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**GOVERNMENT PROVISION OF WELFARE IN
AOTEAROA NEW ZEALAND:**

WE'RE DOING IT WRONG

LLM RESEARCH PAPER
LAWS 531: WELFARE LAW AND SOCIAL OBLIGATION



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Abstract

The paper examines the provision of welfare by the government in New Zealand and suggests that: the monetisation of welfare has led to the concept of welfare being so narrowly defined that it has lost its original meaning and intent; the provision of welfare in New Zealand requires fundamental review, and that with the establishment in legislation of appropriate underpinning principles and identification of the basic needs that welfare should meet, the currently required obligations in welfare are not necessary; and that the provision of welfare should be depoliticised to enable it to be provided using a rights-based approach that honours New Zealand's international obligations and ensures welfare services are provided in the same manner as other services provided by the government from taxation.

Word length

The text of this paper (excluding abstract, table of contents, footnotes and bibliography) comprises approximately 7227 words.

Subjects and Topics

Social security

Social welfare

I Introduction

A What is Social Security?

“Social security” is a concept that encompasses the right of people within society to wellbeing. The Universal Declaration of Human Rights¹ addresses social security in Article 22:²

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

The right described in this Article, straddling as it does economic, social, and cultural rights and personal dignity, provided through national and international effort and cooperation, is so broad and encompassing that it must be woven into the fabric of a society to be met.

“Social welfare” or “welfare” is a subset of social security focused more specifically on assisting people who are experiencing certain social contingencies. “Nine principal branches” of social security that may result in social contingencies are set out in the United Nations Economic and Social Council Committee on Economic, Social and Cultural Rights (CESCR)’s General Comment No.19 (GC).³ These are health care, sickness, old age, unemployment, employment injury, family and child support, maternity, disability, and survivors and orphans.

This paper looks at how the provision of welfare in New Zealand has been isolated from its broader context of social security, and posits that this has allowed the politicisation of welfare to the extent that New Zealand is no longer meeting its international obligations in the provision of welfare to its citizens.

The paper suggests that:

- the monetisation of welfare has led to the concept of welfare being so narrowly defined that it has lost its original meaning and intent.

¹ The Universal Declaration of Human Rights was adopted by the UN General Assembly on 10 December 1948 “to guarantee the rights of every individual everywhere”: <www.un.org/en/documents/udhr/history.shtml>. The Declaration has no force of law, but may have the status of customary international law: Thomas Buergenthal, Dinah Shelton and David Stewart *International Human Rights in a Nutshell* (3rd ed, West Group, St. Paul, Minnesota, 2002) at 39-43.

² Universal Declaration of Human Rights, GA Res 217 A (III), A/Res/217 A (III) (1948).

³ Office of the High Commissioner for Human Rights *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies* HRI/GEN/1/Rev.7 (2009).

- the provision of welfare in New Zealand requires fundamental review, and that with the establishment of appropriate underpinning principles and identification of the basic needs that welfare should meet, the currently required obligations in welfare are not necessary.
- the provision of welfare should be depoliticised to enable it to be provided using a rights-based approach that honours New Zealand's international obligations and ensures welfare services are provided in the same manner as other services provided by the government from taxation.

B The Place of Welfare

New Zealand citizens contract with the government through payment of taxes for the provision of services including healthcare, education, welfare, infrastructure, policing, a justice system, and armed forces. The provision of these services is generally underpinned by legislative principles that assist in determining how services are provided at a policy level. For example, the Education Act 1989 provides that people between the ages of five and nineteen years of age have the right to free primary and secondary education.⁴ With respect to healthcare, the government has issued an Eligibility Direction⁵ pursuant to s 32 of the New Zealand Public Health and Disability Act 2000, which describes the people eligible for publicly funded health and disability services in New Zealand. Eligible people have the right to be considered for publicly funded health and disability services, subject to clinical and other assessment criteria.⁶ Welfare services are underpinned by principles set out in s 1B of the Social Security Act 1964.

Services provided from taxation are utilised by individuals and communities to a greater or lesser extent depending on variables such as where they live and their particular needs and wants. The provision of these services enables the country to operate effectively as a whole, so that individuals are advantaged by a wider societal benefit, although they may not use services directly. This concept of “common good” applies to all services that are utilised unequally across society.

Welfare is a key part of the services provided by the government and is required for the functioning of an equitable and democratic society; however, the way in which it is currently provided in New Zealand is out of step with the way other services are provided by the government, and also with the country's international obligations.⁷ While the

⁴ Section 3.

⁵ Health and Disability Services Eligibility Direction 2011.

⁶ <www.health.govt.nz/new-zealand-health-system/eligibility-publicly-funded-health-services>.

⁷ See Part V Section A International Obligations in this paper.

concept of the welfare state is firmly entrenched in New Zealand society, as discussed later in this paper, of all the services provided by the government from taxation, welfare is the most controversial. There is disagreement over how it should be provided, and whether it should be provided at all, and in recent years the government has imposed significant obligations on citizens in receipt of welfare benefits,⁸ which are not required in respect of other services. The welfare system in New Zealand has become increasingly fractured, stigmatising and monetarised as it has passed through different political approaches. However, at a fundamental level, welfare is no different to any of the other services provided by the government. It is something that people may or may not need to access depending on their particular circumstances and events within and outside their control.

