

Senate Community Affairs Committee
Public Hearing
Social Security and Other Legislation Amendment Bill 2011 – Schedule 3
(Disability Support Pension Impairment Tables)
Tuesday 6 September 2011

Responses to questions on notice - Hansard

Legislative (Disallowable) Instruments

Question 1: Are there other examples of where a *Legislative instrument is directly referred to in qualification criteria*?

Answer 1: Legislative instruments are used extensively throughout the social security law.

The qualification criteria for carer payment paid in respect of a child and carer allowance paid in respect of child require, amongst other things, that a person must obtain an a rating of intense under the *Disability Care Load Assessment (Child) Determination 2009*, which is a legislative instrument. The qualification criteria that must be met to qualify for the carer payment or carer allowance are set out in the relevant provisions of the Social Security Act. The *Disability Care Load Assessment (Child) Determination 2009* sets out the requirements to obtain a rating of intense. Essentially this includes the completion of a questionnaire by the person and a questionnaire by a treating health professional. Each questionnaire is scored separately. A rating of intense is achieved if the score on each questionnaire meets the required level.

The qualification criteria for carer payment paid in respect of an adult and carer allowance paid in respect of adult require, amongst other things, that the disabled adult is assessed under the Adult Disability Assessment Tool. The Adult Disability Assessment Tool is set out in the *Adult Disability Assessment Determination 2001*, which is a legislative instrument.

The qualification criteria for disability support pension are set on in section 94 of the *Social Security Act 1991*. Presently, to qualify for disability support pension a person must, amongst other things, have a physical, intellectual or psychiatric impairment, the person's impairment is of 20 points or more under the Impairment Tables and the person has a continuing inability to work. These qualification criteria have not been amended.

To determine whether a person's impairment is of 20 points or more under the Impairment Tables a person must then refer to the Impairment Tables and comply with the rules presently set out in the Introduction to the Tables and meet the requirements of one or more of the Tables. This will remain the same under the new Tables.

Question 2: Where can legislative instruments be found?

Answer 2: The *Legislative Instruments Act 2003* provides that all legislative instruments must be registered on the Federal Register of Legislative Instruments (FRLI) (section 28). All recent Australian Government legislation and legislative instruments are now available on www.comlaw.gov.au.

Legislative instruments can also be found on the sites of major re-publishers, for example:

- the Australasian Legal Information Institute (AustLII) [↗](http://www.austlii.edu.au), a part of the Free Access to Law movement

- SAI Global, publisher of LawLex [↗](#)
- Thomson Legal and Regulatory, publisher of Legal Online [↗](#)
- TimeBase, publisher of LawOne [↗](#)

The *Legislative Instruments Act 2005* put in place procedures to review instruments. The degree of parliamentary debate on changes made by a legislative instrument is a matter for each House.

The FAHCSIA website provides links to all legislation administered by the Minister for Families, Housing, Community Services and Indigenous Affairs and associated delegated legislation. This includes all the legislation and delegated legislation which form the social security law.

Questions 3: Where Can Legislative Instruments be referred to a Committee process?

Answer 3: Advice on this issue should be sought from the Clerk of the Senate.

The following from the Senate website may also be of assistance:

“The Senate Standing Committee on Regulations and Ordinances ... functions, which are set out in Senate Standing Order 23, are to scrutinise all disallowable instruments of delegated legislation to ensure their compliance with non-partisan principles of personal rights and parliamentary propriety. The Committee engages in technical legislative scrutiny. It does not examine the policy merits of delegated legislation. Rather, it applies parliamentary standards to ensure the highest possible quality of delegated legislation, supported by its power to recommend to the Senate that a particular instrument, or a discrete provision in an instrument, be disallowed.”

Further, there appears to be no reason why the Senate could not refer a relevant legislative instrument to the Senate Standing Committee on Community Affairs for review of the policy merits of the instrument.

Questions 4: How are people alerted or how can people be alerted to changes to legislative instruments?

Answer 4: FaHCSIA alerts the public through its website and in consultation with Centrelink through its publications. Changes to social security law are also generally announced through a Media Release.

Requirements of the Legislative Instruments Act

All registered legislative instruments must be delivered to each house of Parliament within 6 sittings days after registration. The legislative instrument must be accompanied by an explanatory statement and the explanatory statement lists the organisations that have been consulted. Either House has 15 sittings days after the instrument is delivered to it, to bring a motion of disallowance of the instrument.

DSP Advisory Group

Question 1: Who is on the DSP Advisory Group?

Answer 1: See below

Name	Organisation	Position Title
Ms Sally Sinclair	National Employment Service Association	Chief Executive Officer
Ms Lynette May	Disability Employment Australia (formerly ACE)	Senior Policy Officer
Dr Ken Baker	National Disability Services	Chief Executive Officer
Ms Leah Hobson	Australian Federation of Disability Organisations	Acting Chief Executive Officer
Mr Frank Quinlan	Mental Health Council of Australia	Chief Executive Officer
Mr Dale Nelson AM	National Welfare Rights Network	Community Legal Education Officer
Mr Michael Bleasdale	People with Disability Australia	Executive Director
Mr Peter Davidson	Australian Council of Social Service	Senior Policy Officer

The group also includes relevant officials from the Department of Education, Employment and Workplace Relations, the Department of Human Services, the Department of Families, Housing, Community Services and Indigenous Affairs and CRS Australia.

