



National Women's  
Council of Ireland  
Comhairle Náisiúnta  
na mBan in Éirinn

**National Women's Council of Ireland**

**Submission to**

**Department of Social and Family Affairs**

**Technical review of the Social Welfare Code to examine its Compatibility  
with the Equal Status Acts, 2000-2004**

**February 2008**

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## Introduction

The National Women's Council of Ireland (NWCI) is a non-governmental organisation representing women's groups in Ireland. The NWCI currently has 163 member organisations affiliated to it, representing an estimated 300,000 women.

Reforming the social welfare system and ending the unequal treatment of women in the system has been a central goal of the NWCI. In our report 'A Woman's Model for Social Welfare Reform' (2003), and our subsequent campaign, the NWCI clearly highlights the discrimination that women face in the social welfare system. The structural inequalities which currently exist in the Irish Social welfare system are based on patriarchal values that underpin gender roles in society with regard to work, family and domestic responsibilities. Despite changes in language from 'adult dependant' to 'qualified adult' or from 'unmarried mother' or 'prisoners wives' to 'one parent family payment' the concept of male breadwinner persists in Irish social policy. While equal treatment may have ruled out direct discrimination there remains a very definite gendered legacy of indirect discrimination of women in the social welfare system (Cousins and Whyte, 2006)<sup>1</sup>.

**The nature of indirect discrimination in the social welfare system becomes clearer when viewed from the perspective of the UN definition of discrimination in the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). For the purposes of the Convention, the term 'discrimination against women' means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of**

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<sup>1</sup> Cousins, Mel and Whyte Gerry (2006) *An Equality review of the Social Welfare System* (unpublished)

**equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.**

This submission is focused specifically on the area of gender inequality and how the issue of gender inequality interacts with the race, disability, marital status and sexual orientation grounds of the Equal Status Acts. The Review should clearly identify the discrimination, particularly the indirect discrimination (**as defined above**), against women inherent in the social welfare system. It is also critical that the Review should be published and lead to a reformed and modernised social welfare code that places gender equality as a core objective. The unequal treatment of women in the social welfare system has practical consequences which negatively impact on women's lives and their status in society and reinforces gender equality in Ireland.

**1. Is there any legislation or regulation or administrative rule concerning the social welfare code which may, to the knowledge of you or your organisation, disadvantage persons due to *gender*?**

### **Qualified Adult status**

While women form the majority of social welfare claimants (55%), they frequently do not have direct access to their payments. The Qualified Adult payment is approximately 70% of the full adult allowance and is paid to the primary claimant. The welfare of women is primarily linked to this payment rate due to the fact that women make up the majority of all 'qualified adults' (DSFA 2005)<sup>2</sup>. In 2004 there were 119,159 qualified adults in total in Ireland. Defining women as 'qualified adults', means deriving women's rights through their husband's contribution record and receiving a reduced payment on their behalf. The system thus reinforces women's dependency on men particularly in their older years. Formal enforcement of dependency and indirect discrimination is evident in the fact 95%

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<sup>2</sup> Department of Social and Family Affairs (2005) *Statistical Information on Social Welfare Services*, DSFA, Dublin.

of qualified adults are women, even though in theory, equality legislation means the structure of the social welfare system is gender neutral. The DSFA has recognised and acknowledged that 'while ostensibly gender neutral, these features have a greater negative impact on women than men, particularly with regard to economic dependency and incentives to activation (DSFA 2006:76)<sup>3</sup>. There are many consequences for women arising from their dependant status, these include, higher risk of poverty for women, particularly older women, economic dependence, related entrapment in domestic violence and incomplete access to PRSI coverage (Murphy 2003)<sup>4</sup>. The reality of qualified adult status has also lead to further discrimination of women in society as social welfare status is a key determinant to gaining access to education, training and labour market supports, for example in the case of Community Employment women have been forced into situations to obtain agreement from their husbands to a 'spousal swap' of the social welfare claim in order to access the training programme.

### **NWCI Recommends**

Social welfare payments should no longer be a derived right. Each adult should have an individual payment for both social assistance and social insurance payments. This is critical for women's equality in the social welfare system and for equal participation in society.

