supplementary benefits, especially benefits within the third tier, simply to meet daily living expenses – expenses that were intended to be met by the main categorical benefits.
25. Government rhetoric around the 1991 benefit cuts included moving from “targeted welfare provision” to one of “tight-targeting” i.e. main benefits would be reduced and supplementary benefits, especially those in the third tier, are available to meet an individual’s shortfall should that be necessary. The existence of the discretionary special benefit was used as a basis for saying that people would remain in a position to meet essential outgoings and that cuts to main benefits would not place people in situations of ongoing hardship. The special benefit was also used by government to justify the move to market rents.
26. The third tier benefits were never designed to meet ongoing basic costs, general need that main or categorical benefits were meant to meet. People were nonetheless expected to access the myriad of add-ons that in theory were available if at any point and for any reason income was insufficient. A number of operational difficulties arose, but importantly it was the increased reliance on the supplementary system that brought the complexity now intended to be addressed by way of introducing the single benefit.
27. The level of spending on supplementary benefits rose dramatically. Policy advisors within the Department of Social Welfare formally warned the government of what the consequences of cutting benefits would be, which included increased spending on supplementary benefits. They also warned of a significant increase in the level of unmanageable hardship as undue pressure was being put on the third tier system to do what only the first tier was capable of doing.



#### **IV GOVERNMENT'S RESPONSE TO INCREASED EXPENDITURE ON SUPPLEMENTARY BENEFITS: FURTHER CUTS**

28. Instead of regarding the increased spending on third tier assistance as either a positive sign that people requiring extra help were receiving it, or of the need to revisit the adequacy of main benefits, the government set about reducing the availability of supplementary benefits through a combination of tightening eligibility criteria, converting significant areas of non-repayable assistance into repayable loans and removing whole categories of assistance altogether.
29. Despite the then National government's promoting the benefit cuts on the supposed availability of supplementary assistance, the increased level of spending was regarded as undesirable and as something to reduce, instead of as an indicator of the effectiveness of the benefit system as a whole.
30. Attempts to reduce the availability of assistance were made in a number of ways. One of those methods involved attempts to restrict access by way of changes to operational guidelines. However, internal instructions followed by Department of Social Welfare staff hold no authority in law, and exist merely to assist in the interpretation of legislation or other statutory instruments that contain the rules around entitlement.
31. As a result, a significant number of the internally imposed restrictions were found by the Social Security Appeal Authority and by the courts to be unlawful.<sup>9</sup> Whilst many of the supplementary benefits involve the exercise of a statutory discretion, the tribunal and the High Court determined on a number of occasions that decisions to refuse assistance that had been based on the Department's internal guidelines were wrong in law.<sup>10</sup>
32. It became apparent to the government and the Department of Social Welfare that tightening internal policy instructions was not a risk free method for reducing expenditure. Other ways that were legal were needed to be found, but which could be implemented without raising the concerns of Parliament. The benefit cuts of 1991 were regarded as an extraordinary move, and any attempts to cut expenditure by way of legislative change would attract strong public opposition therefore should be avoided wherever possible.

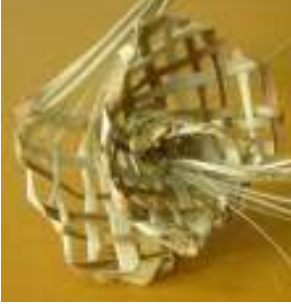
<sup>9</sup> For example, see *Ankers v Attorney-General* [1995] 2 NZLR 595; *Hall v Director General of Social Welfare* [1997] NZFLR 902; A number of decisions of the Social Security Appeal Authority.

<sup>10</sup> For the two year period ending December 1995, approximately 60% of decisions issued by the Social Security Appeal Authority were made in favour of the appellant beneficiary.

