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14 June 2011

Senator Claire Moore
Chair
Senate Community Affairs Committee
Parliament House
Canberra ACT 2600

By email: community.affairs.sen@aph.gov.au

Dear Senator Moore

Re: Family Assistance and Other Legislation Amendment Bill 2011

The National Welfare Rights Network (NWRN) welcomes the opportunity to provide a submission to the Senate Community Affairs Committee in relation to the *Family Assistance and Other Legislation Amendment Bill 2011*. In our submission to this inquiry, we will address provisions of the legislation, which fall within our specialist area of Social Security and Family Assistance law. We also endorse the submission put forward by the Australian Council of Social Services (ACOSS).

The NWRN wishes to express over deep concerns to the Committee over the inordinately limited time allowed for this inquiry. The Committee is to report within extremely short timeframe. This places an unfair burden, not just on community stakeholders, but on the Committee Secretariat, stakeholders and, the Senators on the Committee who are meant to understand and scrutinise the Bill.

Due to timing difficulties, we are unable to appear before the Committee on Wednesday 15 June 2011 at such short notice. The haste with which the inquiry is proceeding means that many stakeholders are unable to adequately examine the likely impacts and consequences of the measures in the Bill.

A further concern is a disturbing paucity of information about the Disability Support Pension (DSP) measures contained in the Bill. Yet, within months, people with disabilities will be denied access to the pension and thousands will start being forced onto inadequate unemployment benefits and the processes that will be followed are unclear and uncertain. It is impossible to provide adequate analysis of the measures on the basis of available information in the Explanatory Memorandum.

Additionally, despite our best efforts, the NWRN has been unable to receive a briefing from FaHCSIA on the important and complex changes to the Disability

Support Pension. Two scheduled meetings have been cancelled since the changes were 'fast-tracked' on Budget night. A meeting has been re-scheduled for 1 July.

The haste with which this Bill is proceeding undermines the role of Senate Committee processes and in this case, we believe it raises significant questions about the quality and usefulness of the process.

We seek your advice about what steps need to be taken to avoid further repeats of this experience. In the interim, given the absence of information, we propose that the DSP changes in the current Bill not proceed.

Yours sincerely

Maree O'Halloran AM
President, National Welfare Rights Network
Att:1

Submission by the National Welfare Rights Network (NWRN) on the Family Assistance and Other Legislation Amendment Bill 2011

About the National Welfare Rights Network

The National Welfare Rights Network (NWRN) is an incorporated national peak body representing Welfare Rights Centres throughout Australia. NWRN members are specialists in Social Security law and policy and its administration by Centrelink and provide direct advice, assistance and representation to clients on a daily basis facing Social Security and Centrelink related problems. The NWRN draws on this daily casework experience to analyse systemic problems and trends, legislation and service delivery issues and raises these with Centrelink, relevant Government Departments and Ministers in order to achieve reform and a better system for all.

Based on the experience of clients of NWRN members, the Network also undertakes research and analysis, develops policies and position papers, advocates for reforms to law, policy and administrative practice and participates in campaigns consistent with its aim to reduce poverty, hardship and inequality in Australia and to build a fair, inclusive and sustainable Australia underpinned by a comprehensive, rights based Social Security safety net for all.

The NWRN advocates that the Social Security system in Australia should be characterised by an uncompromising recognition of the following rights:

- the right of all people in need to an adequate level of income support which is protected by law;
- the right of people to be treated with respect and dignity by Centrelink and those administering the Social Security system;
- the right to accessible information about Social Security rights and entitlements, obligations and responsibilities;
- the right to receive prompt and appropriate service and Social Security payments without delay;
- the right to a free, independent, informal, efficient and fair appeal system;
- right to an independent complaints system;
- the right to independent advice and representation; and
- the right to natural justice and procedural fairness.

Submission by the National Welfare Rights Network (NWRN) on the Family Assistance and Other Legislation Amendment Bill 2011

The following is our brief submission to your Committee's inquiry into this Bill.

NWRN recommends that:

- Schedule 3 in its entirety, which would delay access to the Disability Support Pension for some applicants, be opposed;
- That the Schedule 2 provisions which freeze the Family Tax Benefit A and B supplements be opposed;
- The provisions of Schedule 2 that freeze selected family payment income thresholds be supported.

1. Assessing qualification for disability support pension

The Bill introduces a requirement, commencing from 3 September 2011, that people test their future work capacity by participating in training or work-related activities in order to be qualified for Disability Support Pension. This new requirement will not apply to claimants for disability support pension who have a severe impairment, such as those who are clearly unable to work.

