

REPORT

FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (SPECIAL BENEFIT ACTIVITY TEST) BILL 2002

THE INQUIRY

1.1 The Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002 (the Bill) was introduced into the Senate on 21 October 2002. On 16 October 2002, the Senate, on the recommendation of the Selection of Bills Committee (Report No. 10 of 2002), referred the Bill to the Committee for report by 11 November 2002. The reporting date was subsequently extended to 2 December 2002.

1.2 In recommending the reference of the Bill to the Committee, the Selection of Bills Committee provided the following issues for consideration:

The Bill will expose holders of temporary protection visas (TPV) to activity testing and mutual obligation. Typically holders of TPVs have absent or poor English language skills, high levels of poverty, unstable accommodation and few resources, and the following issues need to be examined:

- the ability of people to comply with complex mutual obligation requirements;
- the impact of breaching and financial punitive measures on already disadvantaged people;
- the ability of job network providers to provide language and culturally appropriate employment services; and
- the ability of TPV holders to access the review and appeals system.

Consideration of the application of mutual obligation to the nominated special benefit recipients with particular consideration of:

- a) language barriers and availability of English language tuition;
- b) availability of Job Network services; and
- c) practical implications for administration by Centrelink.

1.3 The Committee considered the Bill at a public hearing on 14 November 2002. Details of the public hearing are referred to in Appendix 2. The Committee received 52 submissions relating to the Bill and these are listed at Appendix 1 and may be accessed through the Committee's website at http://www.aph.gov.au/senate_ca

THE BILL

1.4 As part of the 2000-2001 Budget, the Government announced a range of measures addressing the issue of unauthorised arrivals in Australia. The Bill proposes to give legislative effect to one of these measures.¹

1.5 Under the Bill, from 1 January 2003, certain recipients of special benefit who hold a visa of a type that has been issued for temporary protection, humanitarian or safe haven purposes (a TPV) will be subject to an activity test regime that is similar to the one that currently operates in relation to Newstart allowance.

1.6 The Second Reading Speech explained that the measures contained in the Bill aim to:

...encourage social and economic participation by treating work force age holders of visas issued for temporary protection, humanitarian or safe haven purposes in a similar way to Australian nationals of work force age; that is, they will be required to be self-reliant and to fulfil a mutual obligation to the Australian community. The measure also reinforces community support for the humanitarian immigration program.²

1.7 Currently, there are approximately 8,800 TPV holders, and 4,262 of those are special benefit recipients.³

ISSUES

Mutual obligation – activity testing

1.8 The concept of ‘mutual obligation’ underpins the provision of income support for unemployed people in Australia. The concept is based on the proposition that it is fair and reasonable to ask unemployed people to participate in an activity (including job search), that improves their employment prospects and makes a contribution to their community, in return for financial support.⁴

1.9 The Bill proposes to formalise the current administrative arrangements of imposing activity tests on certain recipients of a special benefit.⁵

1.10 Under the new special benefit activity test, nominated visa holders will be required to search for work, to participate in vocational training, the Work for the

1 Budget Paper No.2 – Budget Measures 2000-2001, p.96.

2 Second Reading Speech, House of Representatives, Mr Larry Anthony, Minister for Children and Youth Affairs, *House of Representatives Hansard*, 26.09.02, p.7321.

3 *Committee Hansard*, 14.11.02, p.16 (DIMIA); *Submission 25*, Answers to Questions on Notice p.4 (Department of Family and Community Services).

4 *Submission 25*, p.2 (Department of Family and Community Services).

5 *Submission 25*, p.7 (Department of Family and Community Services).

Dole program and other prescribed activities, and to enter into Special Benefit Activity Agreements. They will also be subject to compliance testing, including fortnightly reporting requirements, and to penalties for non-compliance with the activity test or with the terms of their Special Benefit Activity Agreement.⁶

1.11 Nominated visa holders will also be subject to other conditions relating to industrial action, seasonal work, and moving to an area of lower employment prospects. These conditions are all comparable with conditions that apply to Newstart allowees.⁷

1.12 The activity test and those other conditions will only apply to nominated visa holders who, from 1 January 2003, apply for special benefit and are of work force age, or who reach work force age after that date. However, the Committee heard evidence that potentially anyone who has a TPV could be affected by this measure. That is, a TPV holder who receives special benefit before 1 January 2003 and after that date:

...get[s] a little bit of work that precludes their special benefit for a period – even if it is for a few days, a week or six months – as soon as they reapply, they will be affected [by the measure in this Bill].⁸

1.13 Several submissions expressed concern that the current legislation does not permit full-time students to receive special benefit payments.⁹ However, the Department of Family and Community Services (the Department) advised the Committee that:

...the measure makes an important change to existing legislation by allowing special beneficiaries to undertake full-time study without losing their entitlement to special benefit.¹⁰

1.14 The Department also noted the various further exemptions from the requirements of activity testing. It submitted that:

Provisions in the Bill also provide for exemptions from the activity test where a person has caring responsibilities, is temporarily incapacitated for work, and in special circumstances and other prescribed situations.¹¹

6 Explanatory Memorandum, Outline and Financial Impact, p.1.

7 Department of the Parliamentary Library, Bills Digest No.46, 2002-2003.

8 *Committee Hansard*, 14.11.02, p.6 (National Welfare Rights Network).