33. Consequently, the government, through the Department of Social Welfare, embarked on a series of cuts to the various forms of supplementary assistance that were governed by either ministerial welfare programmes or ministerial direction.
34. Ministerial programmes are forms of assistance approved by the Minister under s 124(1)(d) of the Social Security Act. The eligibility criteria of ministerial programmes are contained in the programme itself. Because the criteria are not contained in legislation, the Minister has the ability to tighten the tests, or even remove whole categories of assistance without the approval of Parliament.
35. Similarly, s 5 of the Social Security Act gives the Minister the ability to issue binding instructions to the Director-General (now the chief executive) on how to administer any aspect of the legislation. The difference between ministerial programmes and ministerial directions is that the former contain the eligibility criteria, whereas the latter operate as binding instructions on how a statutory provision must be administered.
36. The similarity however is that whilst ministerial directions cannot require the statute to be overridden, they can still be used lawfully to restrict access to the benefit to which they relate, and importantly, without the scrutiny of Parliament. The most common examples of third tier assistance governed by ministerial direction are the special benefit paid under s 61G of the Social Security Act, and advance payments of benefit issued to meet immediate need, paid under s 82(6).
37. The purpose of placing various third tier benefits under direct ministerial control was to provide flexibility in administration, for example to give the government the ability to respond to new categories of need as they arose. However, the 1990s saw an abuse of that ability by way of a regular tightening of the eligibility criteria and slicing off of categories of assistance, all of which were carried outside of the public arena. This method of restricting access continued throughout the 1990s.<sup>11</sup>
38. One notable attempt to restrict access to supplementary benefits by way of legislative change was the Social Welfare Reform Bill 1994. If passed, the Bill would have given the executive branch of government the ability to set the criteria for all supplementary benefits, thus removing all discretion and replacing it with mandatory rules that under no circumstances could be stepped outside of, regardless of individual need. The public opposition to the Bill and its eventual demise stemmed from what removing flexibility within the third tier would have done in relation to the overall statutory scheme.

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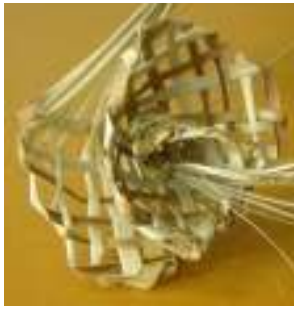
<sup>11</sup> Despite the Labour opposition's continued objections, it too continued the practice after becoming the government in 1999.



## V SOCIAL WELFARE REFORM BILL 1994

39. An important aspect of third tier assistance is the ability of the various provisions to meet individual need, regardless of the applicant's circumstances. As pointed out in the McCarthy Report, the nature of supplementary assistance requires tighter eligibility criteria than the main benefits, but with a residual ability to exceed stated limits in "exceptional cases". It is this flexibility that gives the benefit system its "safety net" characteristic.
40. In 1994 the Social Welfare Reform Bill was introduced. It was an attempt to change the statutory framework of the third tier system from one based on a mix of statutory provisions, ministerial directives and ministerial programmes, to a highly prescriptive set of rules set in regulations. The change would have removed the discretionary nature of the supplementary system and replaced it with an inflexible rules-based regime that could only provide what was explicitly set out in the particular regulation.
41. The proposal met massive resistance. A concerted community response opposing the changes influenced the Select Committee to recommend that the Bill be put on hold. It was never revisited. If passed, the Bill would have removed the ability to meet the many and varied types of need that no prescriptive framework can offer, and would undoubtedly have destroyed the safety net aspect of the legislation that the McCarthy Report reiterated as crucial to adequate welfare provision.
42. Of course, the Labour opposition was highly critical of the proposal for precisely the same reasons, correctly pointing it out as a catastrophic step backwards and representing an abandonment of fundamental principles.
43. Ironically, it was a Labour government that went on to abolish the special benefit in 2004 and to replace it with the prescriptive temporary additional support benefit – an introduction of almost the precise measures it had shown such vehement opposition to throughout the 1990s.





## VI NUMBER OF SPECIAL BENEFITS REDUCED BY MORE THAN TWO-THIRDS

44. Despite the continued attempts to reduce total expenditure on supplementary benefits, both before and after the failed Social Welfare Reform Bill 1994, the mid-1990s saw the total number of special benefits in force at any one time reach approximately 45,000. The failure of the Social Welfare Reform Bill 1994 meant that other methods were required if spending were to reduce. A number of methods were adopted, including the issuing of a new special benefit ministerial direction.
45. The Minister was careful to avoid overstepping his statutory authority by overriding the clear discretion contained in the legislation. Nonetheless he attempted to restrict access to the special benefit as much as possible.
46. One particular change involved a new clause that created the illusion that the special benefit was a time-limited benefit, and that it was to be regarded merely as a short-term solution to an individual's financial shortfall. That clause read:

*"In administering the programme of special benefits, you are to ensure that where practicable, persons receiving special benefit under the Act receive appropriate advice with the objective that wherever possible, their need for a special benefit is eliminated or reduced within 6 months after the later of—*