Question 2: What are the Terms of Reference for the DSP Advisory Group?

Answer 2:

Terms of Reference

The Disability Support Pension (DSP) Advisory Group will work with Government on the implementation of DSP changes including providing advice on:-

- Implementation of the 2010-11 '*More Efficient and Accurate Assessments for DSP and Employment Services*' Budget measure;
- Implementation of revised impairment tables (review of impairment tables was announced as part of the 2009-10 *Better and Fairer Assessments* measure); and
- Implementation of the 2011-12 '*Building Australia's Future Workforce*' DSP Budget measures.

Advisory Committee for Review of Impairment Tables

Question 3: What were the Terms of Reference for the Review of Impairment Tables?

Answer 3:

Terms of Reference

The review will:

1. update the DSP Impairment Tables to make sure they are consistent with contemporary medical and rehabilitation practice;
2. introduce consistent consideration of the use of aids and equipment in the measurement of impairment in the DSP Impairment Tables;
3. reassess the appropriateness of definitions contained in the Introduction to the DSP Impairment Tables, with particular regard to the assessment of people with intermittent psychiatric conditions;
4. re-examine the descriptors in the DSP Impairment Tables to ensure that a score of 20 points aligns with an inability to work 15 or more hours per week in the open-labour market at or above award wages without the need for on-going support;
5. redesign the DSP Impairment Tables to focus more on ability; and
6. ensure that the DSP Impairment Tables can be used by both Allied Health Professionals and Medical Officers.

Question: What criteria were the revised Impairment Tables were tested against?

Answer:

Methodology for Testing the Revised Tables

- **Comparative assessment:** Comparative testing against the current tables (i.e. for each DSP claim, assessors should assess each claim under both the current and revised tables). Rating under the revised tables was required for permanent conditions only.
- **Inter-rater reliability testing:** Where the claimant gives assent, the claim should be independently rated by a different assessor under the revised tables).
- **Independent Case file testing:** Targeted case file reviews to ensure representation of less common medical conditions in the test data set.
- **Face validity and usability:** Assessor feedback on the ease of use, perceived accuracy and appropriateness of the draft revised Impairment Tables.

Question: How many people who apply for DSP do not get it because of other qualifiers (e.g. income, assets and other qualification criteria)?

Answer: 15,866

DSP Appeals

Question 1: What are the current appeal rates – internal/external, SSAT and AAT?

Answer 1: 11.3 per cent of DSP claims are reviewed internally through Centrelink original decision makers and authorised review officers. 0.75 per cent of claims are reviewed through the Social Security Appeals Tribunal. 0.23 per cent of claims are reviewed through the Administrative Appeals Tribunal.

Question 2: How many are successful?

Answer 2: Rejected DSP claimants were successful in 15.5 per cent of cases reviewed by a Centrelink original decision maker, 25.3 per cent of cases reviewed by an authorised review officer, and 18.3 per cent of cases decided by the Social Security Appeals Tribunal. 3.5 per cent of rejected DSP claimants who appealed to the Administrative Appeal Tribunal were successful when the case was decided, noting that in 40.1 per cent of Administrative Appeal Tribunal cases the appeal was settled by consent so the successful party is not evident from the data. 64.3 per cent of Secretary appeals to the Administrative Appeal Tribunal were withdrawn (resulting in the DSP claimant being successful), noting that 14.3 per cent of Administrative Appeal Tribunal cases the appeal was settled by consent so the successful party is not evident from the data.

Question 3: What do we anticipate they will be under the new Tables?

Answer 3: We would anticipate that appeal rates and the proportion set aside would be similar to the current rates above.

Question: The Taylor Fry report states that 21% were found eligible under work capacity assessment but not eligible under Impairment Tables. How do the figures now compare to what Taylor Fry is saying?

Answer: In 2010-11 there were 312 DSP new claim assessments where the Impairment Rating assigned was less than 20 points and the future work capacity was less than 15 hours per week.

As part of the training for introduction of the new Impairment Tables DHS Assessors will be instructed to discuss cases where there is a mismatch between the impairment rating and the future work capacity with their manager and/or the Health Professional Advice Unit.

Question: How many assessors are there, broken down by jurisdictions?

Answer:

Jurisdiction	Number of DSP Assessors
ACT	5
NSW	225
NT	11
QLD	146
SA	57
TAS	17
VIC	161
WA	64
Grand Total	686

All DSP Assessors are Health and Allied Health Professionals who are registered with their Professional Registration Health Board or eligible for membership with their relevant Professional Associations. The majority of these boards are now supported by the Australian Health Practitioner Regulation Agency (APRAH). APRAH is the organisation responsible for the implementation of the national registration and accreditation scheme across Australia.

