Social Security Rights Victoria Inc.

A0015471X

Committee Secretary

Senate Community Affairs References Committee

PO Box 6100

Parliament House

CANBERRA ACT 2600

By electronic submission only

30 July 2021

Dear Committee Secretary,

Senate Community Affairs References Committee – Inquiry into the purpose, intent and adequacy of the Disability Support Pension

This submission was written on the lands of the Wurundjeri People of the Kulin Nation.
Social Security Rights Victoria acknowledges the Traditional Owners of the lands on which we meet, work and provide services to the community. We pay our respects to the first people of this country and to their Elders past, present and emerging.

About Social Security Rights Victoria

1. Social Security Rights Victoria (SSRV) is a Victorian state-wide community legal centre that specialises in social security related law, policy and administration. Our vision is for a fair and just society in which all people are able to receive a guaranteed adequate income in order to enjoy a decent standard of living. SSRV's contribution to this vision is the provision of legal and related services to vulnerable and disadvantaged Victorians and those who support them, which assists them to secure and protect their rights to equitable social security entitlements.

2. SSRV (https://www.ssrv.org.au/) has been operating for almost 35 years, with funding from Commonwealth and Victorian governments, philanthropy and other sources. SSRV's services

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are directed primarily to people who are experiencing financial disadvantage and other forms of vulnerability such as those related to disability or mental illness, age, family violence, family breakdown, Aboriginal and Torres Strait Islander background, cultural and linguistic diversity, location, pandemics, and disasters. SSRV also provides assistance to other professionals, such a lawyers, financial counsellors, disability advocates, social workers, family violence workers and health workers, who are helping their clients with Centrelink matters. SSRV provides legal information, advice, casework and representation services; designs and delivers community legal education and professional development resources and workshops; and contributes to policy development and systemic advocacy. SSRV undertakes specialist projects, currently including the Integrated Services Project in partnership with Financial Counselling Victoria and the Disability Support Pension Help Project (https://dsphelp.org.au/).

3. SSRV is a member of Economic Justice Australia (EJA), the peak organisation for community legal centres providing specialist legal assistance to people on their social security issues and rights.

4. Enquiries about and requests for information and legal assistance in relation to Disability Support Pension (DSP) eligibility and appeals of Centrelink and Administrative Appeals Tribunal decisions regarding the DSP are among the most common matters for which individuals, carers and other professionals contact SSRV. This level of demand reflects the complexities and opaqueness of DSP eligibility and application processes, and the poor quality of administrative practices and decision-making.

5. The difficulties of navigating the DSP are often compounded by the day-to-day challenges of living with disability, limited income and limited supports. For some applicants, the difficulties of navigating the DSP exacerbates their illnesses, injuries and disabilities.

6. SSRV welcomes the opportunity to share our experience and recommendations through this submission to the Inquiry into the purpose, intent and adequacy of the Disability Support Pension. The submission focusses primarily on Term of Reference (b) the DSP eligibility criteria, assessments and determination, including the need for health assessments and medical evidence and the right to review and appeal. SSRV would also welcome the opportunity to speak to the Committee and further explain the recommendations outlined in this submission.

Recommendations

Recommendation 1: References to 'fully' be removed from the criteria used to assess permanency of conditions.

Recommendation 2: The concept of 'reasonable treatment' should be extended to diagnosis.

Recommendation 3: Decision makers should have more regard to the financial resources of DSP applicants, especially those living on JobSeeker and other inadequate payments.

Recommendation 4: The Impairment Tables be reviewed and rewritten in a way that is consistent with the rest of the eligibility criteria.

Recommendation 5: Any review of the Impairment Tables be done in consultation with relevant experts and stakeholders, including health professionals, disability organisations, and most importantly people living with disability.

Recommendation 6: The types of mental health professionals and medical practitioners who can diagnose and give evidence for mental health conditions be broadened.

Recommendation 7: Program of Support be removed as an eligibility requirement.

Recommendation 8: Any program designed to help people living with disability access work should be opt-in and not a condition of receiving income support.

Recommendation 9: The process of giving medical evidence in support of DSP applications be simplified. The 'treating doctor report' be reinstated as the primary means by which medical evidence is provided.

Recommendation 10: Providing medical evidence for the DSP, whether through the treating doctor report or in another format, be made bulk billable through Medicare and should be a regular part of doctors' practice.

Recommendation 11: Services Australia be formally required to meet their obligation to provide information regarding DSP eligibility, applications and appeals in a genuinely accessible and easy to understand format.

Recommendation 12: Services Australia should take an active, human-centred approach to guiding DSP applicants through the DSP system.

Recommendation 13: The Impairment Tables should be rewritten in a way that makes them accessible and understandable to those living with disability.

Recommendation 14: Funding to disability organisations, community legal services and other community-based organisations who assist people with the DSP should be increased.

Recommendation 15: Services Australia be directed to process DSP applications and appeals, and communicate decisions in a timely manner.

Recommendation 16: Original decisions relating to DSP eligibility be communicated with complete written reasons.