- (a) The date of any grant of a special benefit after the date this direction takes effect; or*
- (b) Any review of special benefit after that date."*

47. Time-limiting the special benefit by way of ministerial direction would undoubtedly have been beyond the Minister's authority, and therefore unlawful. The above clause makes no reference to time-limits, nor to anything that suggests the special benefit is intended to be granted to an individual on a temporary basis, whether for a period of up to six months or less.
48. The clause as worded avoided claims of illegality, but at the same time sent a clear message to the chief executive that the discretion contained in the legislation was to be exercised narrowly. As a result, the numbers of special benefits dropped from approximately 45,000 in 1995 to under 10,000 in 2000.

49. The reduction of around 35,000 special benefits between 1995 and 2000 occurred without legislative change, was the result of pure ministerial fiat, and often without proper examination of the individual's circumstances or adherence to either the ministerial direction or the legislation.<sup>12</sup>

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<sup>12</sup> The notion that the special benefit is a temporary benefit was challenged unsuccessfully before the High Court (see: *Stemson v Chief Executive of the Department of Work and Income*). However, the result is highly questionable when it is considered that nowhere in the ministerial direction or the legislation is there reference to time-limits or suggestions of temporary grants. Furthermore, even if the ministerial direction did make such a reference, it would raise clear issues around the legality of that direction. Such a document may reflect the intention of the Minister, but in no way should the Minister's intention be considered to be the same as that of Parliament. It must also be remembered that the apparent availability of the special benefit was used by the Ministers of Social Welfare and Housing to justify the 1991 benefit cuts and in 1992 the introduction of market rents for state house tenants, again suggesting that the special benefit was never considered to provide relief on a short term basis only.



## VII ABOLITION OF THE SPECIAL BENEFIT AND INTRODUCTION OF TEMPORARY ADDITIONAL SUPPORT: THE REMOVAL OF THE SAFETY NET

50. Following the change of government in 1999, concerns around the falling numbers of special benefits paid and about whether the special benefit was being administered correctly resulted in the Ministry of Social Development looking closely at its procedures. Reports by community groups<sup>13</sup> together with comments made by the Social Security Appeal Authority suggested strongly that the application process was flawed and the way the chief executive was applying the ministerial direction was incorrect.
51. The Ministry, with assistance from community groups, began to develop ways to ensure that people who were entitled to receive the special benefit did in fact receive it. A number of practices were introduced that identified those potentially eligible and a policy of “full and correct entitlement” was adopted in around 2001.<sup>14</sup>
52. As a result the numbers of special benefits increased to roughly the same as that paid in 1995. Ironically, efforts to improve the administration of the special benefit and the increased numbers paid were too successful. The special benefit was abolished under the Social Security (Working for Families) Amendment Act 2004 and replaced with the temporary additional support benefit, the change taking effect from 1 April 2006.
53. The eligibility criteria for temporary additional support is contained in regulations. It is rules-based and contains no discretion to grant assistance outside of that which the regulations state, the exception being that the benefit can be denied despite the criteria being met. Part of the regulations’ overview states:

*“These regulations—*

*...*

*prescribe or set out other eligibility criteria for receiving that support, the amount of it, and the period or periods for which it may be granted.”*

<sup>13</sup> See: *Special Benefit Report 1995 – 2000*, Wellington People’s Centre, August 2000.

<sup>14</sup> While the Ministry’s policy of “full and correct entitlement” was welcomed, it by no means resolved problems around take-up rates or ensured that the Ministry’s obligation to be proactive in meeting need was always met. For example, see *Special Benefit Report 1995 – 2000* (ibid) where as at 1 July 2000 at least 159,000 people were eligible to receive a special benefit under the formula assessment contained in the ministerial direction, based on information held by the Ministry. Yet under the “full and correct entitlement” policy introduced around around 2001, special benefit numbers failed to reach one third of this figure.

54. The thinking behind temporary additional support is similar to much of that contained in the Social Welfare Amendment Bill 1994, a Bill that the then Labour opposition opposed. Not only was it this Labour government that was responsible for the change, the legislation was passed under urgency as part of the 2004 budget, therefore avoiding public input via the select committee process—a tactic that Labour was so scathing over throughout the 1990s.
55. The changes represented the abandonment of principles that had underpinned social security in New Zealand for many years. By removing the state's ability to meet any kind of need regardless of circumstances, the legislation could no longer be regarded as providing the type of safety net pivotal to effective income maintenance.



