



**Welfare Reform, Women's Health and Human Rights
Issue Paper
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Sexual, Reproductive and Breastfeeding Rights

Proposed Reforms

The Welfare Working Group (WWG), established by the government, released its final report 'Reducing Long-term benefit dependency: Recommendations' in February 2011. The report proposes significant changes to the structure of, and eligibility for, the domestic purposes benefit (DPB). Women make up the large majority of sole parents raising children with the assistance of the DPB. Women's Health Action acknowledges the goal of supporting people out of poverty and the difficult issues considered by the WWG. However we assert that some of the proposed changes pose human rights issues that require further consideration including:

- The likely differential impact of the proposed changes on the basis of gender resulting in unfair discrimination against women.
- That some of the proposed changes risk compromising women's reproductive and sexual rights as affirmed in international human rights instruments.
- That the proposed changes risk compromising the right of infants to access to the highest attainable standard of health.

Women's Health Action is particularly concerned about the proposals relating to:

1. Additional children while in the welfare system

The WWG report recommends (pg. 78):

That ready access to free long-acting reversible contraception be provided for parents who are receiving welfare.

The majority of WWG members also recommended that where a parent has an additional (second or any subsequent) child while receiving assistance from the welfare system (except where they are pregnant at the time of coming into the welfare system):

- (i) *Expectations to look for work should begin when the youngest child reaches 14 weeks old, in line with current paid parental leave provisions and subject to the availability of affordable childcare and out-of-school care, except where there is*

- already a child under three years of age. In that case the person's job search obligations would be determined by the elder child's age; and*
- (ii) *Government monitors the effect of this policy. If it is not effective, Government should consider whether further financial disincentives are necessary, including that parents not qualify for any additional financial assistance through the welfare system for any additional children born whilst in receipt of welfare, other than access to emergency assistance (Family Cap Policy).*

The explicit intention behind these recommendations is to influence, through welfare policy, women's reproductive choices, and in particular that women not have children while in receipt of welfare assistance. The WWG report states (pg. 77- 78):

For some people the idea that it is not appropriate to have further children while receiving welfare is a significant change in expectation and will require a very different pattern of welfare use (pg. 77)...A majority of the Welfare Working Group are also in favour of strong signals to parents that a welfare payment is intended to provide temporary support while they get back on their feet and into employment...In practice, for most this means taking active steps to avoid pregnancy while receiving Jobseeker support (pg. 78).

Women's Health Action disputes the evidence behind the WWG's conclusion that the current structure of the Domestic Purposes Benefit provides an incentive for women to have additional children while in receipt of welfare to qualify for on-going assistance (pg. 15). Evidence does not support the role of government policy in informing women's reproductive choices, regardless of the extent to which it is perceived to be permissive or restrictiveⁱ. Women have persistently reported that they are more likely to base their fertility-related decisions on their personal and relationship circumstances rather than on government policiesⁱⁱ. From their analysis, Harris et al (2003) concluded that "consistent with other research, the effects on welfare policies on family formation behaviours are weak or non-existent."ⁱⁱⁱ Evidence from the United States where similar welfare policies have been implemented does show however that women who can't, or don't, control their fertility whilst receiving welfare support, are subject to disproportionate levels of poverty and hardship resulting from welfare sanctions. This results in poorer health and greater social and economic marginalisation for both them and their children^{iv}.

Further, the appropriateness of applying welfare sanctions solely to women in need of economic assistance from the state has been questioned in relation to international human rights standards^v. The proposed changes to the DPB risk compromising women's human right to procreative freedom, that is, the freedom to decide whether or not to have offspring and to control the use of one's reproductive capacity, on the basis of economic status^{vi}. Women's Health Action questions whether the inference of welfare policy in women's reproductive choices can be justified within international human rights frameworks^{vii}. We are concerned that should the WWG recommendations relating to subsequent children while in the welfare system be adopted in the reform of welfare policy, they will result in differential treatment of

poor women from non-poor women in terms of the right to procreative freedom. They will also present an economically coercive environment for women's reproductive decision making and jeopardise women's self-determination in the process. The WWG recommendations relating to subsequent children are also likely to result in an inequitable gender impact because men will not be penalised in the same way as women if they procreate while in receipt of welfare support other than the DPB. Further men's role in the prevention of pregnancy through contraceptive use is not included in the proposed changes.

2. Fertility Management and Long Acting Reversible Contraception

Women's Health Action supports access to information and affordable contraception for all women to help prevent unwanted pregnancies. However we hold concerns about all references to women's contraceptive choices, and in particular a focus on women's uptake of long acting reversible contraceptives (LARCs) in the WWG report (pg. 81, 153). Access to a range of contraceptive choices and the ability to freely make contraceptive choices based on informed decision making has been asserted as a human right in international law^{viii}. The Center for reproductive rights states (pg. 1):

The right to plan one's family has explicit protection in international law, and is also grounded in international guarantees of life, health, privacy, and non-discrimination. These norms entitle women and men to the full range of contraceptive choices, as well as to information about sexual and reproductive health.

Women's contraceptive choices should not be subject to coercion resulting from welfare policy. Further government policy should not make explicit mention to particular contraceptive choices. In making an informed decision about contraceptive use and choice of method, all women, including young women, must be provided with full and unbiased information about all of their options, including the expected risks, side effects, benefits and costs. This is provided for under rights six and seven of the Code of Health and Disability Services Consumer Rights.