DSP Eligibility Criteria

7. The DSP is an income support payment for people who cannot support themselves through employment due to permanent illness, injury or disability.[1] This must be kept in mind when considering the DSP eligibility criteria, the challenges applicants face, and the adequacy of the DSP as income support.

8. DSP eligibility decisions are made by a variety people including Centrelink original decision makers, Authorised Review Officers and Administrative Appeals Tribunal members, both in the Social Services and Child Support Division and the General Division. References to 'decision-makers' in this submission refer to all of these people unless otherwise indicated.

9. DSP eligibility is complex. Briefly, for a person to be granted the DSP the decision maker must be satisfied:[2]

    - They have a physical, intellectual or psychiatric impairment or impairments;
    - The impairment is rated as at least 20 points under the Impairment Tables;[3] and
    - They have a continuing inability to work 15 or more hours per week.

10. In order for an impairment to be rated under the Impairment Tables, the condition causing the impairment must be 'permanent', that is fully diagnosed, fully treated and fully stabilised, and likely to persist for at least two years.[4]

[1] See, eg, Services Australia's website where the DSP is described as 'Financial help if you have a permanent physical, intellectual or psychiatric condition that stops you from working.', https://www.servicesaustralia.gov.au/individuals/services/centrelink/disability-support-pension.
[2] *Social Security Act 1991* (Cth) s 94 ('the Act').
[3] *Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2011* (Cth) ('the Impairment Tables').
[4] Ibid cl 6(4).

11. The person must also satisfy other 'non-medical' criteria for DSP qualification and payability, including rules about residency, income and assets.

Permanency of Conditions

12. Whether a condition is considered 'permanent' with reference to being fully diagnosed, fully treated and fully stabilised is a significant hurdle applicants face. To be fully diagnosed an appropriately qualified medical practitioner must have made the diagnosis. To be fully treated and fully stabilised all reasonable treatment must have been undertaken and further reasonable treatment must be unlikely to result in a significant functional improvement within the next two years. In other words, the applicant must have essentially done everything they can to improve their condition before it will be accepted as permanent. To be found eligible, applicants usually need to understand and address each of these by gathering supporting medical evidence from their doctors and specialists.

Fully Diagnosed

13. A diagnosis provided by an applicant's treating doctors will usually demonstrate the condition has been fully diagnosed. For some conditions this can be challenging, particularly those where diagnosis can only be made after certain formal requirements have been met. Chronic Fatigue Syndrome (CFS) is one such condition. Diagnosis is usually made by excluding all other possible causes of the symptoms the person is experiencing.[5] This is a time-consuming process potentially taking six months or more before a formal diagnosis can be made. However, even without a formal diagnosis it is often clear when considering the available medical evidence and overall situation that the person cannot work, is not likely to be able to work within two years, and will require the support the DSP offers.

14. Other conditions, including acquired brain injuries, also have diagnosis requirements that can be difficult or close to impossible to satisfy before claiming DSP.

[5] See, eg, Better Health Channel, 'Chronic Fatigue Syndrome', https://www.betterhealth.vic.gov.au/health/conditionsandtreatments/chronic-fatigue-syndrome-cfs.

Case Study – Gary*: *Gary has a number of physical and psychological conditions and is showing symptoms of an acquired brain injury (ABI). Gary has had an MRI in an attempt to further diagnose his conditions, however the results were not consistent with a traditional ABI. Based on Gary's history of head injuries and being knocked unconscious during sport and in his work his doctors now believe he may have Chronic Traumatic Encephalopathy (CTE). Like Alzheimer's Disease, CTE cannot be definitively diagnosed while the patient is alive. Because of this, and because of the diagnosis being inconsistent with a traditional ABI, decision makers have not accepted Gary's condition as fully diagnosed. Gary has been unable to access the DSP.*

**Name has been changed.*

15. Limited access to appropriate specialists creates barriers to diagnosis. The most significant factor SSRV sees in this regard is cost. The vast majority of DSP applicants making use of SSRV's services are on Jobseeker while applying for or appealing a rejection of the DSP. They simply cannot afford to see the specialists who can properly diagnose their conditions.

Case Study – Lisa*: *Lisa has been living on JobSeeker Payment (formerly Newstart) for many years. She has been unable to find any work in that time. Often, she is not able to look for work and needs a medical exemption from her JobSeeker Payment mutual obligations. She lives with anxiety, depression, a substance dependence disorder, and an ABI. These conditions have been diagnosed by her GP and a clinical psychologist, however the clinical psychologist has indicated a neuropsychological assessment is required to formally diagnose the ABI and to assess the functional impact on Lisa. Lisa has investigated this and been told this will cost at least $2,000. Lisa does not have access to this amount of money and being on JobSeeker will not likely have access to this in the foreseeable future. Lisa has also been unable to access such an assessment through the public health system. This remains a barrier to Lisa accessing the DSP.*

**Name has been changed*

16. Another significant factor is geographic access to specialists. People living in rural and regional areas routinely tell us they have difficulty accessing specialists as they simply do not exist in the area they live.