## VIII SOCIAL SECURITY AMENDMENT ACT 2007

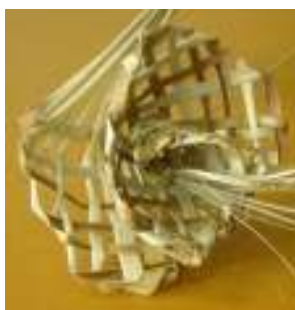
56. A further assault on the ability of our social security system to respond positively towards the most disadvantaged in our community came in the form of the Social Security Amendment Act 2007. The Act was regarded by government as the first of two phases, towards full implementation of the single core benefit expected to be introduced by 2009/10.
57. The Act introduced changes that altered a number of fundamental aspects around the mechanics of the legislation that are at odds with both the purpose of income maintenance, methods used to assess eligibility and principles of good administration.
58. For example, the Act extended the chief executive's ability to impose monetary penalties on sickness and invalid's beneficiaries for failure to participate adequately in activities designed to assist the person to become "work-ready".
59. In addition, it removed the chief executive's obligation to investigate claims for all unemployment-related benefits at the time a claim is made. The change is intended to be aimed at those applying for unemployment-related benefits only, and involves requiring applicants to participate in job search activities before entitlement is determined. Of concern is that the change applies to situations where "the chief executive considers that the appropriate financial assistance for the person would be an unemployment benefit". This means people who ought properly to be applying for a sickness or invalid's benefit but happen to be "considered" as qualifying for an unemployment benefit, may find themselves inappropriately caught up in the job search activities required before applications for income support can be fully processed.
60. The Act also raises a constitutional issue whereby the executive branch of government is given the ability to create regulations that can override the statutory definition of what constitutes "income" in certain circumstances, and determine when and how a beneficiary or an applicant for a benefit has deprived themselves of income for the purposes of assessing entitlement. This is a grave situation, and one that is not easily understood by the general public. Consideration of a person's income is fundamental to assessing entitlement to social security, and for this reason Parliament has taken upon itself to place the rules around what constitutes income into the principal legislation. It should not be a matter for the executive branch of government to determine.
61. It is a fundamental principle that regulations ought not to be able to oust a statutory provision. Regulations that would have the effect of doing so have been ruled by the courts as *ultra vires*, in this case meaning outside of the executive's authority to create. The problem with the present

situation as to the ability to create regulations relating to income and income deprivation is that the Act specifically passes that ability to the executive branch of government to lawfully create regulations that have the effect of overriding the statute itself. Serious constitutional issues are involved that it would be difficult to envisage existing outside the area of social welfare.

62. A further and probably most worrying aspect of the Social Security Amendment Act 2007 is the introduction of the new purpose and principles sections. The statute itself now contains specific guidance the chief executive must follow when administering all aspects of the legislation. The statutory purpose is now based heavily on moving all “working age beneficiaries” into employment. The meeting of need is no longer of central importance.
63. The new purpose and principles sections have the effect of dispensing with the true nature of social security. Prior to the change, the long title described the legislation as “[a]n Act to consolidate and amend the Social Security Act 1938 and its amendments”. In *Ruka v Department of Social Welfare* [1997] 1 NZLR 154 the Court of Appeal at 161 accepted the long title of the 1938 Act as guiding the purpose of the current legislation, which reads:

*“An Act to provide for the Payment of Superannuation Benefits and of other Benefits designed to safeguard the People of New Zealand 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.”*

64. The spirit and intent of the legislation as set out in the long title to the 1938 Act has now been lost and replaced with a list of factors that focus predominantly on employment as the ultimate goal for everyone. A statement that says sustainable employment is desirable in itself appears unobjectionable. However, holding this up as a statutory purpose of legislation designed to ensure that the basic needs of those on the lowest incomes are met necessarily removes the meeting of need as the legislation’s primary concern.
65. The new purpose and principles sections contain concepts that are foreign to the provision of adequate income support. The removal of income support as the statute’s main focus signals an even further dismantling of our current social security system.