A *Budget Review 2010-11 Index* claims that this initiative "has its origins in the inexorable growth in the Disability Support Pension (DSP) population over the last few years and the limited impact on this growth of the Welfare to Work of Howard Government".¹ Certainly, there is truth in the assertion that the 2006 Welfare to Work failed to slow DSP growth, but it is unhelpful and indeed dangerous to develop social policy responses on inaccurate understanding of the real reasons for the growth in DSP numbers.

'Musculo-skeletal' issues accounted for around 40 per cent of disability pension recipients in 1992, falling to 31 per cent in 2008 and in 2010, to 29.2 per cent. In 2009 psychiatric and psychological issues accounted for 18 per cent of recipients; increasing to 28.7 per cent in 2010.

The fastest growing type of conditions of recipients since 1992 has been mental health and intellectual disabilities, while the proportion of recipients whose primary condition was 'musculo skeletal' has declined.

Behind these figures lies the distressing truth that many people and families are not coping with the debilitating effects of mental illness including lapses of mental judgement, difficulty concentrating and inability to function at times in a workplace. It is also important to remember that strong medication for some mental illnesses can also be a major factor.

¹ Yend, P. *Budget Review 2010-11 Index, Budget 2010-11: Welfare, Disability Support Pension*, Parliamentary Library.

Given the current profile of DSP recipients it is a reasonable assumption that people with mental health conditions will represent a significant proportion of those whose claim for DSP will be deferred until they have been tested in the labour market, or undertake additional rehabilitation or training.

Politicians fail to explain that population ageing, coupled with changes to social security entitlements such as the increase to the pension age for women, are the real drivers behind this growth. The DSP is difficult to obtain, and claimants must undergo a rigid, strict medical assessment by an independent expert. In fact, 36 per cent of claims are rejected and since July 2010 there has been more than a six per cent increase in DSP claims being rejected.²

Unfortunately, the Australian community are not told that many other advanced nations have higher levels of their populations on disability payments. Instead, the media is awash with stories about “sneaky” people with ‘bad backs’ who are ‘rotting’ the system.

People who would have qualified for DSP under the existing rules with serious impairments, but not classified as ‘severe’, will be required under this Bill to undertake a ‘program of support’ (rehabilitation, training or other employment assistance) before the pension can be granted.

At the core of the new DSP assessment is a new step whereby claimants will be referred to an employment provider if they have some capacity to work. The NWRN is by no means opposed to allowing recipients of Disability Support Pension to, on a voluntary basis, to be encouraged and supported to participate in training or work-related activities to encourage their return to work and participation in the workforce.

However, in relation to a mandatory requirement that a person try and fail prior to qualification, especially in situations where it is apparent that this failure is overwhelmingly likely to be the case, the NWRN is concerned that this will serve only to deliver disempowering and demeaning effects and cause long term damage to those affected by it.

Information on those affected under these changes has not been published, although we understand that about 18,000 claims for DSP each year are expected to be rejected under these reforms.

People denied the DSP could be required to participate in a program for up to 18 months before the higher DSP payment is available to them. This means that they could be living on a payment of approximately \$237.00 per week. That payment, the Newstart Allowance, is approximately \$127.00 per week less than the comparable rate of pension. It is currently unclear whether or not there are provisions for back-payment of DSP entitlements to the date of claim if a person is later found to be eligible for DSP. If such payments are available, this will be grossly unfair and set a bad precedent in social security law.

² The Hon. Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, *Supporting people with disability into work*, Media Release, 1 June 2011.

The Bill, at new subsection 94(3B) introduces a new definition of “severe “impairment where a person will not qualify if they have a multiple impairments that meet 20 or more points. Some individuals with multiple disabilities that, together would currently mean they met the test of serious disability, will be denied access to the DSP. People whose impairments are serious may be left struggling with employment services systems that may be unfamiliar in dealing with people with such conditions.

The recent Budget statements announcing that these changes would begin in September 2011 contained no suggestions that the definition of ‘severe impairment’ would be tightened ahead of the new Impairment Tables due to start in 1 January 2012. The September 2011 measures will treat people with 20 or more points on the Impairment Tables differently if they are afflicted with serious dual or multiple disabilities.

This change will basically result in a two-tiered system of DSP eligibility – one where people with multiple ailments are to be routinely denied the DSP. This approach sets a worrying precedent. This is an extreme and very harsh approach to assessing a person’s work capacity.

The tighter DSP rules for people with multiple impairment ratings will impact most severely on people with a mental illness. According to Professor John Mendoza, while 28 per cent of Australians receiving the DSP have a primary mental health disability, around 35 per cent “have mental health problems as a secondary contributor”.³

Cutting people’s social security payments will not assist them into work. As well as looking for work, many people will overwhelmed by needing to ‘prove’ that they are not fit to work. This is a perverse, but potentially predictable response, of some people with certain conditions to this Bill.