3. Gender Impact of Changes to Domestic Purposes Benefit

Given the large majority of recipients of the Domestic Purposes Benefit are women, any changes to the structure of, and eligibility for, the Domestic Purposes Benefit is going to have a differential impact on women. Any proposed changes to the Domestic Purposes Benefit need to be subject to a gender impact assessment^{ix}.

4. Breastfeeding Rights

Returning to paid employment has been identified as significant barrier to breastfeeding for many women. Research shows this is particularly the case for low income families^x. Women's Health Action is concerned that the proposed expectations to look for work within the first two years of the child's life where a parent has an additional (second or subsequent) child while receiving assistance from the welfare system will have a direct impact on the ability of women to successfully breastfeed their children.

Breastfeeding is an unequalled way of providing ideal food for the healthy growth and development of infants; it is also an integral part of the reproductive process with important implications for the health of mothers^{xi}. The human right to food and nutrition, including

breastmilk, is well established in international human rights principles and law. The Universal Declaration of Human Rights (Art. 25(1)), the International Covenant on Economic, Social and Cultural Rights (Art. 11), and the International Covenant on Civil and Political Rights assert the rights to adequate standards of living, to food, life, survival, and development. The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (Art. 11 & 12) protects women from discrimination because of the responsibilities of motherhood. The World Health Organisation's (WHO) Global Strategy on Infant and Young Child Feeding calls for governments to formulate, implement and evaluate national policies in support of infant and young child health through recognition of the important relationship between mothers and their babies. The strategy states:

Mothers and babies form an inseparable biological and social unit; the health and nutrition of one group cannot be divorced from the health and nutrition of the other

The Convention on the Rights of the Child (CRC) considers the parents, in most cases, to be in the best position to determine what is in the child's best interests (Art. 3). The Convention presumes that both the state and the parent have responsibilities to the child, but that the state should intervene in the parent-child relationship only in situations where there is compelling evidence that the parents are acting contrary to the best interests of the child.

The Human Rights Commission's discussion paper 'The Right to Breastfeed'^{xii} states that:

The unique interdependence between mother and child in breastfeeding means that a person cannot discriminate against one without at the same time discriminating against the other...The child's right to be breastfed is best fulfilled through the decisions and actions of the parents, but the Government should be obliged to provide support through appropriate services, facilities and policies.

The World Health Organisation recommends that infants should be exclusively breastfed for the first six months of life to achieve optimal growth, development and health and thereafter, to meet their evolving nutritional requirements, infants should receive nutritionally adequate and safe complementary foods while breastfeeding continues for up to two years of age or beyond^{xiii}.

Human Rights Principle

Reproductive rights... [includes the basic right of all couples] to make decisions concerning reproduction free of discrimination, coercion and violence...and to decide freely and responsibly the number, spacing and timing of their children.

(Report of the Fourth World Conference on Women, UN Fourth World Conference on Women, 1995)

International human rights instruments have repeatedly reaffirmed the above principle of reproductive rights, and in particular the right to make decisions about the number, spacing and timing of children. We consider that the extent to which proposed welfare reform may impact on women's procreative freedom risks violating women's right to reproductive choice. If women are faced with pregnancy while receiving the proposed 'Job Seeker Support' and do not qualify for the full period of work expectations exemptions, and related exemptions from sanctions for failing to secure paid work, then they will not be able to make choices about whether they wish to continue the pregnancy free of economic coercion.

Relevant Human Rights Instruments

Universal Declaration of Human Rights (UDHR)

Article 1: All are born free and equal in dignity and rights

Article 12: Deserve protection from interference with privacy, family, and home

Article 16: Have the right to marry and found a family, entered into with free and full consent

Article 25: Motherhood and childhood are entitled to special care and assistance

Convention for the Elimination of the Discrimination Against Women (CEDAW)

Article 12: State parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

Article 16: State parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.

The International Covenant on Economic, Social and Cultural Rights: The differential treatment of women based on their economic and social standing.

The International Covenant on Civil and Political Rights: Rights to adequate standards of living, to food, life, survival, and development.

The Convention on the Rights of the Child: In most cases parents are in the best position to determine what is in the child's best interests.

Code of Health and Disability Services Consumers' Rights: Rights six and seven- the right to make and informed choice and give informed consent when receiving health services.

ⁱ Romero, D. Agenor, M. 2009 'US fertility prevention as poverty prevention, an empirical question and social justice issue', Women's Health Issues, Vol 19, pg. 355 – 364.

ⁱⁱ Ibid.

ⁱⁱⁱ Ibid.

^{iv} Ibid.

^v Albisa, C. 1999. 'Welfare reform as a human rights issues', American Journal of Public Health, Vol 89, No 10, pg. 1476 – 1478.

^{vi} Center for reproductive rights. 2008 'Family Planning is a human right' briefing paper.

^{vii} Ibid.

^{viii} Ibid.

^{ix} Ministry of Women's Affairs. 'Gender Analysis Model' <http://www.mwa.govt.nz/news-and-pubs/publications/genderchart.pdf>

^x Thornley L and Ball (2007) Qualitative research findings; scoping work to inform the design of a national breastfeeding promotion campaign.

^{xi} WHO Global Strategy on Infant and Young Child Feeding (WHA55 A55/15, paragraph 10)

^{xii} Human Rights Commission. 2005...

^{xiii} Global strategy for infant and young child feeding (WHA54 A54/INF.DOC./4)