17. While the Impairment Tables provide guidance about 'reasonable' treatment, and cost and access are both relevant factors,[6] there is no similar provision for reasonable diagnosis. Without a formal diagnosis a condition is unlikely to be considered further as part of a DSP application, not matter how clear the impact on the person's ability to work is, or what the reasons for lack of diagnosis are.

18. The common thread, in the above case studies and SSRV's casework more broadly, is people with a significant functional impairment and an inability to work, demonstrated by medical evidence, being unable to access appropriate income support. The purpose of the DSP is not met because the eligibility criteria is structured in a way that does not adequately take into account the barriers applicants experience in accessing doctors and specialists and in obtaining a diagnosis.

Fully Treated and Fully Stabilised

19. The requirement that a condition be fully treated or fully stabilised is also a one which applicants struggle to satisfy. The key is whether all 'reasonable treatment' has been undertaken, and what the prognosis is with any further 'reasonable treatment'. The legislative guidance is ambiguous enough that this becomes a case-by-case assessment.[7] SSRV strongly supports flexibility in DSP assessments and taking into account the circumstances of individual applicants. However, in practice this aspect of the eligibility criteria can lead to unfair and unjust decisions.

20. The following observations, based on our advice and casework experience, highlight a number of common reasons a condition might not be considered fully treated or stabilised which are harsh or otherwise unfair.

21. **Pain Management Courses/Medical Recommendations:** Job Capacity Assessments and DSP decisions often recommend applicants undertake specific treatment, such as a pain management course or physiotherapy, and in the absence of this determine the conditions to not be fully treated or stabilised. This is very common and in the case of pain management courses, appears to be a standard practice rather than a considered recommendation accounting for the unique circumstances of the applicant. These recommendations are made without regard to the treating doctors' recommendations. Often, they can contradict those recommendations where the doctors' opinion is that such treatment is not anticipated to have

[6] The Impairment Tables cl 6(7).
[7] Ibid.

any benefit, or may even exacerbate the condition. This leads to an unfairness where a person who has done everything to treat and manage their conditions – in line with the advice of their doctors – is denied the DSP because of a suggestion by Centrelink, made without the experience and expertise of the treating doctors. Decisions about medical care and treatment need to be made by the patient with their treating doctors and specialists. It is inappropriate for Centrelink decision makers and Job Capacity Assessors to make health recommendations inconsistent with a person's treating doctors.

22. **Treatment of Mental Health Conditions:** Pharmaceutical treatment of mental health conditions tends to be varied and will depend on an individual's circumstances. Often there is a trial-and-error process where medication will need to be varied in dosage or completely changed before finding something appropriate for a particular patient. This process can happen over many years. This is problematic when considering whether these treatments are *fully* treated. Decision makers often use a change in medication as evidence a condition is not fully treated and reason the DSP should not be granted. This is a simplistic view that fails to consider why the medication is changing and whether it is likely and realistic trialling a new medication will allow the person to work within the next two years. This leads to unfair decisions which are contrary to the purpose of the DSP.

23. **Waiting Lists:** Many DSP applicants find themselves on a waiting list for treatment. This includes waiting lists for particular specialists, for surgery, or in some cases for an organ transplant. Often, we see decision-makers apply a simplistic analysis to these: If the waiting list is estimated as longer than two years the treatment will not preclude find the condition is fully treated. If less than two years the decision-maker reason the condition could improve with treatment in that time and so it is not fully treated or stabilised. This leads to unfairness where the actual likelihood of being able to work in the next two years is not properly considered. Waiting lists are not precise schedules with longer lists being more prone to imprecise estimates. Recovery from treatment also needs to be factored in, both in terms of how long this will take and what functional ability is likely following it. The decisions we regularly see do not account for these factors.

24. Additionally, we have seen on at least two occasions a person with kidney disease not being considered fully treated while waiting for a transplant. In these cases the Centrelink decision maker failed to take into account that such a transplant is not guaranteed and that a person on a waiting list must wait for a suitable, compatible donor. This could mean waiting much longer than the waiting list estimate.

25. The common element in the above is decision-makers applying the fully treated and stabilised too narrowly, without proper regard to treating doctors' recommendations or the likely impact and availability of treatment. The following case study highlights an example of this.

Case Study – Samuel*: *Samuel is a 16-year-old living with Autism Spectrum Disorder. Samuel requires constant supervision from a parent, attends a 'special' school, and needs numerous other adaptations and supports in his day-to-day life. Samuel has been able to access NDIS support, and as part of this receives psychological and psychiatric treatment on an ongoing basis. Samuel's claim for DSP was rejected on the basis his autism was not fully treated and stabilised. On review by an Authorised Review Officer, the ongoing treatment was found to be the main reason for rejection. The review officer decided Samuel would need to further pursue this before his autism could be considered permanent. SSRV assisted Samuel to appeal to the Administrative Appeals Tribunal and argued that his autism is permanent both in reality and within the specific meaning of the DSP eligibility criteria, noting the nature of the condition meant there would always be some kind of treatment needed, and that NDIS support is only given for permanent conditions, so using this as a reason to find a condition* is not *permanent is circular and unfair. Samuel's appeal was successful, and he is now receiving the DSP.*

**Name has been changed*

26. This case demonstrates the DSP eligibility criteria being applied in a very simplistic way during both the original decision and internal review processes. Decision makers failed to take into account the realities of the condition, and of the supports available to this person. Furthermore, these decisions fell short of community expectations around support for people living with disability. Deciding a person's severe autism (for which they already receive NDIS support) is not permanent is not reasonable and should not have been an interpretation open to the decision maker.

