National Welfare Rights Network (NWRN) submission to Senate Community Affairs Legislative Committee Inquiry into the

EMPLOYMENT AND WORKPLACE RELATIONS LEGISLATION AMENDMENT (WELFARE TO WORK AND OTHER MEASURES) BILL 2005

16 November 2005

Introduction

The Employment and Workplace Relations Amendment (Welfare to Work and other measures) Bill 2005 has as its main aim, the facilitation of significant numbers of Australians from income support payments to employment. This is a worthy objective, long championed by the National Welfare Rights Network (NWRN) and which is supported by Government, the wider community and other community organisations that represent the interests of vulnerable and disadvantaged Australians. The overwhelming majority of Australians would be better off in suitable employment, if they have the capacity to work and where this is suitable to their circumstances, rather than remaining on the very low level of income support payments available in Australia.

At the outset, we stress that NWRN has been a long-term campaigner for genuine welfare reform. Through this we seek to ensure that people with disabilities and parents have the opportunity to participate in the economic progress that Australia has achieved over the last 15 years. For this goal to become a reality, sufficient investment is required to address the workforce participation barriers confronted by people with disabilities and parents (eg. child care, employment services, skills and training and transport and workplace accessibility issues). It also requires a well structured income support system that encourages, facilitates and adequately rewards workforce participation.

Unfortunately, on our examination of the income support arrangements proposed by the Government in the Employment and Workplace Relations Amendment (Welfare to Work and other measures) Bill 2005, we do not believe that this will be achieved as the arrangements are currently structured.

This submission, having been prepared in the very short time available, seeks to highlight the main problems and deficiencies that have lead us to this conclusion. The time available has not permitted the opportunity to highlight other features of the proposed legislation or to fully examine every aspect of the Bill as we have been able to do for previous Senate Inquiries. We wish to place on record our dismay at the way in which this very important and complex piece of legislation is being rushed through the Parliament without any real and genuine opportunity for Senators or members of the House of Representatives to fully examine its provisions and how they all intersect.

This submission follows the structure of the Bill by addressing each schedule. Given the time available we have had to limit comments to the most pressing issues in each schedule.

1. Schedule 1 – Definitions and other interpretive provisions

This section is covered throughout the submission, where the relevant definition applies.

2. Schedule 2 – Disability Support Pension

2.1 DSP eligibility and payability

S94 amendments

s94 of the Social Security Act currently states that,

> **"** A person is qualified for disability support pension if:
>
> (a) the person has a physical, intellectual or psychiatric impairment; and
> (b) the person's impairment is of 20 points or more under the Impairment Tables; and
> (c) one of the following applies:
> (i) the person has a continuing inability to work;
> (ii) the Health Secretary has informed the Secretary that the person is participating in the supported wage system administered by the Health Department, stating the period for which the person is to participate in the system; and
>
> (d) the person has turned 16; and
>
> (e) the person either:
> (i) is an Australian resident at the time when the person first satisfies paragraph (c); or
> (ii) has 10 years qualifying Australian residence, or has a qualifying residence exemption for a disability support pension; or
> (iii) is born outside Australia and, at the time when the person first satisfies paragraph (c) the person:
> (A) is not an Australian resident; and
> (B) is a dependent child of an Australian resident;
>
> and the person becomes an Australian resident while a dependent child of an Australian resident.
>
> **94.(1A)** Repealed by Act No. 202, 1997, s.3, Schedule 15(19).
>
> **94.(1B)** Repealed by Act No. 202, 1997, s.3, Schedule 15(19).
>
> *Meaning of continuing inability*
>
> **94.(2)** A person has a **continuing inability to work** because of an impairment if the Secretary is satisfied that:
>
> (a) the impairment is of itself sufficient to prevent the person from doing any work within the next 2 years; and
> (b) either:
> (i) the impairment is of itself sufficient to prevent the person from undertaking educational or vocational training or on-the-job training during the next 2 years; or
> (ii) if the impairment does not prevent the person from undertaking educational or vocational training or on-the-job training—such training is unlikely (because of the impairment) to enable the person to do any work within the next 2 years.
>
> **94.(3)** In deciding whether or not a person has a **continuing inability to work** because of an impairment, the Secretary is not to have regard to:

(a) the availability to the person of educational or vocational training or on-the-job training; or
(b) if subsection (4) does not apply to the person-the availability to the person of work in the person's locally accessible labour market.

94.(4) For the purposes of subparagraph (2)(b)(ii), if a person has turned 55, the Secretary may, in considering whether educational or vocational training is likely to enable the person to do work, have regard to the likely availability to the person of work in the person's locally accessible labour market.

94.(5) In this section:

"educational or vocational training" does not include a program designed specifically for people with physical, intellectual or psychiatric impairments;

"on-the-job training" does not include a program designed specifically for people with physical, intellectual or psychiatric impairments;

"work" means work:

(a) that is for at least 30 hours per week at award wages or above; and
(b) that exists in Australia, even if not within the person's locally accessible labour market.

Person not qualified in certain circumstances

94.(6) A person is not qualified for a disability support pension on the basis of a continuing inability to work if the person brought about the inability with a view to obtaining a disability support pension or a sickness allowance or with a view to obtaining an exemption, because of the person's incapacity, from the requirement to satisfy the activity test for the purposes of job search allowance, newstart allowance, youth training allowance, youth allowance or austudy payment."