### **Qualified Adults and Data**

The absence of data on those in receipt of qualified adult payments within the social welfare system has a particular negative impact on assessing the circumstances, opportunities and outcomes for women dependent on social welfare. Currently no data is collected on qualified adults yet policy proposals are being made on how to activate qualified adults without any data on their age,

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<sup>3</sup> Department of Social and Family Affairs (2006), *Government Discussion Paper: Proposals for Supporting Lone Parents*, DSFA, Dublin

<sup>4</sup> Murphy, M (2003) *A Woman's Model for Social Welfare Reform*, NWCI, Dublin.

care responsibilities, educational background and participation in employment/ training. The lack of data also severely limits any assessment of the discrimination which qualified adults experience within the social welfare system.

### **NWCI Recommends**

The collection of quantitative data on qualified adults.

### **Qualified Adults and Means testing**

The means test is currently based on household income and a family- based system. While this is gender neutral in theory, in practice they have a negative impact on more women than man (Murphy 2003)<sup>5</sup>. The means test reduces the incentive for the women to claim in her own right or to find employment with a higher earning potential. While changes in Budget 2008 have increased the earnings disregards for qualified adults, the indirect discrimination remains. The anomalies that exist between the means tests for different payments also adds to the discrimination against women as there are different types and levels of income disregards across payments. The complexity of calculating the financial outcomes of the various means test acts as a disincentive to women to seek employment or to move from part-time to full time employment.

### **NWCI Recommends**

Reform the system of household means test to an Individualised means test

### **Limitation Rule**

The limitation rule determines that in households where a man and a woman are both unemployed and eligible for Jobs Seekers Allowance the maximum payment can not exceed that of an adult and adult dependant payment. This rule was at first applied only to married couples but, after the 1984 Hyland Case a supreme

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<sup>5</sup> ibid

court judgement applied the rule to cohabitating couples (the rule has never been applied to same sex cohabitating couples). This rule has been the subsequent cause of further poverty traps and has also lead to barriers to household formation for low income couples who found that they lost almost half of an adult payment (the amount ranged between 40%- 30% of an adult payments and amounts to 55 euro in 2006 terms) on cohabitation or marriage (O'Connor & Murphy 2008)<sup>6</sup>. The limitation rule is a clear example of indirect discrimination against women and undermines women's equality in society. Limitation directly prevents women from seeking payments in their own right, as they become qualified adults because there is no financial incentive to both spouses/partners accessing payments individually. The effect on women is clearly apparent as 95% of qualified adults are women. In the Government's recent Discussion Paper: Proposals for Supporting Lone Parents, the Government clearly outlines the arguments for abolishing the limitation rule, which are consistent with NWCi's arguments in 'A Woman's Model for Social Welfare Reform'. However the Proposals recommend the re-introduction of limitation when the parent moves from the new Parenting Allowance to Jobseekers Allowance when their child reaches the age of 8yrs. There is no legitimate rationale for the enforcement of the limitation rule. While the limitation rule assumes that two people can live more cheaply than one. Research highlights the fact that from household to household economies will differ and there are practical difficulties in determining the amount and whether in fact the economies exist (Murphy, M 2003<sup>7</sup>, McLaughlin 1999<sup>8</sup>). Removing limitation is a critical cornerstone to eliminating indirect discrimination in the social welfare system and will have a positive impact on women's poverty and women's equality.

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<sup>6</sup> O'Connor, O & Murphy, M (2008) Women and Welfare in U, Barry (eds) *Where are we now New Feminist perspectives on women in contemporary Ireland*, TASC, Dublin.

<sup>7</sup> ibid

<sup>8</sup> Mc Laughlin, E, (1999), 'Economic Independence and Individualisation' in Department of Social Family Affairs (1999), Report of the Review Group examining the Treatment of Co-Habiting and One Parent Families under the Tax and Social Welfare Codes, DSFA, Dublin.

**NWCI recommends:**

Limitation should be removed completely from the system.