C Types of Welfare State

Writing about welfare in New Zealand, Boston considers different types of welfare state and concludes that the approach set out by Ware and Goodin⁹ is helpful. This distinguishes between three models:¹⁰

- a residualist, minimalist or needs-based model
- an insurance or contributions-based model
- a social citizenship or rights-based model.

In Boston's analysis, these models are each associated with various political approaches.

This paper posits that the positioning of the welfare state as a political product is a step removed from the concept of social security outlined in the Universal Declaration of Human Rights. To deliver on its international obligations, New Zealand must take a step back from the political model currently legislated for and under which welfare is currently delivered, identify the underpinning principles of the right to social security, and reframe the delivery of welfare accordingly.

⁸ The Social Security Act 1964 provides for obligations such as work test obligations (s 102A) that must be met in order for people to be eligible for support under the Act.

⁹ Alan Ware and Robert Goodin (eds) *Needs and Welfare* (Sage, London, 1990).

¹⁰ Jonathan Boston "New Zealand's Welfare State in Transition" in Jonathan Boston, Paul Dalziel and Susan St John (eds) *Redesigning the Welfare State in New Zealand* (Oxford University Press, Oxford, 1999) 3 at 5-6.

D Welfare Stigma

Extensive research has been undertaken on welfare stigma, which is:¹¹

...widely regarded to be of central importance in understanding the impact of welfare programs in their goal of alleviating poverty. It affects both the decision to take up benefits and the well-being of those who actually do.

The separation of welfare from other aspects of social security which has occurred in New Zealand has allowed welfare to essentially become a “political football”. Expectations have changed along with the fortunes of the nation, from a post-war environment where there was acceptance that people could have fallen on hard times without being “at fault”, to the perception that people need to help themselves. The very perception of equality, of a “level playing field” leads to inequality and the belief that if one lives in a fair and just society, one is more at fault for failing to succeed. This has been played on by successive governments since the 1980s: in the preface to *Setting the Record Straight: Social Development in Aotearoa / New Zealand* it is asserted that, as at 1995: ¹²

[s]ince July 1984 Aotearoa/New Zealand has been subjected to a structural adjustment programme whose purity and zeal is unparalleled anywhere in the world. Those responsible were the ‘social democratic’ Labour government from 1984-1990 and the ‘conservative’ government from 1990 to the present day.

Other commentators on this period of social policy change include McClure, who, in a chapter entitled “The Reluctant State: 1984-1998”, records the “sharp shifts in social policy ... to a deregulated economy, a more minimal state, and a range of strategies to lighten what came to called the welfare ‘burden’.”¹³

The stigmatisation of welfare affects access to welfare, and accordingly even though welfare may be available, if people are not able to take it up or are stigmatised if they do, their right to social security is being impinged.

¹¹ Timothy Besley and Stephen Coate “Understanding Welfare Stigma: Taxpayer Resentment and Statistical Discrimination” (1992) 48 *Journal of Public Economics* 165.

¹² Jane Kelsey and Mike O’Brien *Setting the Record Straight: Social Development in Aotearoa / New Zealand* (ANGOA, Wellington, 1995).

¹³ Margaret McClure *A Civilised Community: A History of Social Security in New Zealand 1898-1998* (Auckland University Press, Auckland, 1998) at 210.

II The Evolution of Social Security in New Zealand

A The Social Security Act 1938

New Zealand's attempt to provide social security for its citizens started off well. The Social Security Act 1938 (the 1938 Act) was the first attempt to legislate for social security as a set of interwoven rights. Various other Acts had provided for aspects of welfare, including the Destitute Persons Act 1877 and the Old Age Pensions Act 1898, and the pensions / benefit concept was expanded through other Acts such as the Widows' Pensions Act 1911, the Miners' Phthisis Act 1915 and the Pensions Act 1925. The Family Allowances Act 1926 introduced a means-tested family allowance, and other advances were being made for delivery of healthcare.

The 1938 Act consolidated previous Acts and included provision for payment of a range of specific benefits to citizens by the government from taxation, and also provided for universal superannuation and a universal system of medical care benefits.¹⁴ It brought together aspects of a "social security" system rather than a "welfare" system, consolidating people's right to support and assistance in certain circumstances.

The long title of the 1938 Act set out three "arms":

An Act to provide for the Payment of Superannuation Benefits and of other Benefits destined to safeguard the People of New Zealand for 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.

These three arms – the payment of benefits for social contingencies, here called disabilities; a system for medical and hospital treatment; and other benefits to promote the health and general welfare of the community – are notable for several reasons:

- Benefits for people experiencing "disabilities" from "exceptional conditions" are separated from medical and hospital treatment.
- Maternity and child rearing, now commonly associated with welfare provision, are not included with the social contingencies or "disabilities" (the Family Benefit was universal, and is not mentioned in the long title). Maternity benefits were introduced in 1939 as a separate set of benefits.¹⁵

¹⁴ Social Security Act 1938.

¹⁵ <www.teara.govt.nz/en/1966/social-security/page-6>.

- Promotion of the health and general welfare of the community is specifically stated as an underpinning principle.