2.2 Change from 30 to 15 hours

The most straight-forward and anticipated amendment of the Disability Support Pension qualification criteria is the proposed amendment of s94(5). This amendment replaces the current 30 hour test work test with the test of whether a person is potentially capable of 15 hours work per week within two years. It is proposed that the s94(5) definition of "work" be amended such that,

> **"work"** means work:
> (a) that is for at least 15 hours per week at award wages or above; and
> (b) that exists in Australia, even if not within the person's locally accessible labour market."

We have noted elsewhere our concerns that the introduction of this change to Disability Support Pension qualification at the same time as the Parenting Payment changes will place great pressure on Centrelink, the Job Network and other service providers. However, we accept that the Government is committed to this fundamental change to the work test.

We are greatly concerned that other aspects of the amendments to s94 will have far-reaching impacts that have not been sufficiently outlined in the Explanatory Memorandum to the Bill. These changes appear to be relatively minor and less significant than the change form 30 to 15 hours, but they are only superficially so.

2.3 Other changes

94(2)(b)(i) and (ii), and 94(3)(a) amendments

S94(2) currently requires that for a person to qualify for Disability Support Pension their impairment must prevent them from undertaking "educational or vocational training or on-the-job training" during the next 2 years. Training specifically designed for people with a disability is specifically excluded from the definition of "educational or vocational training or on-the-job training".

It is proposed to amend s94(3)(a) by replacing "educational or vocational training or on the-job training" with "training activity". The proposed amendment would mean that the person's impairment must prevent them from undertaking a "training activity" that would enable them to do any work of 15 hours a week or more, independently of a program of support, within two years.

The effect of this change in conjunction with the change in the work test from 30 to 15 hours per week will be significant. **Given that the majority of people with a disability, including a severe disability, would be capable of undertaking "educational or vocational training or on the-job training" if such training were available and locally accessible, this provision could conceivably preclude most people from Disability Support Pension eligibility, including many claimants with a severe disability.** This would be contrary to the Minister's assurances that people with a severe disability will still qualify for Disability Support Pension under the amended legislation.

We are also concerned that claimants from rural, regional and remote areas where there are limited or no "educational or vocational training or on the-job training" programs in the locally accessible area, may never qualify for Disability Support Pension - purely because of the unavailability of programs. The proposed change would mean that a person who is unable to work at least 15 hours a week (who may in fact be unable to work at all), would be ineligible for Disability Support Pension if their impairment would not prevent them from undertaking a "training activity" that would lead to a capacity to work at least 15 hours a week within two years.

2.4 S94A – the “alternative means” of eventually qualifying for DSP?

This amendment introduces an alternative means of qualifying for Disability Support Pension but does not address the issues for people with disabilities who do not have access to a "training activity" (ie, an "educational or vocational training or on the-job training" program) in their locally accessible area.

Under the proposed amendment, a person will be eligible for Disability Support Pension where all the following conditions are met:

- they have been receiving income support other then Disability Support Pension for at least two years; and
- their last CWCA assessment was at least two years ago; and
- they were then (last CWCA assessment, at least two years ago) assessed as incapable of 15 hours a week work but as having a capacity to work 15 hours a week within two years with a "training activity"; and
- during that period they were required to undertake a "training activity" under an Agreement and they complied with the Agreement (s94A(1)(i)(i)), OR they were not required to undertake an activity under an Agreement but they undertook "suitable" activities; and

- their impairment is at least 20 points; and
- they have a "current" inability to work.

This means that only people with access to a "training activity" or another "suitable" activity will be able to qualify for Disability Support Pension under s94A. The provision thereby provides no alternative access to Disability Support Pension for people in regional, rural and remote areas without "training activity" programs available.

The proposed changes mean that without such services available in regional, rural and remote areas, many people with severe disabilities will be placed indefinitely on Newstart Allowance, despite the fact that that they have minimal or no work capacity without the intervention of a non-existent specialist service. Availability of services is a significant issue for people living in rural and remote areas, though even in metropolitan areas there can be lengthy delays in gaining access to a specialist service. Given the predictability that due to disability and lack of services such people will be dependent on income support indefinitely (forever, for some), the appropriate income support payment is Disability Support Pension rather than NSA.

People on Newstart Allowance in this situation would need to be given an indefinite activity test exemption. This is not realistic, viable or useful.

Recommendation
That the definition of "training activity be amended along the lines:
"….training activity means one or more of the following activities, ***available in the person's locally accessible area,*** whether or not the …."

3. Schedule 3 – Carer Payment

The amendments in this schedule relate to seasonal work preclusion period only and are addressed in section 25 of this submission
.

4. Schedule 4 – Parenting payment

4.1 Qualification for Parenting Payment

One of the major changes proposed in this Bill is to significantly restrict eligibility for Parenting Payment. Currently, both sole and partnered parents are eligible for Parenting Payment until their youngest child turns 16. Under the proposals:

- sole parents claiming Parenting Payment after 1 July 2006 can only qualify for the payment while their youngest child is under **8**;
- partnered parents claiming Parenting Payment after 1 July 2006 can only qualify for the payment while their youngest child is under **6**.