27. The rules relating to permanency of conditions are both complex and technical. In their current form they do not contribute to the purpose of the DSP. That is, when applied they do not accurately and adequately distinguish between conditions which are permanent or long term (likely to persist for more than two years) and conditions which are temporary and will resolve in the shorter term. These rules preclude people who are experiencing illness, injury or disability – and therefore cannot work – from accessing appropriate income support on the basis of technicality rather than genuinely considering whether they will be able to support themselves through work over the next two years.

Recommendation 1: References to 'fully' be removed from the criteria used to assess permanency of conditions. Conditions should be considered permanent if they are diagnosed, treated, stabilised, and likely to persist for at least two years.

Recommendation 2: The concept of 'reasonable treatment' should be extended to diagnosis. Barriers to obtaining a diagnosis – including cost and geographic access – should be considered and accounted for in the same way they are for treatment.

Recommendation 3: Decision makers should have more regard for the financial resources of DSP applicants. Whether conditions have been diagnosed, treated and stabilised, and whether it will likely improve within two years, should be considered with reference to what the applicant can realistically afford.

Impairment Tables

28. This submission will focus on two significant problems with the Impairment Tables. Namely, the standard for a severe rating is set too high, and the additional diagnostic requirement in Table 5 for mental health conditions creates unfair barriers to accessing the DSP. These are not the only problems with the Tables, but they are of particular importance based on our casework experience.

The Standard for a 'Severe' Rating is too high

29. Each Impairment Table is structured with criteria and ratings for five levels of impairment: no impairment (0 points), mild impairment (5 points), moderate impairment (10 points), severe impairment (20 points) and extreme impairment (30 points). To be eligible for the DSP an applicant's impairments must be rated as at least 20 points. This can be in a single table or a combined total across multiple tables.

30. The level of impairment a severe rating under a single table represents is very high. For example, Table 3 – Lower Limb Function requires a person to be unable to do *any* of the following:[8]

    - Walk around a shopping centre or supermarket without assistance.
    - Walk from the carpark into a shopping centre or supermarket without assistance.
    - Stand up from a sitting position without assistance.

[8] Ibid Table 3.

This level of impairment describes a person who needs help from another person on an almost constant basis. The person not only needs assistance anytime they wish to go shopping, but anytime they wish to get up from their seat. This does not align with a person who is unable to work 15 hours or more per week, but rather someone who is unlikely to be able to work *at all* in any realistic workplace.

Recommendation 4: The Impairment Tables be reviewed and rewritten in a way that is consistent with the rest of the eligibility criteria. Specifically, that a 20 point impairment rating under any table be consistent with a person who has some work capacity, but is still prevented from being able to do 15 or more hours per week, rather than someone with no work capacity at all.

Recommendation 5: Any review of the Impairment Tables be done in consultation with relevant experts and stakeholders, including health professionals, disability organisations, and most importantly people living with disability.

Table 5 – Mental Health Function

31. Table 5 covers a particularly important area of the DSP: mental health function. As of June 2019 approximately one third of DSP recipients had a psychological or psychiatric condition as their primary medical condition.[9] Among SSRV's clients the vast majority report experiencing mental health difficulties. It is rare for a DSP applicant to report no mental health conditions, even if the primary reason for applying is another condition. It is particularly important this Table be fit for purpose.

32. SSRV's casework has illuminated issues with this table. The biggest issue is the additional requirement this table places on diagnosis of mental health conditions. A clinical psychologist or psychiatrist must be involved in the diagnosis of mental health conditions before a rating can be given under this table.[10] In practice this means only evidence from these practitioners is considered when assessing mental health conditions, and evidence from others – including treating doctors – is given very low weight if not outright ignored. Requiring these professionals specifically creates unfair barriers in accessing the DSP. Based on our casework we observe:

    - People often do not know they have to see a clinical psychologist or psychiatrist specifically. Those that are aware of this requirement before coming to SSRV often

[9] Australian Institute of Health and Welfare, 'People with disability in Australia 2020: in brief', https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia-2020-in-brief/contents/income.
[10] The Impairment Tables Table 5.

learned of it only after being rejected with this being the reason their conditions were not considered fully diagnosed, treated or stabilised.

