

Senate Inquiry into Employment and Workplace Relations Legislation
Amendment (Welfare to Work and other Measures) Bill 2005 and Family
and Community Services Legislation Amendment (Welfare to Work) Bill
2005

David Heckendorf BA LLB
(A person with a severe disability)

12 November 2005

With its amendments to [section 94\(5\)](#) of the [Social Security Act 1991 \(Cth\)](#) contained in schedule 2, Item 9 of the [Employment and Workplace Relations Legislation Amendment \(Welfare to Work and Other Measures\) Bill 2005](#), the Australian Government is dropping the maximum number of hours people who have a disability can work in a week and still be eligible to receive the [Disability Support Pension](#).

It is understood that the Australian Government's policy behind this decision is to reduce the social welfare economic burden, reduce dependency on the welfare system, and encourage people who are able to work to seek and retain employment. It is 'aimed at comprehensively rebalancing Australia's welfare system to make it more sustainable and to encourage increased workforce participation for those with the capacity to work.' ([Explanatory Notes](#), p.1)

Whilst the need to redress the current welfare system is evident, the deduction in the threshold is an inadequate and simplistic approach to a complex social problem. It will result in a number of employees with long-term severe disabilities being economically disadvantaged and discouraged from seeking, obtaining and maintaining employment. A clever and appropriate policy designed to achieve the Government's aims and objectives would better address the following issues:

~ Who has a disability ~

It is acknowledged that many people with disabilities acquired later in life and that are aged related have significant and legitimate need, however, this submission is predominantly concerned with the affects of the new rules on person with a severe lifelong disability.

It is submitted that the definition of disability be revised between these two groups as they have different socioeconomic characteristics. Persons with a severe lifelong disability are less likely to have work experience, education or qualifications, substantial assets, or personal resources. The degree of disability in mind is the type and level of disability such as those shown in the movies like *My Left Foot* and *Dance Me To My Song*.

[Section 94\(1\)](#) sets out the Disability Support Pension's eligibility criteria and includes the inability to *work* more than a set number of hours per week at award wages for at least two years and be assessed as having at least 20 points on the Impairment Table.

Amendments to the [Social Security Act 1991 \(Cth\)](#) will add the further criteria of not needing the assistance of a 'program of support'. As discussed below, however, there is some uncertainty around what qualifies as a 'program of support' and whether the need for support is significant in itself to qualify the applicant for the Disability Support Pension.

The Government also suggests that the current test for disability support pension effectively encourages many people with disabilities who can do some work to withdraw from the labour market. ([Explanatory Notes](#)) It is submitted that any capped on the number of hours a person with a disability can work and be eligible for the Disability Support Pension will discouraged work in excess of the cap. The previous system of tapering off of payments with each dollar earned (gross salary) encouraged people to work as much as possible. It is submitted that the cap approach be repealed.

~ Program of support ~

It is stated in the [Explanatory Notes](#) that in the new subparagraph 94(4)(a)(ii) the 'program of support' must be a program that is:

- funded (wholly or partly) by the Commonwealth; or
- a type that the Secretary considers is similar to such a program.

The [Explanatory Notes](#) include a number of examples of situations of where the person does and does not qualify for the Disability Support Pension, but does not indicate whether the use of local or state/territory government funded personal care service provider would qualify the employee to a Disability Support Pension. For example, in my case I have severe Cerebral Palsy and need a support worker / paid care come each day to assist me with my lunch. I can not guarantee that the service I receive is Commonwealth funded. And in any case, why should it make a difference where the funds come from?

While the Secretary has the discretion to approve a 'program of support' that is not funded by the Commonwealth, it is unfair on those, such as myself, to have to rely upon a discretionary decision.

As mentioned above, it is also uncertain as to whether the need for such a 'program of support' would be sufficient to qualify a person for the Disability Support Pension. For example, if I need support everyday to assist me with my lunch but I can work 38 hours per week, would I qualify for the Disability Support Pension?

~ Grandfather of existing recipients ~

The Government is proposing to "grandfather" (exempt) existing Disability Support Pension recipients from the new eligibility criteria. People who were receiving disability support pension on 10 May 2005 will not be affected by the changes to disability support pension qualification. ([Explanatory Notes](#))

It is submitted that this only works if the recipients do not become ineligible for a time and then reapplies for the Disability Support Pension at a later date. When the 30 hour

cap was first introduced, my wife (who is also severely affected by Cerebral Palsy) and I lost our entitlement because I was working in excess of the 30 hours threshold. With my Cerebral Palsy worsening, I had to drop my hours and reapplied for the Disability Support Pension, but my entitlement card shows me as being a new recipient from the date I was granted my current entitlement even though I had been on the pension for more than twenty years.