Training is provided to all Health and Allied health Professionals on an ongoing basis commensurate with changes in policy that impacts upon work practices. Induction of new staff members requires comprehensive training across all facets of the assessment process. New inductees are supervised by experienced Health and Allied Health Professionals in order to ensure they have the support required to meet the standards expected of them in the Assessor role.

Ongoing Quality assurance measures are in place to ensure that the work is of the highest standard at all times. To further support best practice the Contributing Assessor process is used when ever the Primary Assessors qualifications do not align with the primary medical condition or relevant Impairment table.

Question: Will the change in the status of assessors (in the Introduction of the Tables) impact on appeals (raised by Bill Gerogiannis, National Welfare Rights Network)?

Answer: Only the Secretary or his delegate can determine a claim for disability support pension. An assessor is not a delegate. This position will not change.

The present Introduction to the Impairment Tables provides that an assessor may assign an impairment rating. Who is an assessor is not presently defined.

As presently drafted the Introduction to the new Impairment Tables provides that an assessor is “a person trained and experienced in applying the Tables”. This change is designed to ensure that assessors who use the Impairment Tables are experienced in the use of them and have a good understanding of the various aspects of the Impairment Tables, including the Introduction. In appeal cases, it will be up to the Tribunals to determine what “trained and experienced” means.

Question: In 1997 when the Tables were changed, how many people were assessed to come off DSP?

Answer: Data on DSP medical reviews is only available from 2002-03 onwards. Anecdotally, the introduction of the revised impairment tables in 1997 made negligible difference to cancellation rates following DSP medical review.

Anglicare

Question 1: Can you put actual dates against Table 1, page 5 of the Anglicare submission?

Answer 1: See below

Initiative	Comes into Effect
Removal of the cap on Disability Employment Services with a \$1.7 billion investment over the contract period	1 March 2010
Better and fairer assessments for DSP measure – Part 1 Senior assessors, Health Professional Advice Unit, New guidelines (including funding for extra employment services for people who do not qualify for DSP)	1 July 2010
More accurate and efficient Disability Support Payment assessments Activity Tests (including funding for extra employment services for people who do not qualify for DSP)	3 September 2011
Australian Disability Enterprises – continuation of funding for existing service levels	1 July 2011 2011-2012
Better and fairer assessments for DSP measure – Part 2 New Impairment Tables (including funding for extra employment services for people who do not qualify for DSP)	1 January 2012
Increase DSP work hours to up to 30 hours whilst remaining eligible for a part payment.	1 July 2012 2011-2012
Implementation of new subsidy rates for employers for positions lasting more than 26 weeks at 15 hours or more a week. This also includes a training subsidy.	1 July 2012
Workforce participation interviews for people DSP recipients under age 35	1 July 2012
\$1 million to support connections between people with a disability and employers and industry groups	2012-2013
\$11.3 million to subsidise 1,000 registered job-seekers who have been unemployed for more than 12 months.	2012-2013
DSP Claims audit identifying “deficiencies or inconsistencies in the current process”	1 July 2012-2013
Moderate and Intellectual Disability Loading and Eligible School Leavers pilots	Completed 2013
Disability Employment Service evaluation	Completed by 2012-2013
Disability Employment Service contracts extended pending provider performance assessment	Completed by 2013
Demonstration pilots for highly disadvantaged job-seekers	Completed by 2013-2014

Question 2: Anglicare comment 3. The timing of the implementation of the new tables is at odds with the roll-out of the participation initiatives announced as part of this year’s *Building Australia’s Future Workforce* budget measure; resulting in at least six but as many as 18 months of greater expectations on people living with disability, without the promised increased support.” Is this correct?

Answer 2: The implementation of the new Impairment Tables was announced in the 2009-10 Budget and builds on other reforms that have already been implemented including:

- From 1 March 2010, the removal of the cap on Disability Employment Services announced in the 2008-09 Budget with a \$1.7 billion investment over the contract period so that all job seekers with disability will have immediate access to assistance from an employment service helping them to gain skills and employment; and
- From 3 September 2011, funding for extra employment services to assist people referred to a program of support as a result of the reforms to DSP assessments which require DSP applicants (other than those with a severe impairment) to provide evidence that they have been unable to obtain employment through an open employment service or vocational rehabilitation.

Question 3: Referring to the report *What if Employers say No?*, what is used to determine actual jobs and is this theoretical or actual figures?

Answer 3: The work test for the availability of work is defined in the Social Security Act 1991 s94(5) as:

"work" means work:

- (a) that is for at least 15 hours per week on wages that are at or above the relevant minimum wage; and
- (b) that exists in Australia, even if not within the person's locally accessible labour market.

Question 4: How does this methodology apply to issues outside capital cities?

Answer 4: This test is applied equally to all DSP claimants.