The intent and long title of the 1938 Act was consistent with the current concept of social security as provided for in the Universal Declaration of Human Rights.

The provision of benefits and other support via statute meant that, in theory, substantial provision for others would no longer have to be by charitable means. The “burden” of those in need would now be shared equally amongst society. The “common good” that comes from social security, enabling people to participate in society to the extent that they are able, from providing for the sick and the poor and the unfortunate, means less crime, less disease, less poverty, and therefore a safer society. The broader social benefit from social security provision is for all, not just those receiving assistance.

B Enabling Participation and Belonging

Stephens notes that the Social Security Act 1938 contained the “... fledgling notion that all citizens should be able to achieve a level of participation in New Zealand society.”¹⁶ The 1938 Act introduced the concept that:¹⁷

... every citizen had a right to a reasonable standard of living and that it was a community responsibility to ensure that its members were safeguarded against the economic ills from which they could not protect themselves...

with “a comprehensive system of benefits ... covering all the main economic hazards which in the past had been the cause of poverty.”¹⁸

Despite the emphasis on economic ills and hazards, as described earlier the underlying purpose of providing financial relief was to allow citizens to participate in society. The intention was to *protect* the community, to *safeguard* people from ills and hazards.

The ten monetary benefits payable under the 1938 Act were superannuation, age (distinguishable from superannuation as it was subject to a means test), widows’, orphans’, family, invalids’, miners’, sickness, unemployment and emergency.¹⁹ Other “benefits” were the provisions of services (notably, medical, pharmaceutical, hospital and maternity). Therefore, “benefits” in the 1938 Act meant not just money but any type of assistance provided for under that Act, including medical treatment and pharmaceuticals. Part III of

¹⁶ Māmari Stephens “The Right to Social Security” in Margaret Bedgood and Kris Gledhill (eds) *Law Into Action: Economic, Social and Cultural Rights in Aotearoa New Zealand* (Thomson Reuters, Wellington, 2011) 127 at 134.

¹⁷ <www.teara.govt.nz/en/1966/social-security/page-2>.

¹⁸ Above n 17.

¹⁹ Social Security Act 1938.

the 1938 Act provided for health benefits. These were added to as the scheme was developed over the years. Hospital benefits included publicly funded maintenance and treatment in hospitals; medical benefits included district nursing; and pharmaceutical benefits included the supply of pharmaceuticals on prescription. These benefits were expressed in the same way as the economic hardship benefits.²⁰

C The Social Security Act 1964 and Subsequent Developments

Stephens records that the Social Security Act 1964 (the 1964 Act) largely “amended, consolidated and broadened”²¹ the 1938 Act, and Boston notes that “for at least four decades following the passage of the Social Security Act [1938] there was solid, bipartisan support for the principles underpinning the welfare state.”²²

The next significant event in the development of the provision of social security in New Zealand was the 1972 Report of the Royal Commission on Social Security.²³

McClure notes that “the Royal Commission [was] an opportunity to analyse economic and social progress in a rational manner and free from political duress”.²⁴ The concepts expressed in the report tended to reflect the international position,²⁵ with the principles underpinning the social security scheme including that the aims of the system should be, *inter alia*:²⁶

...to ensure that ... everyone is able to enjoy a standard of living much like that of the rest of the community, and thus is able to feel a sense of participation and belonging in the community.

However, McClure noted that this freedom from political duress was also the inquiry’s weakness, due to the overriding political pressure that dominated the provision of social security in New Zealand at that time.²⁷

Stephens records that the Report of the Royal Commission on Social Policy in 1988 adopted a similar approach to participation as the 1972 report,²⁸ but notes that while these reports and that of the Royal Commission of Inquiry into Compensation for Personal Injury

²⁰ <www.teara.govt.nz/en/1966/social-security/page-6>.

²¹ Above n 16.

²² Above n 10 at 3.

²³ Royal Commission on Social Security in New Zealand *Social Security in New Zealand: Royal Commission on Social Security in New Zealand* (Government Printer, Wellington, 1972).

²⁴ Above n 13 at 174.

²⁵ At 171 and 172.

²⁶ Above n 20.

²⁷ Above n 13 at 174.

²⁸ Above n 16 at 136-137.

in New Zealand in 1967 all viewed the idea of social security as a tool to achieve the promotion of collective welfare, ongoing political reform and various political approaches prevented the implementation of the reports' recommendations in such a way as to honour New Zealand's international obligations.²⁹ It was at this point that New Zealand's provision of welfare started to deviate significantly from its original premise as established in 1938, and from international expectations.

D A Change in Approach

One of the instigators for the changes in approach to the welfare system by the government was the changing nature of relationships. In the 1970s, the government struggled to deal with increasing pressures on the system as a result of the Domestic Purposes Benefit (DPB). The system had been introduced when marriage was the "norm" and it was no longer (if it ever had been) the best fit, particularly with the growth of de facto relationships. Changing social structures led to more restrictive tests as the government struggled with the changes and offered up for public scrutiny the private lives of citizens accessing benefits as a means of justifying more prescriptive access. This was the harbinger of a significant shift in perception of welfare provision – when people's lifestyle choices became a determinant of whether they were "worthy" of receiving welfare in the eyes of the general public. McClure records the increase in the uptake of the DPB and that "National's return to power at the end of 1975 led to the politicisation of this controversial benefit"³⁰ and that this "reflected public fears of a wider social revolution."³¹ As governments struggled with an overly generous superannuation scheme, taxation soared and those receiving benefits such as the DPB and the unemployment benefit bore the brunt. Demonising of people receiving social welfare benefits by the government embedded welfare stigmatisation.