- People who are aware of the requirement often have difficulty accessing these practitioners. They are often dismayed at the potential cost of seeing a psychiatrist or clinical psychologist privately. They are left at the mercy of the public system and the referrals their GP can give them under a mental health plan. People referred to other practitioners may not realise their evidence will not surmount the requirement. For example, those referred to a general psychologist (as opposed to a clinical psychologist) may not recognise the difference and the issues this will create in demonstrating DSP eligibility.
- For people who have managed to access these practitioners, they can face challenges in getting appropriate and good quality evidence to support their application. While they may have met the hurdle requirement imposed by the table, the evidence they are able to obtain may not be sufficient to demonstrate DSP eligibility. In the case of psychiatrists, SSRV often hears they are reluctant to provide a detailed report after seeing a person only once or twice, which is often all the applicant can get access to.

33. SSRV's clients often describe this aspect of applying for the DSP in particular as 'jumping through hoops'. Particularly those who find themselves being treated by the 'wrong' kind of mental health professional.

Recommendation 6: The types of mental health professionals and medical practitioners who can diagnose and give evidence for mental health conditions be broadened. Diagnostic requirements contained within the Impairment Tables should be set with reference to the actual professionals people see about their conditions, and the professionals that are realistically accessible under Medicare.

Continuing Inability to Work and Program of Support

34. If an applicant is assessed as having 20 points under the Impairment Tables, but not under a *single* table (e.g. 10 points under Table 2 and 10 points under Table 3) in addition to having a continuing inability to work 15 or more hours per week they must also have actively participated in a 'Program of Support' ('PoS').[11] Most commonly applicants participate in such programs

[11] The Act s 94(2)(aa); see also ss 94(3B) and 94(3C).

while receiving JobSeeker or another activity tested payment[12] intended to get the person into employment. Complying with their mutual obligations is participating in the program.

35. SSRV notes significant concerns have been raised about structure and outcomes of these programs, and whether they are fit for their stated purpose.[13]

36. Making PoS an eligibility requirement leads to unfair outcomes and precludes people living with disability from accessing adequate income support. Our position is that PoS as an eligibility requirement is the single most unfair aspect of the DSP, and removal of the requirement should be the priority of any reform.

Program of Support creates inequality in how impairments are considered

37. As PoS is only required where no single impairment is rated as 20 points on its own, two people with the same impairment rating can be treated very differently under the eligibility criteria. A person with a spinal condition rated as 20 points under Table 4 is not required to have participated in a PoS, but a person with spinal, leg and arm conditions will be required if their impairment only reaches 20 points when considered under Tables 2, 3 and 4 together. These two people have the same level of impairment under the Impairment Tables, but the latter is subject to an extra requirement before they can receive the DSP.

38. It is also possible for a person with a greater level of functional impairment overall to be denied access to the DSP because of this requirement. In the above example, if the latter person has 10 points in each table their total impairment is 30 points, 10 points more than the former person. However, they are still subject to the PoS requirement as an additional and often insurmountable hurdle that the former person does not face.

39. The assumption appears to be that a person with multiple, but less severe, impairments will be more able to participate in meaningful employment. While this may be the case for some people, it is not universal. In SSRV's experience people with multiple impairments are less able to participate in employment, especially when considering comorbidities and interactions between conditions.

[12] This includes Youth Allowance as a job seeker and Parenting Payment. All three of these payments are paid at a lower rate than the DSP, all other circumstances being the same.
[13] See, eg, The Guardian, 'Australia's $1bn disability employment service criticised over poor outcomes and reduced employment', https://www.theguardian.com/australia-news/2021/mar/31/australias-disability-employment-down-3-in-past-decade-as-service-scheme-criticised-for-poor-outcomes.

Program of Support is difficult to satisfy

40. To satisfy the PoS requirement an applicant must have actively participated in the program. This means:[14]

    - They have participated for 18 months in the three years before applying for DSP; or
    - They have been exited from the program early, or are participating at the time they apply for DSP; and
    - They are not able to improve their work capacity solely because of their impairments.

41. These requirements create a number of challenges. Firstly, 18 months is a long time to be on JobSeeker or another inadequate payment for people who clearly should be on the DSP but for this requirement. As noted above, the inadequate rate of JobSeeker also creates other difficulties in accessing the DSP, notably through difficulty in accessing medical specialists.

42. Secondly, periods of time the person is medically exempted[15] from participating in the program do not count towards the 18 months.[16] Applicants who genuinely cannot work, look for work, or otherwise participate in the program due to their impairments, yet are still required to satisfy the PoS requirements. This means they have a difficult difficult decision; they can either continue to participate in the program and risk aggravating their medical conditions, or they can choose not to participate in the program, by obtaining a medical exemption, thereby and delaying (potentially indefinitely) their eligibility for the DSP.

43. Thirdly, the exemptions to the 18-month PoS requirement are limited and difficult to obtain. In the case of being exited from a PoS, SSRV is not aware of any of our clients ever having been exited by a PoS provider. Clients who are aware of this option have reported asking to be exited and being informed the program provider does not know how to do this. SSRV has had reports of Disability Employment Services and JobActive Providers not being aware participants are satisfying PoS requirements while engaged with them. Primarily these organisations are supporting those seeking work while on another payment, and do not realise their role in assisting their clients to comply with a PoS in order to meet DSP eligibility criteria.