Under the Bill, these amendments will result (although this is not necessary) in a significant reduction in the rate of payment for people caring for children aged between 8 and 16 years. The NWRN and various community groups, including church leaders, have previously highlighted the harsh impacts this will have on families. This mean-spirited measure to reduce parents' rate of payment is not required to achieve welfare reform or the Government's stated objective to "increase workforce participation by those receiving workforce age income support….". The other measures, outlined below, can address the issue of increasing workforce participation for people caring for children.

Recommendation
That Parenting Payment be retained for parents caring for children less than 13 years old. This does not preclude the application of participation requirements once the youngest child turns 6, as is proposed to apply to sole parents with children between 6 and 8.

The Bill provides that people who, on 30 June 2005, are receiving Parenting Payment (or have a claim that has been granted) will be able to remain on Parenting Payment until their youngest child turns 16. However, in order to remain on the payment they must continue to have "transitional status". In order to retain transitional status a person must not change their relationship status, or have their payment cancelled.

Given the harsh financial consequences of not being able to stay on Parenting Payment, the NWRN is concerned that the legislation does not provide adequate safeguards to ensure that people currently on Parenting Payment will retain the payment until their youngest child turns 16.

The Explanatory Memorandum for the Bill provides a number of examples that highlight the inadequacy of the savings provisions. For example, Mary is a member of a couple prior to 1 July 2006, and her youngest child is 9. She will only retain "transitional status" while she remains a member of a couple. If Mary becomes a sole parent in October 2006 then she will no longer be eligible for Parenting Payment and will only be entitled to the lower Newstart Allowance payments.

Recommendation
That the "transitional arrangements" be amended to ensure that they provide ongoing entitlement to Parenting Payment for people in receipt of Parenting Payment prior to 1 July 2006, despite a change in their relationship status after 1 July 2006 for less than two years.

4.2 Participation requirements

The proposals extend the imposition of participation or activity requirements to people caring for children who are in receipt of Parenting Payment. Unless an exemption is granted, the requirement to meet "participation requirements" and to enter into a Parenting Payment Activity Agreement will apply to:

- sole parents with children aged between 6 and 8 receiving Parenting Payment; and
- people in receipt of Parenting Payment who are covered by transitional arrangements from the later of 1 July 2007 or when their youngest child turns 7.

It should be noted that similar participation requirements will apply to people caring for children under 16 who will be in receipt of Newstart Allowance (who, prior to 1 July 2006, would qualify for Parenting Payment).

4.3 Parenting Payment Activity Agreements

A *Parenting Payment Activity Agreement* will set out the activities the Secretary considers a person should undertake in order to remain qualified to receive payments. The NWRN is concerned about a number of the provisions surrounding these Agreements, including:

- the removal of the requirement that the Secretary give *written* notice of a requirement to enter into a Parenting Payment Activity Agreement (501(5));

- the requirement that a person must comply with the terms of their Parenting Payment Activity Agreement (500A(b)). The current legislation states a person must take "*reasonable* steps to comply" (see s501(2));

- the removal of a list of "approved activities" for Activity Agreements, that currently exists in the legislation. The list provides a legislative safeguard, outlining a range of activities that are appropriate to include in Activity Agreements;

- the provision that states that if an Activity Agreement requires a person to look for part-time work, they must look for work of at least 15 hours per week or hours determined as appropriate by the Secretary (501B). The Explanatory Memorandum explicitly states that a person will not be required to look for work or accept work where the work would involve more than 25 hours per week. Unfortunately there is no legislative protection of the 25 hours as this figure has not been included in the legislation;

- the provision that requires a person to undertake particular paid work, unless the Secretary is of the opinion that the paid work is unsuitable (502(1)). Section 502(4) prescribes in what circumstances work will be unsuitable. For example, work will be unsuitable for a person if the person does not have access to appropriate care for their children (s502(4)(c)). The NWRN is concerned that s502(5) dictates that if the Secretary decides the person has access to appropriate child care, then no regard need be given to whether the parent considers the care to be appropriate for their child. Further, whilst the Explanatory Memorandum states that the Secretary will bear in mind the cost of

child care and accessibility when making a determination as to the appropriateness of the child care, this protection is not provided in the legislation.

It appears that these concerns relating to the inadequacy of the proposed legislation in regard to child care also apply to the Newstart Allowance provisions.

Recommendations
That the Secretary be required to give a person **written** notice (as is currently the case) of a requirement to enter into a Parenting Payment Activity Agreement.

That a person should be held to be complying with their Activity Agreement if they take "reasonable steps to comply".

That the "approved activities list" in the current legislation (see s501B(2)) be included in the provisions guiding Parenting Payment Activity Agreements.

That the legislation explicitly state that a primary carer cannot be **required** to look for, or accept, more than 15 hours work per week.

That in determining whether child care is appropriate the Secretary should be required to take into account the opinion of the child's parent.

4.4 Exemptions from participation requirements

The Bill provides for exemptions from participation requirements for people in limited circumstances, for restricted periods of time. There are problems with a few of these exemptions, mainly:

- **Domestic violence exemption:**

Section 502C sets out when a person will be exempt from participation requirements because of domestic violence or special family circumstances. However, the NWRN is appalled at the proscriptive nature of this provision and the removal of a general exemption from activity requirements for people who are the victims of violence. The proposed provision only applies if a person ceased to be a member of a couple in the 26 weeks before the Secretary makes a determination and was a victim of domestic violence in that 26 week period. This provision will clearly fail to address the needs of many victims of violence.