By the 1990s, the concept of social security was entrenched as the provision of monetary benefits, as recorded in the words of Mark Prebble when speaking about New Zealand social policy:³²

The important shift is away from a commitment to income support at a level so that recipients could "belong and participate" in society... to a modest safety net to maintain individuals in the daily essentials of food, clothing, power and housing at a decent level.

²⁹ Above n 16 at 136.

³⁰ Above n 13 at 184.

³¹ At 185.

³² Above n 12 at 52.

The introduction of benefits such as Working for Families in 2004 further distanced the rest of society from people receiving certain welfare benefits by widening the divide between “good” and “bad” benefits – benefits that went to those perceived as deserving, like the elderly and the employed, versus to those perceived as undeserving such as the unemployed and solo parents.

E The Isolation of Welfare

Another way that the provision of welfare was undermined was by its legislative isolation from other aspects of social security. While the inclusion of medical care and treatment in the 1938 Act and the following 1964 Act until their removal in the 1990s³³ reflected the broader concept of social security that existed in New Zealand at that time and still exists at an international level, successive New Zealand governments have unpacked social security so that the 1964 Act now only covers the provision of welfare.

Superannuation, employment injury and accident and health benefits have been removed from the 1964 Act and given their own legislative bases – the New Zealand Superannuation and Retirement Income Act 2001, the Accident Compensation Act 2001 and the New Zealand Public Health and Disability Act 2000 respectively. The removal of the elderly and the infirm has left those of employment age as fair game for governments to play off against taxpayers.

In New Zealand and internationally, the language has become stigmatised so that the word “benefit” has negative connotations and the term “social security” is commonly used to refer to payment of monetary benefits.

III Principles and Ambit of the Social Security Act 1964

A Current Principles of the 1964 Act and their Impact

As mentioned above, the provision of welfare services in New Zealand is underpinned by legislative principles. Section 1B of the Social Security Act 1964 was inserted on 24 September 2007, and amended (in respect of s 1B(c)) on 15 October 2012, and reads:

1B Principles

Every person exercising or performing a function, duty or power under this Act must have regard to the following general principles:

³³ Parliamentary Library Research Paper *New Zealand Health System Reforms* (Parliamentary Library, Wellington, 2009).

- (a) work in paid employment offers the best opportunity for people to achieve social and economic well-being:
- (b) the priority for people of working age should be to find and retain work:
- (c) people for whom work may not currently be an appropriate outcome should be assisted to prepare for work in the future and develop employment-focused skills:
- (d) people for whom work is not appropriate should be supported in accordance with this Act.

The primary focus of the principles is the prioritisation of paid employment.

The welfare system in New Zealand provides support for people experiencing social contingencies including unemployment, sickness, maternity, child rearing, invalidity and the need for medical care.³⁴ While some social contingencies that were provided for in the 1938 Act such as employment injury and old age are now provided for elsewhere (the Accident Compensation Act 2001 and the New Zealand Superannuation and Retirement Income Act 2001 respectively) people experiencing contingencies that are incongruous with work in paid employment, such as maternity, child rearing, sickness, invalidity and the need for medical care are still included within the ambit of the 1964 Act. The inappropriateness of this situation is illustrated by recent media attention focused on people with cancer who are in receipt of social security benefits.³⁵ People with cancer and other serious illnesses may receive jobseeker support,³⁶ which has work obligations that people must seek exemptions for if they are ill. The Cancer Society has stated that it is “too hard to get and maintain financial assistance”³⁷ due to the onerous processes required to be met by people with cancer to prove their ongoing incapacity for work.

Further, maternity and child rearing are not contingencies per se, and generally must be combined with lack of income to warrant assistance from the state, and yet are subject to a similar obligations process.

In terms of New Zealand’s international obligations, this situation is highly problematic. While the 1964 Act has been stripped away so it largely covers monetary benefits for able-

³⁴ The welfare system provides income support and other supplementary assistance for people experiencing invalidity and the need for medical care where those people are unable to maintain paid employment; the healthcare system provides the actual medical care and treatment.

³⁵ <www.radionz.co.nz/news/political/287100/cancer-patients'-work-requirements-discussed> and <www.stuff.co.nz/national/72993797/Cancer-Society-attacks-ludicrous-benefit-requirements-for-cancer-patients>.

³⁶ Social Security Act 1964, s 88B.

³⁷ Claire Austin, CEO of the Cancer Society of New Zealand, at <www.radionz.co.nz/news/national/286914/jobseeker-benefit-for-cancer-patients'-ludicrous'>.

bodied people capable of work, it includes some situations which do not fit this criteria at all and should be provided for in an entirely different manner. Further, the evolution of the concept of belonging and participating in society to the principle that work in paid employment offers the best opportunity for people to achieve social and economic wellbeing is plainly wrong when situations such as terminal illness, child rearing, and invalidity are considered.