44. Finally, even when accessing one of the exemptions to the 18-month period there is the requirement to have *actively* participated in a PoS. Applicants must have attempted a PoS, despite it being clear that it will not help or medical advice against participation. There is no

[14] See *Social Security (Active Participation for Disability Support Pension) Determination 2014* (Cth).
[15] Note: Periods where a person is exempted for non-medical reasons also do not count towards the 18-month PoS requirement.
[16] Ibid s 8.

exception to this requirement, and unless an applicant has engaged with a provider and entered into a Job Plan and then attempted to perform it, they will be precluded from accessing the DSP.

Program of Support compounds the issues with the Impairment Tables

45. As noted above, the criteria for an impairment to be assigned a severe rating under a single Table is very high and difficult to satisfy. However, for applicants who cannot work or participate in a PoS due to multiple impairments across multiple functional areas, they have no choice but to try and show that one of their impairments does meet a severe impairment rating. If their medical evidence does not support this, they are precluded from accessing the DSP despite being just as impaired and unable to work as other applicants.

46. If the PoS is removed as an eligibility requirement (meaning a person simply needs 20 points across any number of tables) this inequality disappears and the criteria in the tables starts to look fairer.

47. While PoS was ultimately not relevant to the following case study, this matter demonstrates the difficulties the requirement creates. Had PoS not been an eligibility requirement this person's claim would likely have been approved much earlier in the process, which would have meant less financial pressure and a less stressful experience. Their impairment and inability to work were never in doubt. Yet this person had to make several appeals, through Centrelink and the Administrative Appeals Tribunal, and argue their case before they were granted access to appropriate income support.

***Case Study – Alex*:** *Alex is an older person with a number of medical conditions, including Chronic Fatigue Syndrome, Osteoarthritis and a hormonal condition which causes extreme fatigue. Alex was accepted as having 20 points across several Impairment Tables (Tables 1, 2 and 3). Alex's claim for DSP was rejected on the basis of not having met the PoS requirements. This decision was affirmed by an Authorised Review Officer. SSRV assisted Alex to appeal this decision to the Administrative Appeals Tribunal, arguing that the conditions warranted at least 20 points under a single table and the PoS should not apply. Alex was successful and is now receiving the DSP. Due to Alex's conditions they were never able to participate in a PoS and would never have satisfied this requirement.*

**Name has been changed*

Recommendation 7: Program of Support be removed as an eligibility requirement. Participation in a Program of Support, or lack thereof, should not preclude applicants from accessing the DSP.

Recommendation 8: Any program designed to help people living with disability access work should be opt-in and not a condition of receiving income support. Any such program should be designed in consultation with people living with disability.

Difficulty Understanding the DSP Eligibility Criteria

48. As noted above, DSP eligibility is complex. One of the biggest hurdles applicants face is understanding the criteria itself.

49. Fully understanding the criteria is essentially an exercise in legislative interpretation. At the core of the criteria are the Impairment Tables, which are opaque, vague, ambiguous, and subject to interpretation. For example, many of the Impairment Tables use the word 'assistance' which is commonly taken to mean *assistance from another person* rather than the assistance of an aid (like a walking stick or wheelchair). This is a consequence of section 9 of the instrument:[17]

> A person's impairment is to be assessed when the person is using or wearing any aids, equipment or assistive technology that the person has and usually uses.

50. While this may be clear to a lawyer or another professional working with the criteria on a day-to-day basis, it is certainly not clear and accessible to DSP applicants. It is not something applicants know unless they are told. To find a clear and unambiguous statement that assistance means assistance from another person you need to leave the instrument and go to the Social Security Guide:[18]

> The term assistance is used in numerous descriptors within various Impairment Tables. In all of these cases assistance means from another person, rather than any aids, equipment or assistive technology the person has and usually uses.
>
> Given that a person's impairment is to be assessed when the person is using or wearing any aids, equipment or assistive technology they have and usually use, any further assistance would be from another person.

[17] The Impairment Tables s 9.
[18] https://guides.dss.gov.au/guide-social-security-law/3/6/3/05.

51. The Social Security Guide itself also has accessibility issues. The page concerning interpretation of the Impairment Tables is more than 11,000 words long.[19] This is the page concerning the *general* interpretation of the tables, there is also a page for each of the 15 tables themselves.

52. DSP applicants have significant difficulty engaging with the criteria and understanding how their claim is being assessed. SSRV frequently sees applicants who are ill equipped to take steps to improve their chances of accessing the DSP. Applicants are being denied appropriate income support not because they are ineligible in reality, but because the instrument creates barriers to them showing they are eligible.

Medical Evidence

53. DSP eligibility decisions are made based on the medical evidence an applicant has, and the best thing an applicant can do to support their claim is to obtain relevant, good quality evidence from their doctors and specialists. Therefore, doctors have to engage with the criteria as well. While many doctors do this on a regular basis and have become quite proficient, for many others this is not a regular occurrence. For those latter doctors the same challenges apply: engaging with a legislative instrument when that is not normally within their role.