~ Undermines incentive ~

The Government suggests that changes to income support arrangements and the increased funding for employment services are designed to encourage and assist people with disabilities to test their capacity to work. ([Explanatory Notes](#)) This seems counter-intuitive. The policy of having an arbitrary weekly cap of hours that a person with a disability can work without becoming ineligible for the [Disability Support Pension](#) undermines incentive to work more than the capped hours. The previous policy of reducing the pension in direct proportion to the person's wage income encouraged the person to work more hours.

~ Too severe a drop in income ~

The drop in income from working one hour less than the cap to one hour more is too severe. A person with a disability wanting to increase the number of hours her/his work from 14 to 15 hours per week may lose as much as \$200 from her/his fortnightly income (and more if she/he is married).

~ Insufficient income to live ~

There are very few jobs in which the average person with a severe disability can earn a sufficient income to maintain herself or himself above the poverty line and integrate into the community working just 15 hours per week.

~ An incentive not to recover/improve ~

People are encouraged to amplify the extent of their disabilities or lose the incentive to improve their conditions in order to qualify for the [Disability Support Pension](#). (This phenomenon is also a problem in civil compensation cases where the plaintiffs' awards are assessed on their level of disability. See for example: [Accident victims who hire a lawyer take longer to recover: study](#) – ABC Radio National - The World Today - Wednesday, 23 February, 2005 at 12:29:46 - Reporter: Nick Grimm.)

~ Misusing the cap ~

The eligibility criteria can be misinterpreted or misused. Some people with a disability may misunderstand the policy and say that the Government won't allow them to work more than the cap.

Also, some employers may justify only employing people with a disability up to just under the cap so the employees do not lose her/his pensions.

~ Prevents or inhibits rehabilitation ~

The cap prevents gradual rehabilitation of a person with a severe disability back into the workplace after an illness or accident. The person may need to restart in the workplace on a few hours a day and build up this time over a number of months or years.

~ Extra effort and time required ~

Most people without a disability can take care of their own personal needs and can easily run around as much as they choose. A severe disability makes the person reliant upon others to assist with even the smallest tasks. The burden caused by a physical disability can, to some extent, be simulated by wearing a backpack containing a couple of bricks all day, communicating only by a bad telephone line and by wearing socks on both hands. It is also not unusual for people with a severe physical disability to be on prescription medication to lessen the involuntary spasms. People with a severe physical disability are often exhausted towards the end of the day with simply accomplishing the daily activities.

People with a severe physical disability are often reliant upon personal care attendants, disabled taxis and need to consult medical experts. Such reliance upon other people consumes a sizeable amount of waiting time and requires a considerable amount of patience and good humour. It can be quite stressful to have a member of a team of twenty personal care attendants visit your home and workplace four times a day.

To lose as much as 40 cents from the Disability Support Pension for every dollar earned, is yet another disincentive for people with a severe physical disability not to work.

~ The cost of disability ~

The cost of seeking, obtaining and retaining employment exceeds that of other employees. For example, the average powered wheelchair costs approximately \$10,000 and requires replacing every seven years. Most people with a severe disability rely upon disability accessible taxis that, though partly subsidised, can amount to large sums. As well as the costs of specialist equipment, there is also the need to rely upon support workers in the workplace.

~ Limited in employment options ~

People with a severe disability are often limited in the choices of occupations/professions that they are able to pursue and obtain, and retain employment only so long as the employer is in a financially advantageous position.

~ A shorter working life ~

Due to the extended length of tertiary study time (and costs), the length of time obtaining employment, and time off work and possible early retirement due to illness or a deterioration in their disability, people with a severe disability are inherently going to have less opportunities to create wealth and, therefore, are economically disadvantaged.

MY SITUATION

My wife and I both had severe cerebral palsy (eg we are unable to even feed ourselves) since birth and spent our childhoods and youths in a nursing home for people with this condition. After spending fifteen years in tertiary studies in computers, philosophy and the law, I now work as a project/policy officer within the Australian Government.

Cerebral palsy is thought to be caused at birth by a lack of oxygen to the brain. My cerebral palsy affects my speech, hand function and means I am reliant upon a motorised wheelchair. There is no cure or treatment for cerebral palsy. The most that can be medically done to help people with severe cerebral palsy is to keep us comfortable with anti-spasm medication.

Due to my level of disability, I am only physically able to work 28 hours per week. I have recently finished paying off our specially modified van (about \$45,000) that I use to get to work. In September 2003, I purchased a motorised wheelchair (about \$11,000). Jenni is physically unable to work due to her severe cerebral palsy and epilepsy but had to recently replace her ageing powered wheelchair (about \$11,500). We are both on approximately seven medicines per day. We should also be having weekly physiotherapy, but this is prohibitively expensive and takes time.

In mid April 2005, I had a hip replacement and a second operation in May to put a plate in my upper leg. These meant I was hospitalised for approximately 12 weeks and anyway from work for 16 weeks. Part of my rehabilitation involved a gradual return to work. The need for the plate in my leg and the extended time in hospital was due to complications caused by my disability. This is an example of how a significant disability can have a direct economic burden on the individual and his/her family. Such a long time away from work used up my sick leave and holiday leave.

