



WELFARE RIGHTS CENTRE INC

Advice, advocacy and free legal services
for people with Centrelink problems

15th 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 Welfare Rights Centre Inc. (Queensland) 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 note our endorsement of the submission to this inquiry from our national peak body, the National Welfare Rights Network. As a member of the Australian Council of Social Services (ACOSS), we also endorse their submission.

In making our submission, we note our concern about the unusually short time-frame permitted for this inquiry. This inevitably has limited the capacity of those with on-the-ground knowledge of the real issues facing people with disabilities and/or people who are dependent upon income support, to offer informed comment. Such haste undermines the integrity of the Senate Committee process.

If you require further information, please contact Gail Middleton, Executive Director, on 07 3421 2510.

Thank you for considering our submission.

Yours sincerely

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About the Welfare Rights Centre

The Welfare Rights Centre Inc (Queensland), (WRC), has been operating throughout Queensland since 1984. Its purpose has been to provide specialist legal and advocacy services for people having problems with the social security system. Since inception, the Centre has primarily been funded through the Community Legal Services Program, which is resourced by both the State and Commonwealth Attorney General's offices.

Our client work with vulnerable people struggling to negotiate their way through the social security system gives us a sound understanding of the consequences, both intended and unintended of legislation and policy changes and informs our policy and law reform work.

The Welfare Rights Centre believes people are better off in paid work than on welfare; however for those who are unable to maintain themselves financially, Australia should have a social security system which is based upon the following principles:

- A civil society supports those who are unable to earn an adequate income, while in return the recipients contribute as they can.
- Social security should be sufficient to afford a decent standard of living, based on what is widely considered acceptable in Australia.
- The social security system should be accommodating of diversity and responsive to individual needs and circumstances.
- Social security payments, criteria, rules and processes should be simplified into a system that is easily comprehensible, accessible and fair.
- Centrelink decision-making processes should be transparent, with a right of review of all decisions and access to independent advice, advocacy and representation.

Submission by the Welfare Rights Centre Inc (Queensland) to the Senate Inquiry into the Family Assistance and Other Legislation Amendment Bill 2011

Summary of recommendations:

- That the introduction of the term '*severe impairment*' be opposed.
- That Schedule 3, Item 6 be qualified to allow for clear definitions of what 'actively participated' and 'a program of support' require;
- That Schedule 3, Item 10 be explained further

The Welfare Rights Centre welcomes government policy that provides greater support for persons with disabilities to be encouraged and aided back into the workforce. In our experience the vast number of persons with disabilities that we have represented and/or supported would welcome this as well. We are however, concerned that, previous

government initiatives in this direction have failed to provide little more than shifting persons from a pension to an allowance. The 'Welfare to Work' programme, for example, shifted people from the Disability Support Pension to Newstart Allowance, where more than 80% remained or were diverted to other income support payments.¹ We believe that the focus and mindset on 'curbing the growth' of people 'rotting the system' is responsible for this policy failure, and is not supported by the reality of the situation. It is important to recognise that an ageing population and shifting focus of modern life as well as changes to the social security system is responsible for these changes rather than the mythical 'dole bludger' with a crook back. In today's Courier Mail for example, a "news" item about the Disability Support Pension misquoted the problems and solutions of this system as a perfect example of the attitude of reactionary media and politics. Comments such as "*These people will now have to prove they cannot work and will undergo a job capacity assessment. ...Before the crackdown, applicants for the pension did not face any test to determine if they could work. All they needed was a certificate from their doctor. ...Analysis of new applicants showed many of them did not have a disability and could hold down a job.*"² lined the argument for the changes proposed in the current Bill. However, as the Hon. Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs has recently noted, there is a considerable increase in the number of applications for a DSP being rejected.³

The system currently requires a claimant for the Disability Support Pension to have a *Continuing Incapacity to Work*. This currently means, inter alia, that their "*...impairment is of itself sufficient to prevent the person from doing any work independently of a program of support within the next 2 years;*"⁴

The proposed changes introduce a new requirement that a person claiming for a Disability Support Pension has a *Continuing Incapacity to Work* if; "*... the person has actively participated in a program of support within the meaning of subsection (3C);*"

Severe Impairment

The changes propose a new definition of a 'severe impairment'. This severe impairment is one which, by itself, provides for 20 points or more from *Schedule 1B* of the *Social Security Act* 1991. If an applicant has this, they are not required to have participated in a program of support to be eligible for the Disability Support Pension. If an applicant has two or more incapacities that amount to twenty points or more on the Impairment Tables, they will not be treated as having a Severe Impairment and as such will have to qualify by undertaking in a program of support.

These changes will introduce a two-tiered system for eligibility for the Disability Support Pension. The Welfare Rights Centre supports the introduction of greater help and support

¹ DEEWR 2007, 'Welfare to Work evaluation'

² Courier Mail, 15 June 2011, p 21

³ *Supporting people with disability into work*, Media Release, 1 June 2011.

⁴ Schedule 3, Item 3

for people with some work capacity. We are greatly concerned that the changes as proposed will not achieve this result and will only complicate an already complex system.

While the Welfare Rights Centre supports the provision of programs and services to support reintegration and inclusion, we regard these changes as in no way addressing someone's capacity to participate in the workforce.

The qualifications under section 94 (1)(b) for the Disability Support Pension require an applicant to have 20 points under Schedule 1B of the *Social Security Act* 1991. It is our understanding that this requirement is asking for the applicant to have a disability that is diagnosed, treated and stabilised and causes some functional incapacity in a general sense. Importantly, an applicant may now, in theory, have 100 points on these tables, yet be considered able to work a 40 hour week and as such, not be qualified for the Disability Support Pension. This first limb does not measure someone's ability to work in any specific way.