54. Prior to 2015 this process was simpler with a specific report doctors needed to provide.[20] This is often referred to as the 'treating doctor report'. This process was easier to understand and navigate, and easier for doctors to fit into regular consultations.

55. SSRV's clients regularly report an unwillingness by doctors and other health workers to provide medical evidence in support of applications. A variety of reasons are cited, including the complexity of the task, doctors not believing the person will get the DSP even with their help, and the cost of producing evidence which they are unable to bulk bill for. On the latter point, Services Australia's website indicates doctors may be remunerated for their time in assisting with a claim,[21] however when SSRV contacted Centrelink for more information about this we were informed there are no circumstances in which a doctor would be paid for their time to give medical evidence for the DSP.

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[19] Ibid.
[20] See *Social Security Guide*, '3.6.2.10 Medical & other evidence for DSP', https://guides.dss.gov.au/guide-social-security-law/3/6/2/10.
[21] See, eg, *Services Australia*, 'Remuneration options', https://www.servicesaustralia.gov.au/organisations/health-professionals/services/centrelink/disability-support-pension-information-health-professionals/how-help-your-patients-claim/renumeration-options.

Recommendation 9: The process of giving medical evidence in support of DSP applications be simplified. The treating doctor report be reinstated as the primary means by which medical evidence is provided.

Recommendation 10: Providing medical evidence for the DSP, whether by the treating doctor report or in another format, be made bulk billable through Medicare. Providing such evidence be normalised as a regular part of a treating doctor's role.

Community Organisations' role in the DSP

56. A wide range of disability support and advocacy organisations, health services, social and community workers, financial counsellors, legal assistance services – including specialist community legal centres and legal aid commissions, family members, carers and statutory guardians, and others are active in assisting people with regard to the DSP. Consequently, significant amounts of government funding, community resources and philanthropic funding are directed towards supporting and assisting people to understand DSP eligibility, apply for the DSP, obtain suitable medical evidence, liaise with Centrelink, understand and appeal unfavourable decisions. These resources are also applied to supporting people to address the range of health and social issues that often arise from living with debilitating medical conditions and disability, with inadequate income and with stress related to meeting obligations and participating in required processes. The organisations and professionals also contribute to activities to identify and propose solutions to policy and systems issues relating to the DSP, such as making evidence-based submissions to this Senate Inquiry. For SSRV, DSP eligibility is the single most common issue our clients present with, making up close to half of all enquiries and services provided.

Case Study – SSRV's Services and Projects: *The primary initial intake pathways for SSRV's services are through the General Advice Line, open to members of the public, and the Worker Help Line via which other professionals who are assisting clients with social security related matters can access secondary consultation and make referrals. DSP matters are among the highest areas of inquiry for both of these intake pathways.*

Following provision of initial information and advice, SSRV staff then assess matters against guidelines to determine to whom and to what extent further legal casework and representation services can be provided given available resources. People experiencing financial disadvantage and other forms of vulnerability, and matters where legal assistance has potential to make a difference, are prioritised.

SSRV is not able to meet all of the demand for further legal assistance from people who want to understand and challenge decisions regarding the DSP.

Based on our experience that some people are able to effectively self-advocate or advocate on behalf of others if they have access to suitable information and tools, SSRV has undertaken a range of initiatives to inform and resource the 'missing middle' and carers and professionals assisting vulnerable and disadvantaged clients. This has included delivery of community legal education workshops, production of written information and the development of the DSP Toolkit which focussed on obtaining medical evidence.

In 2019 SSRV received a grant for funding over two years from the Victorian Legal Services Board and Commissioner to undertake the DSP Help Project. With a focus on using human-centred design and technology to address the complexity and confusion around the DSP, the project has asked the question "How might we help people with disability prove their eligibility for the Disability Support Pension so that they enjoy a fairer, faster pathway to adequate income support?". In the first year the DSP Help website and chatbot were developed and launched.

DSP Help: https://dsphelp.org.au/

57. SSRV has been approached by other organisations to contribute our expertise to their initiatives to provide assistance in relation to the DSP to specific cohorts including people with an intellectual disability and rooming house residents.

58. We note the work of non-government organisations in relation to the DSP and describe SSRV's work as an example, to inform the following points:

- A substantial amount of work is undertaken and resources are expended outside of Services Australia to provide information, support and advocacy to people in relation to the DSP.
- This raises the questions of are, why and to what extent are external services identifying the need to fill the gaps for services and support that Services Australia is responsible for providing?
- The importance of clarity and transparency about Service Australia's role and responsibilities and of ensuring that a person-centred approach is taken in the execution of these responsibilities.

- The importance of ensuring that community and legal assistance services are suitably and sustainably funded to undertake their roles in assisting people to navigate the DSP system and challenge decisions they consider unfair, and to provide feedback about system problems and improvements.

Recommendation 11: Services Australia be formally required to meet their obligation to provide information regarding DSP eligibility, applications and appeals in a genuinely accessible and easy to understand format.