A further issue with this approach is the lack of acknowledgment of the importance of other roles within society. A meaningful contribution to society may take many forms, such as care-giving for family members who are elderly, unwell, or require additional assistance; support of charitable causes by fundraising or other volunteering; and pooling of skills and resources to assist friends, families and / or neighbours and acquaintances to achieve tasks or learn new skills. These contributions may also include the passing on of cultural skills or knowledge, which may be significant in the maintenance of familial and ancestral connections.

In the same sense that individuals have a legal duty of care, it could be said that members of a society have a duty to “give back”. In some instances, the manner in which people “give back” may take substantial time and effort, and constant pressure to undertake paid employment which may not be in the individual’s area of skills and training,³⁸ may not recognise or acknowledge a significant contribution that is already being made to society by that person.

B Current Purpose of the 1964 Act and its Impact

The shift away from the original understanding of social security to the provision of monetary benefits rendered the original purpose of the 1964 Act redundant. This is reflected in the new purpose of the 1964 Act inserted in 2007, focusing primarily on work and employment:

1A Purpose

The purpose of this Act is—

- (a) to enable the provision of financial and other support as appropriate—

³⁸ Work and Income Te Hiranga Tangata, the division of the Ministry of Social Development responsible for administering jobseeker support, states that that people need to be “willing to accept suitable employment” (<www.workandincome.govt.nz/individuals/a-z-benefits/jobseeker-support.html>). However, anecdotal information suggests that the threshold for “suitable” is quite low. An example of this is at <thedailyblog.co.nz/2014/10/14/heres-what-winz-are-patronisingly-saying-to-people-on-welfare-when-they-dont-think-anyones-listening/> which states “[w]hen Jill first started working at WINZ she told me that ... she was supposed to shove (and it was “shove”) her clients into any job.”

- (i) to help people to support themselves and their dependants while not in paid employment; and
 - (ii) to help people to find or retain paid employment; and
 - (iii) to help people for whom work may not currently be appropriate because of sickness, injury, disability, or caring responsibilities, to support themselves and their dependants:
- (b) to enable in certain circumstances the provision of financial support to people to help alleviate hardship:
- (c) to ensure that the financial support referred to in paragraphs (a) and (b) is provided to people taking into account—
- (i) that where appropriate they should use the resources available to them before seeking financial support under this Act; and
 - (ii) any financial support that they are eligible for or already receive, otherwise than under this Act, from publicly funded sources:
- (ca) to provide services to encourage and help young persons to move to education, training, and employment rather than to receiving financial support under this Act:
- (d) to impose, on the following specified people or young persons, the following specified requirements or obligations:
- (i) on people seeking or receiving financial support under this Act, administrative and, where appropriate, work-related requirements; and
 - (ii) on young persons who are seeking or receiving financial support under this Act, educational, budget management, and (where appropriate) parenting requirements; and
 - (iii) on people receiving certain financial support under this Act, social obligations relating to the education and primary health care of their dependent children.

The manner of describing benefits in the 1938 Act allowed implementation to be a matter of policy. The prescriptive manner in which they are now described in the 1964 Act means that the monetary benefit system is entrenched and provided for at a very detailed level in statute. People wanting to avail themselves of their statutory entitlement to, for example, jobseeker support, must complete approximately 72 pages of application forms.³⁹ In contrast, health benefits which once sat side-by-side with welfare benefits are now prescribed at a high level in the New Zealand Public Health and Disability Act 2000 and

³⁹ <www.workandincome.govt.nz/map/income-support/main-benefits/jobseeker-support/index.html>.

eligibility is set out in the Health and Disability Services Eligibility Direction 2011. People who meet the criteria defined in the Direction can receive funded health and disability services if they are unwell.⁴⁰ No application process is required. This isolation of welfare from other aspects of social security has allowed it to be fundamentally diminished. In addition, welfare is now only accessible by those able to negotiate an increasingly complex and often demeaning system.⁴¹

C Obligations in Welfare

The current means of provision of welfare as set out in the Social Security Act 1964 imposes obligations or requirements on people in receipt of benefits in exchange for receiving financial support.⁴²

There are no such obligations imposed in legislation on citizens in respect of, for example, education and healthcare. Students are entitled to taxpayer-funded education, but they are not legislatively required to do well at school. People are eligible for publicly funded healthcare, but they are not legislatively required to refrain from practices that may result in higher or more expensive levels of care, such as smoking or an unhealthy diet, nor are they required to take any responsibility where such practices may have been the direct cause of illness or disease.

The level of welfare that may be provided by any government may always be subject to change, in the same way that the number of surgical operations undertaken as part of publicly funded healthcare may vary and other aspects of government services may be provided to a greater or lesser extent. However, where people have a right enshrined in international law, citizens of a country whose government is fulfilling that right should have *access* to that service at whatever level it may be provided. The imposition of inappropriate obligations before access is granted is inconsistent with that fundamental right. Further, the introduction of obligations which allows people to be judged as to whether or not they are worthy of having their fundamental rights met is abhorrent in a free and democratic society.