The NWRN has a number of more specific concerns with the changes:

- It is unclear at what point, when a person’s efforts have been unsuccessful, they would be eligible for DSP or whether a new claim would be required.
- If people who are denied access to the pension are unable to find work, they will be placed onto Newstart Allowance. At \$237 per week for a single adult, the Newstart Allowance is clearly inadequate to pay for the essentials of life.
- Too many of the details (as raised above) are unknown, and will be left to legislative instruments. This is not sufficient. Changes of such magnitude should be the subject of full scrutiny by the public and community organisations.
- The proposed starting date is less than three months away, and there is not sufficient time adequately communicate the changes. Apart from the “saving”

³ Professor John Mendoza, *Why do so many mentally ill Australians struggle to maintain employment?*, The Conversation, published on 21 April 2011 and reprinted in Croakey – the Crikey health blog.

\$49.7 million, there is no clear reason to rush the changes, ahead of the anticipated changes to the Impairment Tables on 1 January 2012.

- People whose DSP is delayed face an even penalty regime that starts from 1 July 2009.⁴ There are currently 160,000 with Vulnerability Indicators (VI) on NSA and YA. About 45 per cent of people with a VI have a psychiatric or psychological issue. This budget change will result in significant numbers of people with a mental illness moved onto activity-tested payments. Recent media reports have highlighted a doubling of penalties imposed on people who experience a mental health problem. Changes meant to better “protect” vulnerable job seekers do not start until 1 July 2012.⁵ Measures to guard against the unfair application of penalties on vulnerable job seekers are needed immediately – not in 9 months. The Committee needs to address this problem.

Most people with disabilities want to work, and the NWRN supports programs and policies that assist people with disabilities find employment. However, cutting people’s income by moving them onto lower payments won’t help people find work.

Previous attempts at “welfare reform” since 2006 for people with disabilities have meant in practice shifting 92,000 people with disabilities onto a lower paying Newstart Allowance, and 4,000 onto the even lower paying Youth Allowance.

Given the inherent unfairness that is likely to result from this Schedule, plus the range of unanswered questions about how this measure will be operationalised, we submit that it be opposed at this time.

2. Family Tax Benefit Changes

Schedule 2 to the Bill contains changes to the *Family Assistance Act* with amendments to some indexation arrangements for family assistance.

The Bills gives effect 2011-12 Budget changes aimed at further targeting family assistance to those in greatest financial need – and achieving savings in excess of \$2 billion over 4 years. The main savings measure stems from the continuation for two extra years of the indexation freeze introduced in the 2009-10 Budget for certain income test thresholds. Family payments are a vital element of the supports that helps ensure that children can live decently and that their needs are met.

At around \$18 billion in 2011-12, it is vital that the family payment system provide greater support to those families in need of greater levels of financial assistance. A more highly targeted family payments system ensures that sufficient funds are available to meet other important community needs, in mental health, transport and disability and children’s services.

⁴ National Welfare Rights Network, *Centrelink penalties surge 100 per cent*, Media Release, 29 May, 2011. Go to: welfarerights.org.au

⁵ Karvelas, P. *Fines for mentally ill, homelessness double*, 20 May 2011, p. 2.

2.1 Indexation of FTB A and B Supplements

The NWRN is very concerned over the impact of the freeze on indexation to the Family Tax Benefits A and B Supplements, which saves \$803.2 million over 4 years. The maximum rate of FTB supplement is \$726 per child year, per year. The freezing of indexation is quite small on an individual basis, and will result in low income families missing out on increased benefits of about \$20 per child, per year.

The FTB Supplements were initially introduced, in part, to assist with extensive numbers of overpayments which were a common feature of the family payments system. Debts are still at disturbing levels within the family payments system. Despite attempts in recent years to reduce the endemic incidence of overpayments one in 12 families had accrued an FTB debt, with the average debt around \$1,291 per annum.⁶

Many rely on this payment – and are justifiably annoyed and distressed if the supplements fail to arrive because of a reconciliation debt.

These supplements are now important in the budgets of families living on low incomes. They are used to purchase whitegoods, repay credit card and other debts, or cover large expenses such as insurance or car registrations.

The impact of the freeze of the FTB supplements will be felt more acutely by families on low incomes.

Therefore, we recommend that this measure not proceed. Alternatively, consideration could be given to capping the annual supplements that are available to higher income earners. We can see no rationale for paying the full-rate supplement of \$726 to a family on \$50,000 and providing the same benefit to a family on three times this income. Another option could also be to allow for just one annual FTB supplement per high income family. We are mindful that there could be cost consideration in applying means tests to the supplements, so an assessment would need to consider the savings that might accrue from this approach.