**Availability to work full time**

The requirement to be available to work full time is a significant barrier for women to access Job Seekers Allowance. This rule particularly effects women as they are the predominate carers in our society and therefore are less likely to be available to work full time. For example, if qualification for an unemployment payment requires a person to prove availability for full-time work, it will be harder for women with care responsibilities to prove full-time eligibility. In practice, some women are denied an unemployment payment because they are not available for full-time work although they are available for, willing to undertake, and are actually seeking part-time work.

In current situation, a person has to prove that she has immediate provision of childcare in the event of a job offer. This is likely to deter more women than men from seeking unemployment payments. There is anecdotal evidence to suggest that more women than men are asked to prove child-minding arrangements (Murphy & O'Connor 2008)<sup>9</sup>. The impact for women from having no access to social welfare payments has resulted in significant barriers to accessing education, training and labour market supports. (Donegal Women's Network 2002)<sup>10</sup>. Other European countries e.g. Denmark have also introduced part-time payments which recognise the interest and willingness for people to combine paid employment with parenting and care. As part of its proposals to support lone parents the Government has recommended that a person should have to prove availability to work for 19.5 hours a week to

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<sup>9</sup> ibid

<sup>10</sup> Donegal Women's Network (2002) Alive but not Registered, DWN, Donegal.

recognise the care work done by women. This proposal if implemented would represent a significant reform to the current discrimination experienced by women.

**NWCI recommends**

Change criteria for availability to work to 19.5hours per week for Job Seekers Allowance

**SOCIAL INSURANCE**

**Unpaid Care Work**

The lack of recognition of parenting and care work as a contingency within the social welfare system is indirectly discriminating against women. Recognition of women's unpaid care work is fundamental for women to achieve economic independence. Care work, particularly within the home, whether that is seen as a burden, source of fulfilment, or complex combinations of the two, continues to be women's responsibility. The reality that women spend more time in comparison to men engaged in care work has meant that women will have lower social insurance contribution records for all social welfare payments. The lack of adequate state intervention to support parenting and care work has reinforced women's disadvantaged position in society. The impact of women's care work responsibilities is apparent across the lifecycle of women, but the cumulative effects are most stark in women's older age. The Pensions Board in its recent review in 2006, highlighted that women are more likely than men to have inadequate or no pension coverage and drew attention to the connection between women's care work and their low coverage rates.

**NWCI recommends**

Recognition of unpaid work for social insurance contributions



## **Two year Rule**

One practical way that women's employment and care pattern is not facilitated by social security regulations is the a rule which establishes women as new entrants if they have not contributed to the social insurance system for the previous two years. For example - The 2-year rule (S 57 S1 312 1996) states that a person with no social insurance record for more than 2 years must have 26 paid contributions before credits can be awarded. This affects women who cared for their children and now that they are grown up, wish to access and return to employment. A reform of this complicated obstacle is long over due.

## **NWCI recommends**

The two year rule be abolished

## **Homemakers scheme**

The Homemaker's Scheme introduced in 1994 has gone some way towards acknowledging care work by assisting women qualify for an Old Age Contributory Pension. It allows people caring for children under the age of 12 or an incapacitated person on a full time basis, to 'disregard' up to 20 years when calculating their pension contributions. However, this system gives no value for short term payments and slightly lower yearly average than if credits were awarded. It also is solely targeted at pension entitlement and does not allow for coverage for other social insurance payments e.g. Maternity Benefit. Given that the Scheme is only applicable since 1994, this means that for women receiving pensions now and women who will reach pension age in the next 10-15yrs will not benefit from the scheme. Women also find it deeply offensive that care work is officially 'disregarded' for the purpose of the scheme (NWCI, 2003)<sup>11</sup>. The concluding Comments of the Committee on the Elimination of Discrimination

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<sup>11</sup> National Women's Council of Ireland (2003) *Valuing Care Work*, NWCI .Dublin

against Women (CEDAW) on the Irish Governments Report recommended that 'the State party consider allowing for the Homemaker's Scheme (1994) to be applied retroactively so as to benefit older women.'<sup>12</sup>