⁴⁰ Above n 5.

⁴¹ Welfare Justice Alternative Welfare Working Group “Welfare Justice in New Zealand: What We Heard” (Caritas Aotearoa New Zealand, Wellington 2010).

⁴² Social Security Act 1964, s 1A(d)

IV The Experiences of People Receiving Welfare in New Zealand

A The Manner of Provision of Welfare

The manner of provision of welfare in New Zealand has changed from a practical perspective at a grassroots level as well as from a legal perspective. Instead of being assigned individual case workers or social workers as in the past,⁴³ people are required to deal with the “menacing and punitive environment”⁴⁴ of the Work and Income (WINZ) offices (which administers benefits for the Ministry of Social Development). The report of the Alternative Welfare Working Group, “Welfare Justice in New Zealand: What We Heard” notes that when that report was undertaken in 2010 there was “a consistent message that Work and Income as an institution has become more intimidating”⁴⁵ reflecting “a marked change in the institution’s culture to be less respectful, more judgemental and more suspicious towards people.”⁴⁶

Other research records the intergenerational nature of welfare participation in New Zealand.⁴⁷

B The Impact of the Manner of Provision of Welfare

The experiences of people receiving welfare in New Zealand – problems with access such as intimidation and possibly being put off attempting to obtain a benefit because of the culture of the organisation that administers them; and that people may experience “intergenerational transmission of welfare participation”⁴⁸ – indicate that the provision of welfare in New Zealand is not being undertaken effectively.

V A Rights-Based Approach

A International Obligations

In *The Right to Social Security* Stephens outlines the rights-based approach to social security embedded in international law and ratified by New Zealand, including the Universal Declaration of Human Rights and the International Covenant on Economic,

⁴³ Above n 13 at 184.

⁴⁴ Above n 41.

⁴⁵ Above n 41 at 11.

⁴⁶ Above n 41 at 12.

⁴⁷ Tim Maloney, Sholeh Maani and Gael Pacheco “Intergenerational Welfare Participation in New Zealand” (Economics Department, The University of Auckland, 2002) (retrieved from <http://researchspace.auckland.ac.nz/ecwp/227>).

⁴⁸ Above n 47.

Social and Cultural Rights, and argues that New Zealand's needs-based system pays little heed to these international instruments.⁴⁹ The concept of a human-rights-based approach to social security using the GC⁵⁰ is outlined in some detail, including that state obligations fall into three categories: obligations to respect, obligations to protect, and obligations to fulfill.⁵¹ The argument is well-established that to meet international obligations New Zealand should take a rights-based approach to welfare.

Article 9 of the International Covenant on Economic, Social and Cultural Rights (the Covenant) states that “[t]he States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.”⁵² The GC⁵³ elaborates on the meaning of this Article, stating that “[t]he right to social security is of central importance in guaranteeing human dignity for all persons”⁵⁴ and in Part II sets out elements of the right to social security, including availability and accessibility.⁵⁵ As mentioned earlier, the GC also sets out the “social risks and contingencies” that form the “nine principal branches” of social security: health care, sickness, old age, unemployment, employment injury, family and child support, maternity, disability, and survivors and orphans.⁵⁶

The content of the GC demonstrates the:

- underpinning principle of human dignity inherent in the right to social security.
- importance of access to social security.
- diverse range of scenarios where the state may be required to intervene to assist people to ensure their right to social security is fulfilled.

Part III, Obligations of States Parties⁵⁷ sets out three specific legal obligations for states parties. The obligation on the state to respect citizens' rights to social security means that access to social security should not be hindered, for example by organisational culture or stigmatisation by the government. The obligation to protect citizens' rights to social security requires the establishment and maintenance of an effective and meaningful regulatory framework, and fulfilling citizens' rights to social security requires the

⁴⁹ Above n 16.

⁵⁰ Above n 3.

⁵¹ Above n 16 at 149.

⁵² International Covenant on Economic, Social, and Cultural Rights (ICESCR), 993 UNTS 3 (opened for signature 16 December 1966, entered into force 3 January 1976).

⁵³ Above n 3.

⁵⁴ Above n 3 at clause 1.

⁵⁵ Above n 3 at Part II A, 1 and 4.

⁵⁶ Above n 3 at Part II A 2 12.

⁵⁷ Above n 3 at Part III Obligations of States Parties.

government to take positive action to assist those citizens to enjoy the right to social security.

In the New Zealand context, an analysis of the current legislative framework for the provision of assistance in the case of unemployment, sickness, maternity, invalidity, child rearing, and the need for medical care may indicate that the system is lacking in the following areas:

- The underpinning principle of the maintenance of human dignity as expressed in the GC.
- Access to and availability of welfare.
- Negative organisational culture and stigmatisation by the government.
- The taking of positive action by the government to assist citizens to enjoy the right to social security.

As mentioned above, Article 22 of the Universal Declaration of Human Rights⁵⁸ establishes a right to social security. Article 25 states:

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

The significance of this Article in the analysis of the New Zealand context includes that:

- the right to a standard of living adequate for health and wellbeing is listed as a separate right to that of security in the event of unemployment and other contingencies leading to lack of livelihood.
- motherhood and childhood – maternity, child rearing and childhood – are identified as being entitled to special care and assistance, indicating that the inclusion of these as social contingencies alongside unemployment and sickness may not be appropriate.