After working for nearly six years in the Australian Public Service, we have not, to date, been able to save any money (other than my minimal superannuation). We live in a modest modified government house and, due to the cost of purchasing and modifying an appropriately sized and positioned house, we are very unlikely to ever own a home.

The reduction from 30 to 15 hours a week would mean we may no longer be eligible for the [Disability Support Pension](#) (except for the 'grandfathering' of existing recipients) and this would have been a drop in income of approximately \$500 per fortnight.

Like many people with a severe disability, I want to work and I also want to contribute to my community by serving on government advisory committees and boards of management. And I do. But people with a severe physical disability need to be encouraged to make the most of what they can do while they can. The deduction in the weekly allowable threshold from 30 to 15 hours of work only discourages people with a severe disability.

SUGGESTIONS

The following list of suggestions is designed to address the issues discussed above and is targeted towards supporting and encouraging people with a severe disability:

- The impairment/disability test be refined to determined people with a severe disability.
- The current threshold of 30 hours and the new threshold of 15 hours per week that a people with a disability can work and still be eligible for the Disability Support Pension not apply to people with a severe disability.
- The 'program of support' test be widen to any personal care services rather than just those that are funded wholly or in part by the Commonwealth (Australian Government). That the reliance upon the Secretary's discretion for deciding whether support fund by other means be replaced by a formal reviewable test.
- The Disability Support Pension for people with a severe physical disability not include an income test as is the case with people who are permanently blind.
- A Disability Employment Allowance be introduced and paid to employees with a severe disability to encourage workforce participation. This could operate in a similar way to the Mobile Allowance.
- A saving dollar-for-dollar matching scheme be introduced to encourage people with a severe disability to save and to either build up equity in their homes, superannuation, or long term bonds.
- People with a severe and permanent recognisable disability be assessed for their disability once and not subjected to continuous periodic assessments.

Consultation procedures

Fortunately, I had been following the public debate over the last few years and was home to hear the parliamentary discussions on this Inquiry and know to keep visiting the Senate Committee's website. Even with this notice, 11 to 17 November 2005 is hardly sufficient time to read, digest and respond to the call for submissions in any considered manner. It must have been very difficult for non-government representative organisations such as [People With a Disability Australia](#) or [ACOSS](#) to truly represent all their constituents' interests with less than a week to prepare a considered submissions.

OTHER LINKS

[Andrews confirms welfare package changes](#)

Federal Workplace Relations Minister Kevin Andrews has announced changes to the Government's welfare-to-work package.

<http://www.abc.net.au/news/newsitems/200511/s1500284.htm>

[Canberra - a wealthy city](#) with over fifteen thousand people living in poverty. Emma Renwick reports

DR ANDREW LEIGH: "The state of Wisconsin or Washington DC have their own wage subsidies programs, Canberra could copy that. We've put in place a range of policy measures which are innovative in an Australian context, the Human Rights ACT is one example, and there is no reason why Canberra also can't lead Australia in the way in which we tackle poverty."

<http://www.abc.net.au/stateline/act/content/2005/s1478095.htm>

[People with MS protest against Government planned pension changes](#)

- The World Today - Wednesday, 9 March 2005 - 12:46:00 - Reporter: Kim Landers

<http://www.abc.net.au/worldtoday/content/2005/s1319368.htm>

[Business offered carrot to hire disabled](#)

[Lachlan Heywood](#) – 11 March 2005 – The Courier Mail

[Contractor says encouragement, not force, key to welfare-to-work programs](#)

- AM - Wednesday, 2 March, 2005 - 08:11:50 - Reporter: Alexandra Kirk

[Government plans to move people on disability pensions into work](#)

- AM - Monday, 28 February, 2005 - 08:12:00 - Reporter: Catherine McGrath

[Disability changes crude and recycled: Labor](#)

- The World Today - Monday, 28 February, 2005 - 12:26:00 - Reporter: Catherine McGrath

[Government wants disability support pensioners in the workforce](#)

- The World Today - Monday, 28 February, 2005 - 12:22:00 - Reporter: David Mark

[Government to toughen requirements for some pensions](#)

- ABC Radio National - The World Today - Wednesday, 23 February, 2005
12:34:12 - Reporter: Alexandra Kirk

[ABC Radio National PM - Monday, 21 February, 2005 18:18:00 - Reporter: Alexandra Kirk](#)

[ACOSS - Consult first then reform, disability & welfare organisations tell the PM](#)

[ACOSS](#) - New alliance calls for disability welfare reform (February 2005)

[ACOSS](#) - Disability Support Pensions (DSP) - the facts revealed (February 2005)

[Rehame media monitoring Internet site](#) (21 February 2005)

[Libs water down pension changes](#)

- By Emma MacDonald – The Canberra Times - Friday, 28 June 2002