### **NWCI recommends**

That the Homemakers scheme be amended to

- provide full social insurance credits for time spent in care work and
- make it retrospective to ensure that all older women currently at pension age are not discriminated against because of years spent in unpaid care work and are entitled to full contributory pensions in their own right

### **Atypical work and the substantial loss of earnings rule**

Women also experience indirect discrimination resulting from the varied patterns of employment and predominance in atypical and part-time employment. There are currently structural barriers in the social welfare system for the many women who work outside of the traditional full time model. Women who have worked in part-time, casual and seasonal employment also have broken social insurance records. The substantial loss of earnings rule requires a person to have lost substantial employment before becoming re-eligible for employment benefit. This rule means that people in part-time atypical work cannot rely on unemployment benefit to subsidise their earnings. This rule may be causing involuntary part-time unemployment and leading low paid workers into situations of poverty (Murphy 2003)<sup>13</sup>. The Report on Social Insurance in Ireland also recommended the need to develop a comprehensive social insurance system that could recognise the varied work patterns of individuals within a modern economy (DSFA 1996)<sup>14</sup>.

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<sup>12</sup> United Nations, (2005), *Concluding Comments of The Committee for the Elimination of Discrimination Against Women*, UN, New York.

<sup>13</sup> *ibid*

<sup>14</sup> Department of Social and Family Affairs (1996) *Social Insurance in Ireland*, DSFA, Dublin.

### **NWCI Recommends**

Reforming eligibility criteria to 19hours per week for all Unemployment payments.

### **Relatives Assisting**

Women who have worked on family farms and in family businesses also do not have social insurance coverage. This leaves them totally reliant on their husbands income. Spouses of business owners (mainly women) who are working in the family business are treated as 'relatives assisting' for social insurance purposes. Although working, 'relatives assisting' cannot make PRSI contributions, which would entitle them to old age contributory pension and maternity benefit etc.

This rule particularly affects women who are more likely to be the relative assisting on the farm or in the business. This is particularly important for rural women who have spent many years working on family farms and have not been recognised as making a contribution to the business. This discrimination results in higher levels of poverty and dependency for women in their older years as they do not have access to contributory pensions. It also discriminates against women who find themselves with no access to Maternity Benefit and no income during that period. Recommendations to change the legislation to allow self employed people to ensure their spouses were put forward in 1999 Credits Expenditure Review and the 1996 Social Insurance Report.

### **NWCI recommends**

Obligatory insurance for all workers in business or farms.

### **Parental Leave**

The provision to provide parental leave on an unpaid basis is particularly discriminatory for women as women are the predominant carers in our society.

The unpaid nature of parental leave, impacts on women's participation in employment as they are forced into making choices regarding working part-time or leaving employment for significant periods. This impacts on women's equality in society and specifically contributes to the gender pay gap in Ireland. In EU countries where paid parental leave is provided for at least the first year of a child's life, higher participation rates of mothers are achieved and lower levels of inequality between women and men in employment are also evident (NWCI 2005)<sup>15</sup>.

### **NWCI recommends**

Introduce paid parental leave, on the same basis as Maternity leave, until a child reaches one year old.

### **Paternity Leave**

No entitlement to paternity leave, is discriminatory against fathers. The provision of Maternity Leave is essential for women and its extension to six months is a progressive measure and one which was campaigned for over a long period. However providing Maternity Leave without legislative and paid recognition for fathers reinforces women's role as the predominant carer in families and hence the associated inequalities in society. The absence of Paternity Leave also places Ireland in a unique position relative to our European counterparts.

### **NWCI recommends**

The introduction on 10 days paid paternity leave

**2. Is there any legislation or regulation or administrative rule concerning the social welfare code which may, to the knowledge of you or your organisation, disadvantage persons due to *marital status*?**

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<sup>15</sup> National Women's Council of Ireland, (2005), *An Accessible model of Childcare in Ireland* NWCI, Dublin.