9 For instance, see *Submissions* 13, 24, 30, 36, 41 and 42.

10 *Submission* 25, p.3 (Department of Family and Community Services); see also *Committee Hansard*, 14.11.02, p.16.

11 *Submission* 25, p.2 (Department of Family and Community Services); see also Answers to Questions on Notice p.5.

TPV holders' ability to meet mutual obligation requirements

1.15 A view expressed by many submissions to the Committee was that TPV holders, without the adequate support of government, would be ill-equipped to meet the bureaucratic requirements of an activity agreement. For instance, the National Union of Students submitted that:

Language barriers not only mitigate against TPV holders finding employment but also raise serious questions about the ability of such people to successfully fulfil mutual obligation requirements.¹²

1.16 In particular, numerous submissions noted that TPV holders would not be eligible for English classes funded by the Department of Immigration and Multicultural and Indigenous Affairs and would not have access to the full range of assistance under the Job Network.¹³ For instance, the Refugee Council of Australia submitted that when the Bill was first foreshadowed:

...the community sector was given the impression that the imposition of activity testing would be introduced with certain compensatory measures, in particular access to language instruction, job search assistance and vocational training. This would have given the TPV holders a chance to meet the requirements being imposed upon them.¹⁴

Language assistance

1.17 The Department acknowledged the particular needs of customers from diverse cultural and linguistic backgrounds. It submitted that Centrelink's administration of special benefit is sensitive to these differences, and its services include multi-language information products, translation and interpreting services.¹⁵

1.18 The Department also advised the Committee that:

Centrelink will ensure that Special Benefit Activity Agreements include activities that are appropriate for the customer's individual circumstances, focussing on activities that develop English language skills where this represents a barrier to participation. The legislation specifically requires that, in approving the terms of a Special Benefit Activity Agreement, the Secretary (or delegate) must have regard to the person's capacity to comply with the proposed agreement and the person's needs.¹⁶

12 *Submission* 29, p.3 (National Union of Students).

13 For instance, see *Submissions* 1, 2, 4-7, 9-11, 14-18, 20-22, 24, 26-32, 34-36, 38, 39, and 41-52.

14 *Submission* 34, p.6 (Refugee Council of Australia).

15 *Submission* 25, p.3 (Department of Family and Community Services); see also *Committee Hansard*, 14.11.02, pp.14 and 17.

16 *Submission* 25, p.3 (Department of Family and Community Services); see also Answers to Questions on Notice p.1.

1.19 To support TPV holders in meeting their obligations under an activity agreement, the Department of Education, Science and Training will provide access to the Language, Literacy and Numeracy program. This will provide basic training for eligible job seekers whose skills are below the level considered necessary to secure sustainable employment or pursue further education and training. It is designed to help remove a major barrier to employment and improve participants' daily lives. The Department stated that 'this activity will be central to a Special Benefit Activity Agreement where required and will be the preferred activity option in many cases'.¹⁷

Job Network assistance

1.20 Currently, TPV holders have access to Job Matching Only services under existing Job Network arrangements. Several submissions noted that the wider range of assistance available to others under the Job Network was not available to TPV holders.¹⁸

1.21 The Department advised that from 1 July 2003, TPV holders will have access to Job Search Support services—including development of a vocational profile and résumé to be matched to employment opportunities in the Job Search database. However, the Department noted that:

TPV holders will not have access to long-term intensive support employment services as it is not considered appropriate given the temporary nature of their visas.¹⁹

Rate and impact of breaching

1.22 A further issue that arose during the Committee's inquiry was the incidence and effect of any penalties imposed for failing to comply with an activity agreement.

1.23 Several submissions addressed this issue and argued that the peculiar disadvantage and vulnerability of TPV holders made them more likely to breach their obligations under an activity agreement.²⁰ For instance, the South Australian Council of Social Services submitted that:

There is significant evidence that people with poor language skills, temporary accommodation, and few personal resources or family support are more likely to be breached. TPV holders would be at greater than

17 *Submission 25*, p.7 (Department of Family and Community Services).

18 For instance, see *Submissions 1, 7, 14-18, 20-22, 24, 26, 27, 29, 30, 33-36, 38, 39, 42, 45, and 47-51*.

19 *Submission 25*, p.7 (Department of Family and Community Services); see also *Committee Hansard*, 14.11.02, p.21.