The drive to move people “off welfare” and into paid employment, as established by the current principles of the 1964 Act, also means that the outcomes sought by the system do not meet the principles of the international rights to social security. The underpinning principle of the preservation of human dignity may not be met by enforced movement into

⁵⁸ Above n 2.

an employment role that does not recognise a person's training and / or experience, and the lack of ability to choose for oneself a suitable role that could ensure ongoing health and wellbeing.

VI What do New Zealand Citizens have a Right to?

A A Broader Definition of Social Security

In determining how a rights-based approach could be implemented, further consideration may first be given to what New Zealand citizens have a right to.

As noted above, the broader concept of “social security” encompassed a range of monetary and non-monetary benefits when the 1938 Act was introduced and these have gradually been stripped away until the majority of the 1964 Act provides for monetary benefits in exchange for fulfilling obligations to seek paid employment.

Implementation of a rights-based approach requires a return to the original broader definition of social security – that which encompassed the concept of “maintain[ing] and promot[ing] the Health and General Welfare of the Community”;⁵⁹ that which sought to enable people to “belong and participate” in society.

B Social Security Delivery through Legislation and Policy

To successfully deliver social security to New Zealand citizens, the government's starting point should be the interpretation of social security rights as set out in international instruments. This should be embedded in our legislative provisions, with further interpretation of the delivery of benefits through policy. If those rights are accurately captured in legislation, the delivery of social security to citizens as directed by the legislation should include the fulfillment of the state's obligations to respect, protect, and fulfill citizens in need of a “modest safety net” to enable their participation in society.

C Realisation of Rights

The realisation of the right to social security as envisaged by international instruments requires a combination of factors that are currently lacking in the New Zealand system. People should be assisted by the government to avail themselves of welfare if required, and this should be done in such a way as to empower people through the process. The needs of people that can be met through a broader definition of social security should be taken into account; security should consist of aspects of safety, belonging, and esteem. This means

⁵⁹ Social Security Act 1938, long title.

the provision of services with respect, and the provision of evidence-based support alongside monetary benefits.

D The Social Investment Approach

The lack of suitable underpinning principles for provision of social security presents a further danger to the fulfillment of New Zealand's international obligations in that there is an insufficient framework for the development of appropriate policy. The Treasury's social investment approach aims to "improve[e] the lives of New Zealanders by applying rigorous and evidence-based investment practices to social services."⁶⁰ The Treasury's website states that the social investment approach:⁶¹

...focus[es] ... on early investment to achieve better long-term results for people and helping them to become more independent. This reduces the number of New Zealanders relying on social services and the overall costs for taxpayers.

The focus in this approach is on financial investment. For example:⁶²

[A]nalysis of lifetime costs of people who receive a benefit found that *one of the most expensive groups* is people who have recently returned to work from being on a benefit. This is because they are likely to slip back onto benefits. In any given month, 70 percent of people who sign up for a benefit have been on a benefit before. This indicates that the government needs to do more to help those people stay independent (*emphasis added*).

The danger inherent in this type of approach is the focus on return on investment. The approach enables the selection of "low-hanging fruit" in that those "clients" (that is, people in need of assistance) who will produce a greater return may receive a greater focus and more assistance than others. This sidesteps the equal right to social security prescribed at an international level. A stronger legislative framework is required to ensure that government obligations are met without an undue focus on financial outcomes. While the overall cost of the system is important, if the fundamental elements are delivered appropriately, costs are likely to be reduced. This is evidenced by the Ministry of Health's approach to healthcare known as "Care Closer to Home".⁶³ This approach focuses on providing healthcare in locations that are more convenient to the person requiring healthcare. This leads to the earlier identification of health problems and results in fewer hospital admissions, reducing overall costs to the health system. The broad concept of

⁶⁰ <www.treasury.govt.nz/statesector/socialinvestment>.

⁶¹ Above n 60.

⁶² Above n 60.

⁶³ Ministry of Health *Care Closer to Home* (Wellington, Ministry of Health. 2014).

services being delivered in a manner that is more convenient for and suited to the recipient, as opposed to the people delivering the service, generally results in a more cost-effective service as well as a more respectful process for recipients. The Whānau Ora model, discussed below, mirrors the Care Closer to Home approach in its delivery.

E Policy Models for Delivery of Social Security: Whanau Ora and More Effective Social Services

It is noteworthy that there are some current policy initiatives such as Whānau Ora which are more reflective of the principles underpinning New Zealand's international obligations in social security. Whānau Ora is a "policy framework for a new method of government interaction with Māori service providers [to] improve the responsiveness of social services ... through promoting whānau-centred service delivery."⁶⁴

The framework provides assistance to families in need of all ethnicities, and delivers services in a wraparound model designed to empower families as a whole rather than focusing on individuals, taking a "development rather than a deficit" approach.⁶⁵ This concept fits alongside international social security obligations in that it respects the people in receipt of the services and recognises the whole of people's lives – as they exist within their family unit – rather than seeing them in isolation and in need of employment as the primary method of ensuring their wellbeing.