- **Exemptions for people with disabled children, foster carers, home educators and distance educators:**

Section 502D provides a maximum 12 month exemption for people with a disabled child, foster carers, home educators and distance educators. The legislation should provide for longer exemptions in some cases. It is inappropriate to ask a parent of a child with a permanent and significant disability to reapply every 12 months for an exemption.

- **Large family exemption**

There does not appear to be any provision in the Bill to implement the promised measures which would exempt parents of large families from activity requirements. Parents of large families must be provided with certainty, and it is

inadequate for the Bill to simply mention the possibility of an exemption for this group in the ExMem.

Recommendation
That the legislation clearly state that large families with four or more children be exempt from activity requirements.

- **Pre and post-natal exemptions – death of a baby**

Section 502G provides for 6 weeks pre and post-natal relief from the activity test. Considering that no Parenting Payment recipient with a child under 6 years is to be activity tested, the post-natal relief exemption is presumably for a Parenting Payment recipient whose baby dies in the 6 weeks before the expected date of confinement, or within 6 weeks of being born, or who gives birth to dead baby. Given the scenarios covered by this automatic exemption, 6 weeks is far too short an exemption. We note that there is no provision to apply for a further pre or post-natal exemption.

Recommendations
That the domestic violence exemption from the participation requirements be reworded to extend to any victim of domestic violence, regardless of their relationship status and without reference to the violence occurring in a specific timeframe.

That longer exemptions be available for people with a disabled child, foster carers, home educators and distance educators, in certain circumstances.

That parents undergoing an acute family crisis, such as homelessness or the death of a partner or a parent or child, be provided with an activity test exemption.

That temporary exemptions for home educators, foster parents, distance educators and victims of domestic violence should apply automatically when circumstances indicate an exemption, rather than requiring these groups to seek an exemption which is subject to the discretion of the Secretary.

That the pre and post-natal relief exemption from the activity test be extended to a least 13 weeks.

It appears that these concerns relating to the inadequacy of the proposed legislation in regard to exemptions from activity requirements also apply to the Newstart Allowance provisions.

5. Schedule 5 – Youth Allowance

The amendments in the Bill contemplate situations in which a person of Youth Allowance age may be the principal carer of a child at least 6 years old (if the person is partnered) or 8 years old (if the person is not a member of a couple). A jobseeker will be of Youth Allowance age if they are under 21. It is envisaged that a young person on Youth Allowance may be the principal carer of such a child in the following scenarios (amongst others):

- the young person is orphaned, or their parents are unable to exercise parental responsibilities, and the young person is left to become the principal carer of a younger sibling. In such a situation a (say) 20 year old looking after a 9 year old younger sibling on their own would receive the lower YA rate of $427.80 (single with child), rather than the higher NSA rate of $437.60 (single with child).

- the young person became a parent at a very young age (eg 14). In this situation, a (say) 20 year old partnered person with a 6 year old would have to survive on the YA partnered (with child) rate of YA (currently $358.50 per fortnight) rather than the NSA partnered rate (currently $365 per fortnight).

- the young person became partnered with a person who already has a child. In this situation, once the child turns 6, the young person would be receiving the lower YA rates until they turn 21, even if they are discharging the principal caring responsibilities for the child.

We would propose that all principal carers of Youth Allowance age be paid *at least* at the rate equivalent to a principal carer of Newstart Allowance age. The age of a principal carer is an irrelevant consideration in calculating the level of income support they require to care for their dependent children.

Recommendation
That the Bill be amended so that primary carers receiving Youth Allowance be paid *at least* at the rate equivalent to a primary carer on Newstart Allowance.

6. Schedule 6 – Austudy Payment

Many of the comments relevant to Youth Allowance in this submission also apply to this schedule. Comments in relation to the Seasonal Workers Preclusion Period are set out in section 25 of this paper.

7. Schedule 7 – Newstart Allowance

Given the significant increase in the number of people who will be in receipt of Newstart Allowance as a result of the changes to Disability Support Pension and Parenting Payment, there are a number of proposed changes to Newstart Allowance that are cause for concern.

7.1 Activity Agreement/Activity Test – RapidConnect

The introduction of RapidConnect via sections 605(1) and 615 means that as soon as a person either lodges a claim or contacts Centrelink with an intention to claim they can be required to "attend an interview with a specified person or organisation at a time and place specified in the requirement" and/or be required to "enter into an activity agreement". If the person fails to meet these requirements, Newstart Allowance will not be payable until they do so or until another time determined by the Secretary. Guidelines will be available outlining who will not be subject to this requirement.

This has the effect that a person can be required to undertake some activity *before they have even lodged a claim* and before, if they have lodged, that claim is processed. This means a person may meet that requirement only to subsequently be advised they are not in fact qualified for payment.

If a person is claiming Newstart Allowance it may be that they do not have the money to meet any requirement, eg, due to transport costs.

The Secretary may decide that a person will not be subject to the RapidConnect requirements (547AA(2)). The Explanatory Memorandum explains this would most likely be people who would be referred to JPET, Language, Literacy and Numeracy, Job Pathways program, Career Planning Program, Disability Open Employment Services etc. The examples provided in the Explanatory Memorandum of potential claimants indicates that at an initial "intention to claim" telephone conversation it will be determined whether a person is suitable for RapidConnect.

How can a Centrelink officer over the phone without a claim in writing before them possibly determine whether RapidConnect or one of the above mentioned programs may be suitable for a potential claimant?