Recommendation 12: Services Australia should take an active, human-centred approach to guiding DSP applicants through the DSP system, providing hands on assistance wherever possible. Services Australia should take steps to obtain medical evidence on behalf of applicants.

Recommendation 13: The Impairment Tables should be rewritten in a way that makes them accessible to those living with disability. This should be done in consultation with health professionals, disability organisations, and most importantly people living with disability.

Recommendation 14: Funding to disability organisations, community legal services and other community-based organisations who assist people with the DSP should be increased. Access to independent information, advice and support should be guaranteed.

The Administrative Processes Associated with the DSP

Administrative Delay

59. Processing DSP applications takes a long time. SSRV's standard advice to applicants is to expect this process to take at least three months, if not longer. Applicants are usually reliant on JobSeeker while waiting for their claim to be processed, which is inadequate for many, especially when factoring in disability specific expenses.

60. For unsuccessful applicants, administrative delay can be compounded by the appeals processes. An appeal to an Authorised Review Officer will generally take at least another three months. We have seen such reviews take more than a year in some cases, and while these are outliers, they are not uncommon. Appeals to each division of the Administrative Appeals Tribunal can also add to this time.

Case Study – Arnold*: *Arnold is living with Chronic Fatigue Syndrome, a spinal condition that limits movement of the back and neck, a blood pressure condition and mental health conditions. Arnold was receiving the DSP in the early 2000's but lost eligibility when they moved overseas for several years.*

On returning to Australia they attempted to work but found they could not and eventually applied for the DSP again. Arnold was rejected by the original decision maker, by the Authorised Review Officer, by the first tier of the Administrative Appeals Tribunal, and had been through a number of conferences as part of the Tribunal's second tier before seeking assistance from SSRV. During these conferences representatives for Services Australia maintained Arnold was not eligible for the DSP. SSRV assisted Arnold to prepare submissions ahead of their hearing. Services Australia offered to settle the matter before the hearing proceeded agreeing that Arnold should receive the DSP. Between the initial claim and the Secretary agreeing Arnold was eligible three years had elapsed. Arnold noted during debrief with SSRV that the entire process was traumatic and has worsened their conditions. Arnold has some work capacity provided they are afforded flexibility. Arnold believes this has been diminished by the worsening of their conditions which would not have been the case if the process was not drawn out to such an extent.

**Name has been changed*

61. Back payment to the date of claim is not sufficient to compensate for such delay as the delay makes a material difference to those trying to demonstrate eligibility. DSP eligibility is assessed on the day of claim and in the following 13 weeks. A person engaged in an appeal a year or more after this period can and will have additional challenges in getting medical evidence about their conditions and impairments as they were at that time.

Administrative Decision-Making Quality

62. The quality of administrative decisions and in particular the way they are communicated to applicants has been an issue for at least several years now. People whose claim for DSP is rejected are notified with a standard letter telling them they do not have 20 points or have not met the PoS requirements. In the case of the former, there is no indication as to whether this is because the conditions are not considered permanent (and therefore cannot be assigned a rating) or because they *have* been assigned a rating but it is too low. To obtain more information about why they have been rejected and how they can address this in a new application or appeal, applicants can call Centrelink and ask for an explanation. SSRV's clients report inconsistent results. Some get a helpful explanation, others are not told anything useful.

63. In the past, where people have been unable to obtain useful information by calling, SSRV has suggested requesting review by an Authorised Review Officer as even if the decision is not

changed clients will at least have a more thorough understanding of why this is and can use this in deciding what to do next. The quality of these reviews also appears to be declining. These reviews used to result in a detailed letter explaining exactly how the eligibility criteria applies to the applicant's claim. Now they are mere statements with very little reasoning. In one recent letter provided to SSRV by a client the review officer identified the person as having 15 points under the Impairment Tables, but *did not actually state which tables they had assigned these points under*. In some cases it is difficult to judge whether the decision results from a genuine review, or is a merely an explanation of the first decision made.

64. These changes appear to be related to a recent initiative to make these processes and particularly these decisions more accessible and easier to understand. While the information presented may be easier to understand, it is also of much less value and use. Applicants now need to appeal to the Administrative Appeals Tribunal to get a detailed analysis of where they fall under the DSP eligibility criteria.

Recommendation 15: Services Australia be directed to process DSP applications and appeals, and communicate decisions in a timely manner.

Recommendation 16: Decisions relating to DSP eligibility be communicated in writing, in full. In case of rejection, decisions are explained with reference to the eligibility criteria and the precise reasons an applicant does not meet these.

Endorsements

SSRV endorses the principles and recommendations contained in the following documents:

- Australian Federation of Disability Organisation – Key Principles for a Sustainable Disability Support Pension (https://www.afdo.org.au/disability-support-pension/8-key-principles)
- Economic Justice Australia's submission to this Inquiry.
- Victoria Legal Aid's submission to this Inquiry.
- Mental Health Australia's submission to this Inquiry.

Contact for this submission

Dermott Williams

Community Lawyer

Website: https://www.ssrv.org.au/

DSP Help: https://dsphelp.org.au/