2.2 Indexation of various income thresholds

The Bill provides on the indexation of thresholds and indexation and rates which effect payments of Family Tax Benefits A will be continued for two more years. This will save \$1.2 million over 2 years.

The freeze to the higher income threshold for FTBA is expected to impact 39,000 families, whose part-rate payments would cease by 2013-14. According to a Parliamentary Briefing, just 2.6 per cent of the estimated number FTBA families in 2014 would be impacted.⁷ According to published data on the incomes of families receiving FTBA fortnightly, the average adjusted taxable income was around \$50,000 per annum. This means that families with incomes close to the thresholds

⁶ Daily Telegraph, *Families welfare debts up*, September 21, 2009.

⁷ Daniels, D. *Budget 2011-12: Family assistance retargeted*, Budget Review Index, Accessed: 26 May 2011.

that will be affected by the indexation freeze are living on incomes two or even three times that of the average family in receipt of FTB A.⁸

Much has been made of the impacts of Budgetary measures on families with incomes in excess of \$150,000, who will be most effected by this reform. As indicated earlier, most families exist on considerably less income. Only about 13 per cent of Australian households have an income of \$150,000.

In a tight budgetary environment, the NWRN believes that the modest reduction in benefits arising from this measure, if a family's income increases, is justifiable.

We recognise that by setting the a number of payments at one point of \$150,000, the system is creating work disincentives for higher income earners – which are similar to those on lower income earners receiving social security payments. These changes add greater urgency for further reform of the family payments system to be examined at the forthcoming tax forum.

2.3 Age of Family Tax Benefit child for Family Tax Benefit

The Bill lowers the maximum child age of eligibility for family tax benefit Part A from 24 to 21 on 1 January 2012. This will align with the age at which a person becomes independent for the purposes of youth allowance from 1 January 2012.

There are a significant number of people who will miss out on payments because they would have qualified for Family Tax Benefit, but would not qualify for Youth Allowance by reason of either their residency status or parental means.

To meet the residence requirements, the person receiving Family Tax Benefit must be an Australian resident, or the holder of either a special category visa (a New Zealand citizen who arrived on a New Zealand passport) or one of the qualifying visa categories as declared by the Minister. Currently this list includes holders of visa types:

- 820 (Spouse provisional) or (Partner);
- 826 (Interdependency provisional);
- 309 (Spouse provisional) or (Partner Provisional);
- 310 (Interdependency provisional);
- 447 (Secondary movement offshore entry);
- 451 (Secondary movement relocation);
- 695 (Return pending);
- 785 (Temporary protection);
- 786 (Humanitarian concern);

⁸. Department of Families, Housing, Community Services and Indigenous Affairs, *Annual Report, 2009-10*2010, Appendix.

- 787 (Temporary witness protection)(trafficking);
- 851 (Resolution of status Class CD);
- 070 (Removal pending); and
- the Criminal Justice Stay visa.

The child must meet the above requirements or be living with the person claiming payment.

The largest group of our clients likely to be unable to access income support based on their residency status because of the proposed Bill will be New Zealanders, who meet the residential criteria for Family Tax Benefit but not for Youth Allowance. The second largest group is likely to be the families of provisional partner visa holders.

The proposed Bill effectively strips these families of three years' worth of payments in respect of each child, having a significant impact on those families' ability to subsist and to provide for their families' basic needs during this time.

In addition to restrictions on income support based on residency, there will be families who qualify for Family Tax Benefit but not for Youth Allowance by reason of their satisfying the relevant income tests. In particular there are families who would be prevented from accessing Youth Allowance by reason of the Family Actual Means Test which would have previously been permitted to receive Family Tax Benefit.

We also concerned about the flow-on effect of alteration to the definition of Family Tax Benefit child to other payments. For example, currently a person qualifies for Double Orphan Pension in respect of a Family Tax Benefit child. There are potentially groups of people responsible for adult orphans in this situation likely to be left without payments as a result of the proposed changes.

Welfare Rights Centres in each state and territory are contacted regularly by many families and young people from New Zealand who are unable to access Australian social security payments or payments under the International Agreement with New Zealand who are in situations of extreme financial hardship. It is our experience that currently the granting of "Act of Grace" payments in relation to people in this situation is being applied extremely restrictively given the clear legislative intent behind the previous changes restricting access to payments which came into effect 26 February 2001.

The changes included in the proposed Bill are likely to increase instances of extreme financial hardship as experienced by New Zealanders living permanently in Australia.