NWRN has recommended on many occasions that the claiming and obtaining of income support should be separated from the process of even explaining, let alone demanding, activity and other requirements. This is to allow people an opportunity to have the resources to comply with requirements, and allow time to fully comprehend what future requirements will be. Many people when claiming Newstart Allowance have no income and minimal or no savings. The most important thing at that time is to secure an ongoing source of income. This can be an extremely stressful time for people and adding activity requirements before payment is made makes it more so. It is often difficult for people in this time to fully comprehend what they are agreeing to do but rather than own up to this, the person will sign any document required for payments to commence.

In our opinion future compliance with requirements is much more likely if a person agrees to those requirements once they know payment has been granted and the immediate need for income support has been met.

7.2 Activity Agreement/Activity Test – terms of agreement

Currently subsection 606(1) contains the following terms, one or more of which may be contained in an activity agreement:

> (a) a job search;
> (b) a vocational training course;
> (c) training that would help in searching for work;
> (d) paid work experience;
> (e) measures designed to eliminate or reduce any disadvantage the person has in the labour market;
> (ea) subject to section 607A, development of self-employment;
> (eb) subject to section 607B, development of and/or participation in group enterprises or co-operative enterprises;
> (ec) an approved program of work for income support payment;
> (f) participation in a labour market program;
> (fa) participation in a rehabilitation program;
> (fb) participation in the PSP;
> (g) another activity that the Secretary regards as suitable for the person and that is agreed to between the person and the Secretary.

The proposed new subsections 606(1) to (1AC) remove reference to specific terms that may be included in an agreement and insert a new subsection stating that an activity agreement is "to require the person to undertake one or more activities that the Secretary regards as suitable for the person". New subsections (1A) and (1B) provide that there are to be guidelines outlining what is **not** to be included in an activity agreement.

This removes any legislative protection against arbitrary and unreasonable terms being included in a person's activity agreement. A Centrelink officer or Job Network case manager may make judgements about a person's health, domestic circumstances, and employment barriers without having the expertise to make such judgements and as a result may require a person to undertake unsuitable activities.

This new subsection does not include any reference to the terms of an activity agreement being negotiable, only that the terms are to be what the Secretary regards as suitable. This will place many people in a potentially precarious situation whereby they will accept terms of an agreement that they may know they are not able to meet. In our experience, particularly vulnerable people are often not in a position to question the terms proposed by Centrelink or the Job Network Provider and will assume that the proposed terms must be accepted. This will leave these people open to suspension and other compliance penalties.

It is dangerous to have open-ended provisions in the legislation, where it becomes necessary to outline the range of activities that a person should not be reasonably compelled to undertake. The Secretary would need to provide an exhaustive list of requirements that were not considered suitable, and any list would be regularly challenged by recipients. Any list would at a minimum have to rule out compelling people to move house; to undertake personal grooming, to undergo a medical intervention, to consume medication or to compel a person to diet to get the dole.

Recommendations
That the legislation clearly indicate that activity requirements are to be negotiated with recipients.

That Centrelink and the Job Network be required to produce information and resources suitable for a wide range of individuals to assist clients to negotiate activity agreements.

That what constitutes a suitable activity for an individual be set out clearly in legislation, rather than being left to the Secretary to list what is not suitable.

7.3 Activity Agreement/Activity Test – job search only

Subsections 607 and 607A set out activity agreement requirements for "principal carers" and people with a "partial capacity to work". These subsections state that for these people the agreement "requires the person to undertake, as an activity, looking for part-time paid work that the Secretary regards as suitable".

The Explanatory Memorandum seems to indicate that job search will be the only activity for parents and people with a partial capacity to work.

People who have dependent children or a disability may have been out of the workforce for some time and or have additional barriers to obtaining employment. Making these people solely look for work in order to comply with their activity agreement without allowing other types of activity, such as training, will be counterproductive. If people are not currently employable, making them seek work could be demoralising and pointless and will in no way improve their workforce participation. There needs to be a recognition that job search should not be the only activity that would meet the activity test.

7.4 Activity Agreement/Activity Test – requirement to undertake employment

Currently subsections 601(1A) to (2) contain a number of activities that can be undertaken by a person in order to satisfy the activity test. The current range of activities contained in 601(2), under which the Secretary may require that a person:

> (i) should undertake particular paid work, other than paid work that is unsuitable to be done by the person; or
> (ia) should participate in an approved program of work for income support payment; or
> (ii) should:
> (A) undertake a course of vocational training; or
> (B) participate in a labour market program; or
> (BA) participate in a rehabilitation program; or
> (C) participate in another course;
> approved by the Employment Secretary which is likely to:
> (D) improve the person's prospects of obtaining suitable paid work; or
> (E) assist the person in seeking suitable paid work; or
> (iii) in a case where the person lives in an area where:

(A) there is no locally accessible labour market; and
(B) there is no locally accessible vocational training course or labour market program;
should participate in an activity suggested by the person and approved by the Employment Secretary; or
(iv) should participate in the PSP; and
(b) the Secretary notifies the person that the person is required to act in accordance with the opinion; and
(c) the person takes reasonable steps to comply, throughout the period, with the Secretary's requirement

This means that a person can undertake, with the approval of the Secretary, any one of the above activities deemed to improve that particular person's employment prospects.