## VIII SINGLE CORE BENEFIT

66. Current plans for a single core benefit were initially announced around 2000/01 and were promoted on the basis of a need to create a simpler and fairer benefit system.
67. Broad information about the single benefit that has been announced includes:
  - A single core benefit with one set of rates and one set of eligibility criteria;
  - Supplementary benefits to recognise costs such as accommodation, childcare or disability;
  - Introduction of an enhanced employment service designed to either assist all working aged people into employment, or prepare those who are not to become “work-ready”;
  - No one will be financially worse off as a result of the changes.
68. There has been little detail released and the legislative timetable has been altered more than once. The required legislation, including a complete rewrite of the Social Security Act, had been planned for as early as July 2006. It was then moved to December 2006, and is at present expected in 2009/10.
69. A limited amount of support has been shown for the idea of a single benefit in principle. Moves to reduce complexity and the opportunity to remove the name “invalid’s” benefit have been welcomed. However, such support fails to acknowledge the history of changes that have taken place since 1991. The concept is ill-conceived and likely to exacerbate the difficulties the core benefit is supposed to fix.
70. The proposal assumes that complexity within the current system will be reduced by replacing most of the main benefits, such as invalid’s, domestic purposes, sickness, widow’s and unemployment benefits, with a single benefit containing one set of criteria.
71. The perceived need for a single benefit is based on a misunderstanding of how the current framework is intended to operate and a lack of recognition of how current problems have arisen. In particular, the proposal fails to recognise that the complexity is not within the main benefits at all, of which there are relatively few. In reality the complexity comes from the increased expectation that people must apply for the range of supplementary assistance or “add-ons” just to meet everyday costs. As mentioned above, the increased reliance on the supplementary system arose as a result of the benefit cuts in 1991 and the move to market rents in 1992.

72. Moving to a single benefit will not remove complexity from the first tier because this is not where the complexity is. Assessing entitlement for a main benefit is relatively straightforward. People apply for one of six or seven benefits according to general need.
73. Ironically, it is likely that a single benefit will bring further complexity because of the need to introduce another tier of “add-ons” that recognises differences in general need, as the current main benefits reflect, such as unemployment, caring for children, sickness, disability and so on.
74. Third tier, or supplementary, benefits were never designed to meet ongoing basic costs. The move in the early 1990s from a benefit system based on targeting to one based on tight-targeting nonetheless meant that people were expected to access the myriad of add-ons that in theory were available if at any point and for any reason income was insufficient. A number of operational difficulties arose, but importantly it was the increased reliance on the supplementary system that brought the complexity the government now intends to address by way of introducing the single benefit. Under the single benefit proposal it is necessary to increase the role of add-on benefits in order to recognise differences in general need that are currently reflected in the first tier.
75. At the same time, a single benefit removes recognition of general need from the first tier and places it within either the second or third tier mechanisms. Far from reducing complexity and administration, this will be increased.
76. There is also concern over what is meant by the assurance that no one will be worse off. Does this mean that all new applicants with the same general needs as existing beneficiaries will receive the same level of support? Or will people currently receiving a benefit paid at a rate higher than the unemployment benefit, such as the invalid’s benefit, be grand-parented within the new system and that new applicants will receive less than would be paid currently as if the changes had not occurred?
77. It is almost certain that the rate of the core benefit will be set at the current rate of the unemployment benefit. Government reports have indicated the need to provide for differences in general need by way of further supplementary assistance. In addition to the perceived need to reduce complexity, there is the further aim of treating in the first instance all beneficiaries of working age as either “work-ready” or as requiring preparation to become “work-ready”. The core benefit is envisaged by government as a means to meet this objective with as little fuss as possible. The Social Security Amendment Act 2007, as the first phase of the core benefit, has paved the way for this to occur by introducing benefit sanctions for those in receipt of the sickness and invalid’s benefit and replacing meeting of need with movement into employment as the main purpose of social security.
78. A core benefit is unnecessary to ensure people in receipt in benefits, other than unemployment benefit, have access to job search assistance. One of the reasons for merging the New Zealand Employment Service and Income Support was to help achieve this very end. Moreover there has



never at any time been any restriction on people receiving benefits other than an unemployment benefit receiving job search assistance.

79. The concept of a core benefit as it currently stands is ill-conceived and unnecessary. No account has been taken of the true causes of the difficulties it is intended to remedy, and it will have the effect of exacerbating those same problems.
80. Much of the damage has already occurred. A lack of understanding of what an adequate welfare model should look like has resulted in decimation of the safety net that once characterised New Zealand's social security system as caring and comprehensive.
81. We have now reached a point where we can say that our system of ensuring all New Zealanders have access to adequate income support is no longer with us.

**Tony McGurk**

**Beneficiary Advocacy Federation of New Zealand, 2008**