### **Lone parents: Co Habitation rule**

The legislation, Section 17 of the 1996 Social Welfare Act, which introduced the One Parent Family Payment (OFP) states that 'a qualified parent shall not, if and as long as that parent and any person are cohabiting as husband and wife, be entitled to and shall be disqualified from receiving payment of one parent family payment'. As the majority of those in receipt of the OFP are women, this rule is particularly discriminatory against women. The rule negatively impacts on the capacity of lone parents to move out of poverty, achieve economic independence and to form new families. The DSFA have recognised the significant negative impact the rule has caused for lone parents and have recommended its removal under the proposals for a new Parenting Allowance (DSFA 2006)<sup>16</sup>.

### **NWCI recommends**

The removal of the co-habitation rule

### **Recognition of parenting within the system**

Currently financial supports for parenting are only recognised in the case of lone parents, parents who are married have no explicit payment to support them in their parenting years. This particularly affects mothers on other social welfare payments who are either qualified adults and receive no payment in their own right or have to prove eligibility for work. The NWCI has proposed the introduction of Parenting allowances, full time and part-time up the age of 14yrs. It would make parenting a contingency within the system and provide low-income parents a continuum of support through caring for children to paid employment and back again depending on their circumstances. The Government have recognised the need for wider support for parents and made proposals to introduce a limited Parental Allowance until the child reaches 8yrs which would make parenting a contingency within the system.

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<sup>16</sup> ibid

### **NWCI recommends**

Introduction of Parenting allowances, full time and part-time until the child reaches the age of 14yrs.

### **Unmarried Couples:-**

Married and co-habiting couples are treated differently by the social welfare legislation which arises to discrimination. While co-habitation is recognized for means testing purposes the existence of relationship is not recognized if one partner dies e.g. Widow's or Widower's Contributory Pension or the Widow's Bereavement Grant.

### **3. Is there any legislation or regulation or administrative rule concerning the social welfare code which may, to the knowledge of you or your organisation, disadvantage persons due to *sexual orientation*?**

### **Same Sex Couples:**

Same sex couples are invisible within the welfare code. Section 19 of the Social Welfare (Miscellaneous Provisions) Act 2004 specifically excludes same-sex couples for the benefits and burdens of statutory and non-statutory welfare schemes. This was brought in to reverse the successful outcome of a challenge by an older same sex couple under the Equal Status Act regarding free travel passes.

### **NWCI Recommends**

- Repeal Section 19 of the Social Welfare (Miscellaneous Provisions) Act 2004.
- Equal Treatment for same-sex couples regarding State Pension Rights.

**4. Is there any legislation or regulation or administrative rule concerning the social welfare code which may, to the knowledge of you or your organisation, disadvantage persons due to *disability* (including type of disability)?**

**Cost of Disability Payment**

The significant costs of living with a disability are well documented. Evidence from EU-SILC<sup>17</sup> highlights the economic disadvantage experienced by people with a disability. Four out of every ten disabled people (40.8%) were found to be at risk of poverty in 2006, while consistent poverty remained high and rose from 17.4% in 2005 to 20% the following year (2006).

Over the past number of years the NWCi have consistently called on Government to introduce a cost of disability payment in recognition of the costs of living with a disability. The failure of Government to introduce a payment to provide the additional costs of disability represent a form of indirect discrimination against disabled people which serves to increase their already high risk of poverty and contribute to their on-going social exclusion.

**NWCi Recommends**

- The introduction of a Cost of Disability Payment

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<sup>17</sup> EU SILC (2006) *EU Survey on Income and Living Conditions (EU-SILC) 2006*, Central Statistics Office

**5. Is there any legislation or regulation or administrative rule concerning the social welfare code which may to the knowledge of you or your organisation disadvantage persons due to *age*?**

**Refer to issues and recommendations under Homemakers Scheme (pg 9) and Recognition of Care Work for (pg 8 )**

**6. Is there any legislation or regulation or administrative rule concerning the social welfare code which may to the knowledge of you or your organisation disadvantage persons due to *race, colour, nationality or ethnic or national origin* (e.g. country of origin)?**

### **Habitual Residence Condition**

On May 1<sup>st</sup> 2004, the Habitual Residence Condition (HRC) was introduced as an additional criterion for qualifying for social assistance payments as a direct response to the expressed fear of 'welfare tourism' in the context of EU enlargement.