20 For instance, see *Submissions 1, 16, 17, 18, 20, 29, 33, 35, 42, 43, 45-48 and 50*.

average risk of losing part or all of their Special Benefit as a result of being breached.²¹

1.24 Similarly, the National Welfare Rights Network and ACOSS, quoting from the Independent Review of Breaches and Penalties in the Social Security System (the Pearce report), submitted that:

People with literacy and numeracy problems and people with poor English comprehension were identified in the Report as being in the group considered to be “especially vulnerable to particular difficulties in receiving, understanding or being able to comply with official communications about obligations such as attending interviews or returning forms”.²²

1.25 In addition, a number of submissions warned that the special circumstances of TPV holders meant that they would be more affected by the penalties imposed for any such breach.²³ For example, the Welfare Rights Centre (SA) suggested that:

...people who are already marginalised are not only more likely to be breached, but the level of their disadvantage is significantly increased by breaching policies.²⁴

1.26 However, addressing this issue the Department noted that:

Customers with language and cultural barriers do not necessarily incur a higher rate of breaches. FaCS research shows that, with some exceptions, people born overseas have a lower breach rate than people born in Australia (in 1999-00, 12 per cent compared to 15.2 per cent).²⁵

1.27 The Department also informed the Committee that in circumstances where a customer has not complied with their activity test requirements, the reasons for the failure to comply are assessed. If the person has a reasonable excuse, taking into account the particular circumstances of that individual, no penalty will apply. It submitted that:

When considering what is reasonable, the decision-maker will take into account the circumstances that are specific to the particular job seeker and also whether or not the requirement imposed on the customer was

21 *Submission* 16, p.1 (South Australian Council of Social Services).

22 *Submission* 35, p. 8 (National Welfare Rights Network and ACOSS); Pearce, D. *Making it work: The Report of the Independent Review of Breaches and Penalties in the Social Security System*, 2001, p.22.

23 For instance, see *Submissions* 1, 3, 17, 18, 20, 27-29, 33, 35, 36, 42, 43, 45, 46 and 48.

24 *Submission* 18, p.5 (Welfare Rights Centre (SA) Inc).

25 *Submission* 25, p.4 (Department of Family and Community Services).

reasonable – that is, whether compliance with the requirement was within the customer’s capabilities.²⁶

Access to appeal and review

1.28 TPV holders have the same legal rights to access the review and appeals system as other recipients of special benefit. Specifically, beneficiaries who are dissatisfied with a decision can seek a review by the Centrelink officer who made the decision. If they wish to pursue the matter further they may subsequently ask for a review by another Centrelink officer. If the special beneficiary remains dissatisfied they can access a process of external review to the Social Security Appeals Tribunal, the Administrative Appeals Tribunal, the Federal Court and, ultimately, in rare cases, to the High Court.²⁷

1.29 However, several submissions to the Committee suggested that language and cultural issues were a significant practical barrier preventing TPV holders from accessing the appeal and review mechanisms.²⁸ For example, the South Australian Council of Social Services submitted that TPV holders are:

...likely to have problems with fair access to the review and appeals process. Language and other barriers will make it more difficult for them to understand the legalistic and bureaucratic administrative system.²⁹

1.30 In response to these claims the Department advised that, for each of its internal review processes, Centrelink arranges for an interpreter to be available as required. In respect of the external process of review, the Department submitted that:

The Social Security Appeals Tribunal and the Administrative Appeals Tribunal are sensitive to the needs of those from a diverse cultural and linguistic background and will arrange for an interpreter to be present at the person’s appeal hearing if required. Migrant resource centres and welfare groups may also be able to assist the person with their appeal.³⁰

1.31 The Department concluded that these efforts were reflected in the statistics that indicate that special benefit recipients access the review and appeals system more readily than others do. The Department submitted that:

Centrelink data show that in the period January to September 2002 a total of 89 special benefit recipients lodged appeals with the Social Security Appeals Tribunal. This represents 0.7 per cent of the special benefit population, which is in comparison with 0.2 per cent (1089 appeals) for

26 *Submission 25*, p.4 (Department of Family and Community Services); see also *Committee Hansard*, 14.11.02, p.22.

27 *Submission 25*, p.6 (Department of Family and Community Services).

28 For instance, see *Submissions 16-20, 23, 29, 30, 40-42 and 46*.

29 *Submission 16*, p.2 (South Australian Council of Social Services).

30 *Submission 25*, p.6 (Department of Family and Community Services).

newstart and 0.1 per cent for youth allowance (413 appeals). These figures indicate that special benefit recipients use the appeals system considerably more than those from other similar payments categories.³¹

RECOMMENDATION

1.32 The Committee reports to the Senate that it has considered the Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002 and **recommends** that the Bill proceed.

Senator Sue Knowles
Chairman

December 2002

31 *Submission 25*, p.6 (Department of Family and Community Services).