This subsection is to be repealed and replaced with a subsection allowing the Secretary to determine that a person should undertake particular paid work (other than work that is unsuitable). This work can be at a different number of hours than the number contained in the person's activity agreement.

The removal of the variety of activities currently deemed to satisfy the activity test and the replacement with employment only, fails to recognise the varied circumstances of Newstart Allowance recipients. Not all Newstart Allowance recipients are capable of undertaking work and many greatly benefit from the types of training specifically referred to in the subsection which the Bill would repeal.

The reference to the employment a person could be required to undertake as being at a different number of hours than agreed to in an activity agreement is of particular concern. For parents and people with a reduced capacity for work due to a disability or medical condition their activity agreement will require them to undertake an activity of up to 15 hours. While the Explanatory Memorandum states that there would be no requirement above 25 hours this is not reflected in the legislation and could lead to people being required to undertake hours above 25.

If a person fails to comply with the requirement to undertake work they are deemed not to satisfy the activity test regardless of other activities they may be undertaking (new subsection 601(2)). Failure to meet the activity test would result in the person no longer being eligible for Newstart Allowance. A person may be required to undertake work at a greater number of hours than is contained in their activity agreement and then if they are unable to continue they will no longer be eligible. This could be a parent with dependent children or a person whose disability prevents them from complying.

Taking reasonable steps to comply with an agreement

Currently the legislation in a number of places allows for a person to continue to satisfy the activity test where they are taking "reasonable steps" to comply with their agreement. Any reference to reasonable steps is to be removed and replaced with "is complying with".

Given the increased number of people with reduced capacities to comply with activity requirements who will be in receipt of Newstart Allowance, this proposed amendment is unnecessarily harsh. A person may have signed an activity agreement containing activities they can no longer undertake, and the fact that that person is trying or

taking reasonable steps to still comply should be recognised. There is no point in punishing people who are trying to comply.

Recommendation
That the “reasonable steps” provisions in the current Act relating to complying with an activity agreement remain.

Exemptions – temporary incapacity

Currently section 603C provides that a person is exempt from the requirements of the activity test where they have a temporary incapacity preventing them from working 8 or more hours per week. Section 603D is to be added to provide that a person is no longer exempt “if the Secretary is satisfied that, although the person meets the requirements of 603C, the person should undertake one or more activities that the Secretary regards as suitable for the person”.

If a person's treating doctor has provided information that they have a temporary incapacity for work, it should be accepted. Centrelink is not in a position to override a treating doctor's opinion. There is potential for a person to be required to undertake an activity that would be detrimental to their health.

Centrelink practice is generally to refuse to accept some Newstart Allowance medical certificates, with the result that these people are required to "negotiate" activity agreements. In our experience many such people with temporary incapacities are not able to comply despite the Secretary's opinion to the contrary. This amendment will expose more vulnerable people to the harsh compliance measures. This may particularly affect people who are temporarily incapacitated due to episodic illness, psychiatric episodes, mental illness and drug and alcohol related issues.

It is proposed that from 1 July 2006, people with medical certificates declaring that they are unfit for more than 8 hours work will not necessarily be exempt from the activity test. We understand that where it is decided that an "appropriate intervention" would assist them they will have this intervention as a requirement.

It would appear that this measure is targeted to people with psychiatric disability, behavioural disorders (often in fact due to brain injury), and drug and alcohol problems, and that people with such conditions may be **required** to undertake treatment/rehabilitation programs as part of their “activity agreement”. We are concerned that this group is being singled out for activity requirements that would never be imposed on other groups with physical disabilities and that the imposition of such requirements could be harmful and counterproductive in many cases. In view of this we propose that any such referrals must be voluntary.

Whilst Centrelink/Job Network referrals may be useful for a person with mild depression who is socially isolated, it is unrealistic to expect Centrelink or a Job Network to properly assess what referrals would be appropriate for a person with a serious and entrenched psychiatric disability on the basis of a medical practitioner report/medical certificate. There would be problems in making assessments based on doctor's reports that are brief and advise only of, e.g., "depression". It may well be that the doctor and the person concerned have described a condition such as schizophrenia and bipolar disorder in this way, to avoid discrimination (real and perceived).

There are duty of care issues where a person has applied for Newstart Allowance incapacitated and is assessed as being able to undertake an "appropriate intervention". There may be health risk issues in referring people without consultation with their treating health professional. How will services such as community health counselling services accept referrals from a Job Network member without any background report as to the person's needs, diagnosis, and current treatment? Without this information the proposed intervention may be counter-productive or dangerous.

Compulsory engagement in these programs may conflict with treatment already received by the person under the supervision of their medical practitioner. If a GP refers someone to a psychiatrist or community mental health service, they do so with a detailed report. The psychiatrist or mental heath service then reports back to the GP. There is a mine-field of duty of care issues if Centrelink and the Job Network member stumble into the picture and start meddling with people's treatment or lack of it. Failures in the provision of adequate mental health services cannot be addressed through the conditional provision of income support.

Many people with episodic illnesses currently go on and off Newstart Allowance incapacitated, often providing medical certificates for three to six months during periods they are symptomatic and unable to work. Given that the proposed amendments are targeted to people who either have long-term medical exemptions or who repeatedly claim exceptions, people with such episodic illnesses will be affected. This is misguided and poor targeting. People with such conditions go from periods of being capable of and willing to undertake full-time work, to periods where they are symptomatic and have little or no capacity for work. Management of their condition and capacity to work (and the stressors that can cause symptoms), must be left to treating health professionals. For permanent ongoing conditions with highly debilitating symptoms that are episodic, any intervention by Centrelink and/or a Job Network member is unlikely to be of any assistance and may indeed be counter-productive.