Case Study1: A recent client of the Welfare Rights Centre had epilepsy, leg and back injuries, reflux, anxiety and severe type two diabetes. None of these impairments amounted to 20 points, but together they reduced his ability to work to almost nothing. Treatments for the impairments were hard due to the different and conflicting nature of each (treatment for diabetes – walking and regular exercise was not possible due to leg and back injuries, treatments for epilepsy and anxiety conflicted with treatment for reflux etc)

Case Study 2: A recent client of the Welfare Rights Centre had a disease of the nervous system that caused her pain that interfered with, but did not prevent her from doing everyday tasks and caused interference with her ability to perform work tasks. This client was allocated 20 impairment points from Table 20.

The person in Case Study 2 would be considered by the proposed changes to have a 'severe impairment' and as such would not be required to have undertaken a program of support. The person in Case Study 1 would not be considered as having a 'severe impairment' and would have to have undertaken a program of support. The person in Case Study 2 would greatly benefit from a program of support, the client in Case Study 1 would not benefit at all.

We believe that it would be both considerably simpler and considerably more effective if this two-tiered system were based on the qualification requirements which state that a person has a severe disability if they have no ability to work eight hours or more in a given week. As it currently stands, qualification for a Disability Support Pension in some cases, for example, in the case of a New Zealand Citizen, requires the applicant to be 'severely disabled'. This definition, which is already in place in the legislation and policy, we believe would provide an effective and sensible dichotomy between people who would benefit from programs of support and those who would not.

We recommend that Schedule 3, Item 6 of the proposed Bill be amended to state something like:

6 After subsection 94(3)

Insert:

(3A) If:

(a)

...

(3B) A person has a ***severe impairment*** if the person is unable to undertake eight hours of paid work or study in a given week for the next two years.

Further, we note that there may be an imbalance between the system as proposed and the proposed changes to section 94(a)

Actively Participated

We are concerned that the term '*actively participated*' in Schedule 3, Item 6, (3C) allows for too great an uncertainty for legislative standards and good policy making. This should not be outsourced to a legislative instrument from the Secretary, it should form part of the legislation and be qualified by what time and circumstantial constraints need to be met. It is our understanding that someone should be assessed as having a *Continuing Inability To Work* based on assessment of their vocational and other needs and not based on a program of unknown length and purpose, after the fact. The Explanatory Statement explains this new requirement as asking "*...a person claiming disability support pension to demonstrate that they have undertaken and actively participated in a program of support.*" However, the proposed changes do not specify timeframes, actual requirements or purposes of these programs. This may mean any number of different things: delay, disengagement or further social isolation being some of the more concerning potential unintended outcomes. However there seems to be a contradiction between why and how this new requirement exists. If it is to promote reintegration and support back into the workforce, then it would be undermined by the withdrawal of money associated in the difference between the Disability Support Pension and Newstart (Incapacity) Allowance.

However if it is to further qualify and narrow the scope for what is considered a *Continuing Incapacity to Work*, and thus for the Disability Support Pension, then it appears as a vote of no confidence in the current Job Capacity Assessments and the system as it currently exists.

Under the proposed changes, the Secretary may, by legislative instrument, define how "A person has *actively participated* in a program of support. It is our contention that this is not a clear legislative statement as to what the government policy on the issue is. A person could effectively be placed on hold indefinitely due to fact that requirements for completing a program of support are not contained in this Bill, especially with regard to what, when and how a program of support is engaged in.

It is our recommendation that the Bill enforce a want to re-engage persons who qualify for a Disability Support Pension with a partial work capacity back into the workforce. We see this as a similar task to that of the Employment Pathway Plan for persons seeking Newstart or Youth Allowance. These are agreements between employment service providers and applicants that seek to foster development and self-advocacy while promoting reintegration and inclusion.

We see that the qualifications proposed for the Disability Support Pension are similar and suggest that the new changes mirror the existing requirements. The insertion of a new 3F into the Bill would allow for these changes, and may look something like:

6 After subsection 94(3)

Insert:

(3A)...

...

(3F) For the purposes of 3C, a person has actively participated in a program of support if he/she has engaged in an undertaking with a Disability Employment Service or another organisation specified by the Minister under 3E to provide such services for the purposes of this section.

In the alternative to such a proposal, limitations on how long a program may run; whether certain programs are not appropriate for certain applicants; whether applicants have a say in the appropriateness of the program and other such considerations we feel need to be addressed and clarified in the legislation.

Item 10: Repeal of section 94A

It is of concern that we can find no explanation given as to why section 94A is being repealed. It is our understanding that, given the legislative authority conveyed in section 94 of the *Social Security Act 1991* together with section 12 of the *Social Security Administration Act 1999*, this section is superfluous, however we are concerned that this has not been explained.

Other issues

We are concerned that the Family Tax Benefit's indexation to the Consumer Price Index has been suspended. Many families who rely on these payments to meet the costs of living and raising children we fear may be placed in financial stress due to these increases.

The proposed changes essentially move a person aged 21-24, living at home and studying from Family Tax Benefits to Youth Allowance. We note that the explanatory statement views this change as minor; however we note that the qualification for Youth Allowance is greater than that for Family Tax Benefit. Issues concerning residency requirements will affect a great number of New Zealand Citizens and persons on visas such as Spousal visas, Temporary Protection, Humanitarian Protection and the many visas relating to application

processing and pending statuses will be denied access to Youth Allowance where they currently have access to Family Tax Benefit.