The Productivity Commission's report, *More Effective Social Services*, enquired into enhancing productivity and value in the state sector, with a focus on the purchasing of social sector services.⁶⁶ Its brief was to "carry out an inquiry into how to improve outcomes for New Zealanders from social services funded or otherwise supported by government."⁶⁷

Some of the report's findings include that while there are positive attributes to the social service system, there are also weaknesses, and it identifies areas for improvement including incorporating innovation, being more responsive, and monitoring of system performance. While the report has a significant emphasis on costs to government of social services, it noted that the current government's "investment approach" to social services "risks excluding some clients from receiving any service."⁶⁸ This reflects that people's right to social security may not be met if service delivery focuses on return on investment.

⁶⁴ <www.tpk.govt.nz/en/whakamahia/whanau-ora/frequently-asked-questions/>.

⁶⁵ Above n 64.

⁶⁶ The New Zealand Productivity Commission – Te Kōmihana Whai Hua o Aotearoa "More Effective Social Services" (New Zealand Productivity Commission, Wellington, 2015).

⁶⁷ Above n 66 at 27.

⁶⁸ Above n 66 at 375.

F Maslow's Hierarchy of Needs

The literature often discusses the approach to social security as being either needs-based or rights-based, as illustrated by the types of welfare state listed by Boston and Ware and Goodin above. The concept of need, as illustrated in the quote by Mark Prebble above, reducing welfare provision to “the daily essentials of food, clothing, power and housing”⁶⁹ requires some further analysis.

A now commonly accepted hierarchy of needs was proposed by Abraham Maslow in his book *Motivation and Personality*.⁷⁰ This hierarchy has physiological needs, or requirements for basic survival, at the bottom. Secondary or higher-level needs are subsequent needs that can be realised in a certain order (each level building on the one before) if physiological needs are met.

Safety and security needs are subsequent to physiological needs. These include health, well-being, and financial needs. Subsequent to this are the need for love and belonging, and then the need for esteem and finally self-actualisation.

Using Maslow's hierarchy of needs to categorise priorities for government spending, it is noted that a basic analysis of any area of spending straddles different needs across the hierarchy, and that taxation spending is generally directed towards enabling people and communities to ultimately be in a position to achieve self-actualisation. For example, education enables belonging and esteem, as does healthcare.

While to a certain extent money may buy particular services which can assist people to belong and participate, Maslow's hierarchy of needs indicates that safety, belongingness and esteem could be requirements of a system that provides security in society – *social security*. Such a system requires more than the meeting of physiological needs, and this would align with other government provision of services, for example of education and health.

G A New Approach to Social Security in New Zealand

As with other publicly funded services in New Zealand, an appropriate approach to the provision of welfare is to embed underpinning principles for the provision of that service in legislation. The current means by which this is achieved in the 1964 Act is not commensurate with the underpinning principles for the provision of other services by the

⁶⁹ Above n 12 at 52.

⁷⁰ Abraham Maslow *Motivation and Personality* (Harper, New York, 1954).

government, New Zealand's international obligations, or an analysis of the concept of welfare and its broader concept of social security.

Regardless of any particular political approach by the government of the day, there are fundamentals of the welfare system that should remain consistent, in the same way that students consistently have the right to education and eligible people may access healthcare if they are unwell.

The fundamentals of such a welfare system arise from basic human needs, not for survival, but for self-actualisation.

This includes ensuring access to welfare, the provision of welfare within a supportive framework, and the provision of appropriate evidence-based support such as opportunities, role modelling, mentorship, collegiality and protection. These are the fundamental principles that should be enshrined in statute to guide the delivery of welfare, including the provision of monetary benefits where appropriate.

The current prescriptive detail relating to the granting of benefits should be shifted from the legislation to a policy based document to enable this to be adapted more easily by the government of the day to suit particular political agendas.

The stigmatisation of welfare by the government is expressly prohibited by New Zealand's international obligations. While this stigmatisation means that negativity towards the provision of welfare is embedded in society and may therefore be difficult to change, this process must be undertaken to stop the continued narrowing focus of the current legislation underpinning the provision of welfare in New Zealand.

VII Conclusion

A Delivering the Broader Definition of Social Security

New Zealand has lost its way in the provision of welfare to its citizens. People in need of welfare are not just subject to economic hardship. They also need help to navigate "the system", support to assist them to participate effectively in society to meet their social and cultural needs, recognition of contributions that they already make to society that do not fall within the narrow realm of paid employment, and protection of their self-esteem and self-worth. To meet international obligations, welfare in New Zealand should be provided within a supportive framework and consist of the provision of appropriate evidence-based support such as opportunities, role modelling, mentorship, collegiality and protection as well as monetary benefits to meet basic physiological needs.

The role of government is not to stigmatise but to draw a line in the sand, to be the conscience of society, and reflect the desires of the majority of its citizens. Community and culture is in a constant state of evolution. Legislation and policy needs to work together and be flexible enough to change when the context demands it. Welfare should be provided in the broader context of social security which is underpinned by legislative principles that reflect the relevant international treaties and conventions. Policy developed under appropriate legislative principles can then change according to the political climate without endangering New Zealand's international obligations, and while ensuring basic fulfillment of rights for citizens.

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