It is not appropriate for people with temporary incapacities to be forced to agree to standard NSA activity test agreements. The legislation reduces that ability of people to negotiate flexible agreements that meet their capacities, and the Secretary is given far too much discretion in determining the suitability of an individuals activity agreement.

Exemption – domestic violence

This exempts from the activity test a person (subsection 602B) who has separated within the past 26 weeks, not re-partnered and been subject to domestic violence within the 26 prior to the exemption determination being made. An exemption is also provided where there are “special circumstances relating to the person's family”.

Only exempting people who are separated fails to recognise that for a variety of reasons, people stay in violent relationships or may be experiencing difficulty convincing Centrelink that the relationship has irrevocably broken down.

Realistic activity requirements

The Bill does not make it clear that there should be reduced activity requirements for single parents and people with a disability who may only have a capacity to work 15 hours per week, to reflect the fact that they will have a requirement to look for part-

time work. One could be forgiven for thinking that the normal Newstart Allowance activity requirements will be extended to all people with disabilities who will be in receipt of Newstart Allowance in the future. The legislation provides some minor reprieve from a tough activity testing regime for parents and indicates that parents will not have to fill in employer contact certificates or Job Seeker Diaries.

Flexible activity requirements for mature age unemployed people that were negitotiated as part of the Australian's Working Together Legislation are to be removed, according to the Bill. Special conditions that allowed a person over 55 to look for only four jobs a fortnight, and person over 60 but under Age Pension age to look for two jobs a fortnight, are to be removed.

Recommendation
That the legislation clearly set out the partial and flexible requirements that principal carers and people with a partial capacity to work must undertake.

That beneficial provisions for mature age unemployed people in relation to reduced job seeking activities that were part of the Australian's Working Together Legislation be maintained.

There are no protections for people who have deteriorating or fluctuating conditions in relation to activity agreements. There appears to be little flexibility in the number of jobs that a person must apply for, irrespective of their health at the time.

Recommendation
That careful consideration be given to requiring the lodgement of Employer Contact Certificates by people with acquired brain injuries, episodic illnesses or other health conditions that may deteriorate.

Very long term unemployed people – full-time "work for the dole"

Long term unemployed people who are judged to be not "genuine" in their job search efforts will be required to undertake full-time "Work for the Dole" equal to 50 hours a fortnight for 10 months of the year. In addition, an unemployed person must also fulfil their job search activities. A further problem is that the legislation does not appear not rule out requiring a person who is a "principal carer" or a person on Newstart or Youth Allowance with a "partial capacity to work" from undertaking full-time "Work for the Dole".

Recommendation
That the legislation make clear that "principal carers" and people on Newstart Allowance with a "partial capacity to work" will not be required to undertake full-time "Work for the Dole".

8. Schedule 8 – Employment Entry Payment

This payment has been extended to a wider range of income support recipients. While there are anomalies in the rates of payment to parents, Disability Support Pension and people on Newstart and Youth Allowance with a "partial capacity to work", the extension of this payment is generally welcome.

9. Schedule 9 – Sickness allowance

Comments in relation to the seasonal work preclusion period are at section 25 of this paper

10. Schedule 10 – Special Benefit

Many of the comments made on the compliance regime in section 24 and in relation to activity testing and agreement content in relation to Newstart Allowance in section 7 are also relevant to Special Benefit.

11. Schedule 11 – Mobility Allowance

11.1 Issues

The NWRN is concerned that it appears that a person on Disability Support Pension prior to I July 2006 (and on payment before 11 May 2005) who was receiving the Mobility Allowance and was working 15-29 hours a week will not be eligible to receive the higher rate of Mobility Allowance.

The Bill is also arguably discriminatory, as the higher rate of Mobility Allowance will not be paid to people with disabilities who are employed for more than 15 hours a week in sheltered workshops (that are referred to as "business services").

11.2 Outline of schedule

Section 1035 provides qualification for Mobility Allowance. The Mobility Allowance will be paid at two rates. A higher rate of Mobility Allowance ($100 per fortnight, indexed annually) will be paid to certain recipients, from 1 July 2006.

To be eligible for the higher rate of Mobility Allowance, Newstart Allowance, Disability Support Pension and Youth Allowance (unemployed) recipients need to be looking

for work for 15 hours or more a week as required by an employment services provider, such as a Job Network provider, or working at least 15 hours a week.

Recommendations
That a person on Disability Support Pension prior to I July 2006 (and on payment before 11 May 2005) who was receiving the Mobility Allowance and was working 15-29 hours a week be eligible to receive the higher rate of Mobility Allowance.

That the higher rate of Mobility Allowance be paid to people with disabilities who are employed for more than 15 hours a week in business services (sheltered workshops).

12. Schedule 12 – Advance payments of benefit Parenting Payment (partnered)

NWRN has no comments on this schedule at this point.

13. Schedule 13 – Pensioner Education Supplement

13.1 Issues

The Pensioner Education Supplement (PES) is paid at $31.20 a fortnight. The aim of Pensioner Education Supplement (PES) is to assist Disability Support Pensioners and Parenting Payment (Single) recipients with study costs associated with undertaking approved courses of education or study.