Although it applies to all applicants for social assistance payments (including Irish applicants), the regulations guiding it's implementation make it particularly difficult for migrant workers to satisfy the HRC.

These regulations include the length and continuity of residence, the nature and pattern of employment, applicant's main centre of interest in Ireland and the future intention of the applicant. The impact of the HRC on migrant workers has been documented by the Migrant Rights Centre Ireland. They highlight the plight of migrant workers who have become undocumented as a result of exploitation and now find themselves in a situation of being unable to seek other work (because of the time period required to get a new work permit) and ineligible



(because they do not satisfy the HRC) for social assistance and social insurance payments. These migrant workers are left vulnerable to homelessness and deprivation.

For migrant workers on temporary work permits, working in low paid and insecure employment and with no entitlement to family reunification, it is difficult to demonstrate a centre of interest in Ireland.

The vulnerability of migrant women experiencing domestic violence is intensified by the HRC. Women in this situation, who are in Ireland as dependent spouses and not entitled to work, frequently find themselves in a position of being either forced to stay in the abusive relationship or forced into homelessness and poverty.

### **NWCI Recommends**

- Abolishment of the HRC
- In the interim ensuring that migrant women experiencing domestic violence and migrant workers who have been made undocumented through no fault of their own.

### **Families in Direct Provision Accommodation**

For the past 8 years the system of accommodating asylum seekers in Ireland has been through 'Direct Provision'. There are many difficulties which face asylum seeking women and their families in direct provision the most pressing of which is the extremely low levels of income on which these families are forced to live.

Asylum seekers receive full board accommodation and an allowance of €19.10 per adult and €9.60 per child. The allowance has stayed at the same rate since

it's introduction and represents under 10% of the current SWA rate. This represents a decrease of 10% since the introduction of direct provision when the asylum seekers allowance was 20% of the SWA payment. The poverty trap into which this payment forces all asylum seekers has a particularly damaging affect on women.

### **NWCI Recommends**

- Provide an adequate for asylum seekers in direct provision

### **Access to Child Benefit**

Asylum seekers with children ceased to be entitled to receive child benefit payments in May 2004. According to the Department of Social and Family Affairs website '*Child Benefit is a payment to parents (usually the mother) for the support of their children*'. The denial of child benefit to asylum seekers puts their children at real risk of poverty and has a direct impact on women who hold the primary responsibility for family care.

### **NWCI Recommends**

- The reinstatement of Child Benefit as a universal payment.

**7. Is there any legislation or regulation or administrative rule concerning the social welfare code which may to the knowledge of you or your organisation disadvantage persons due to *membership of the Traveller community*?**

### **Loss of secondary benefits**

Traveller organisations in Ireland have continuously highlighted the on-going institutional and individual discrimination against Travellers has contributed hugely to their position on the margins of Irish society. Given the very high levels of unemployment amongst the Traveller community (almost 75% according to the 2006 census) and the lower life expectancy of the Traveller community (10 years less for Traveller men and 12 years less for Traveller women), it can be argued that as well as direct individual discrimination on the part of some employers, the current system relating to the loss of secondary benefits when in employment, in particular the medical card has an extremely negative impact on Travellers, is a form of indirect discrimination and acts as a clear barrier to Traveller participation in the labour force.

### **NWCI Recommends**

- Retention of secondary benefits for a defined period while in employment.

### **Conclusion**

This Review of the Social Welfare Code provides a significant opportunity to reform the social welfare system from an equality perspective. The NWCI believes that the current social welfare system was established for a very different society to the one in which we live now. The system does not reflect the realities of women's lives and the desire for economic independence which women rightfully demand. The review provides the opportunity to substantially modernise the system and place equality, particularly gender equality, as a core objective in the reform process. Each adult should have an individual relationship with the social insurance system, not one mediated through a relationship with another adult. Individual rights must be placed at the centre of the re-design of the Social Welfare code.