The Government argues that the focus of welfare reform should be to engage people in paid work or job search activities, rather than education. This schedule seeks to provide continuing PES eligibility only until the course is completed for recipients who commenced a course while on the Disability Support Pension or Parenting Payment Single, and subsequently moved to Newstart Allowance or Youth Allowance.

The National Welfare Rights Network is extremely disappointed that the financial disincentives to undertake study have not been removed from the 'welfare to work' package, and is alarmed at the negative impact that the 'welfare to work' changes will have upon parents and people with disabilities who wish to study. Under the current proposals, parents and people with disabilities who seek to undertake full-time study as a means of gaining permanent, secure, decent paying employment will be placed onto the lower paying Austudy Payment.

A further disincentive to study is the proposal to restrict access to JET child care subsidies to one year only. These subsidies are currently paid in addition to Child

Care Benefit to help people on Parenting Payment with their child care costs while they study or work. This subsidy covers most of their "gap fees", which would otherwise average at least $60 per week for two children in full-time outside school hours care. In addition, as recipients of Austudy Payment are not eligible for the Pensioner Education Supplement (PES), some single parents and people with disabilities will be worse off than their peers by an additional $31 a week. Austudy recipients are also not eligible for Rent Assistance.

The Government's own research by the Department of Family and Community Services in 2002 in the Welfare Reform Pilots, found that 80% of single unemployed parents wanted to study full-time, as 60% have only completed year 10 schooling or less.

At a time when Australia's skills shortage is widely acknowledged, it is misguided to place financial barriers in the front of parents who want to enhance their skills and attractiveness to employers, whose main aim is to provide a better financial future for their children.

Recommendation
That discrimination in the Bill that discourages people to pursue further education and training, be removed.

14. Schedule 14 – Telephone Allowance

14.1 Issues

NWRN supports this schedule of the Bill.

15. Schedule 15 – Concession cards

Schedule 15 extends qualification for the Pensioner Concession Card to certain Newstart Allowance and Youth Allowance recipients. Unfortunately, the provisions for extending qualification for the card where a person's Newstart Allowance or Youth Allowance ceases to be payable, are inadequate and inconsistent.

15.1 General qualification provision

Proposed sections 1061ZA (2A) and (2B) extend qualification for a Pensioner Concession Card to certain people receiving Newstart Allowance or Youth Allowance (except full-time students and new apprentices). To qualify for the Pensioner

Concession Card a person must have a "partial capacity to work" or be the single (un-partnered) "principal carer" of at least one child.

15.2 The 52 week extension provision

Proposed section 1061ZEB, which extends eligibility for the Pensioner Concession Card for up to 52 weeks after a person's Newstart Allowance or Youth Allowance ceases to be payable, is inadequate and inconsistent. It applies only to people who have a "partial capacity to work" and does not extend to single "principal carers" who only retain qualification for up to 12 weeks pursuant to existing section 1061ZEA. This means that there is a disparity between the treatment of people with "partial capacity to work" and that of the single "principal carers" i.e. 52 weeks versus 12 weeks respectively. The effect of this is that "principal carers" (i.e. single parents) will also have to have "partial capacity to work" to qualify for the 52 week extension.

A further problem is that the extensions only apply where payability of the Newstart Allowance or Youth Allowance ceases due to employment income and ignores situations such as re-partnering, or where (in the case of a person with a partial capacity to work) a partner's income is the reason that payability ceases. We anticipate that this will act as a significant disincentive to re-partnering. The Explanatory Memorandum at page 132 compares the extension provisions to those which already exist for Disability Support Pensioners, however we note that those existing provisions are more generous and include situations were payability ceases for reasons other than employment income.

Whereas under current provisions (Section 1061ZM(1)), a person can retain a Heath Care Card for up to 26 weeks after ceasing to be an "employment affected person", an exception is to be made for single "principal carers" who are to retain the Pensioner Concession Card for up to 12 weeks and then qualify for the Health Care Card for the "balance" of the 26 weeks from when they ceased to be an "employment affected person". We anticipate that from an administrative point of view this will be cumbersome and problematic. Further, it is likely to cause confusion for the customer.

These concession card extensions are not the panacea for the significantly lower rate of payment, especially for parents. Previously a single parent, whose payability ceased due to employment income, would have had access to the higher rate of Parenting Payment (single) and retention of the Health Care Card for 26 weeks. Under the proposed changes, the single parent would now have a lower rate of Newstart Allowance and retention of the Pensioner Concession Card for only 12 weeks followed by a Health Care Cared for up to 14 weeks. This means the only real benefit to single parents of the proposed extension provisions is the difference between a Health Care Card and a Pensioner Concession Card for 12 weeks.

Recommendations

That single (un-partnered) "principal carers" have the same access to the 52 week extension of qualification for a Pensioner Concession Card that has been extended to people who have a "partial capacity to work".

That the 52 week extension provisions apply to all situations where a person's payability ceases, not just to situations where employment income is the reason for payability ceasing.

16. Schedule 16 – Pension Rate Calculators

Changes made in relation to the Income Maintenance Period are covered in section 26 of this paper.

The NWRN welcomes changes made to the income test in relation to Youth Allowance.

The rate of Newstart Allowance or Youth Allowance paid to people who have a partial capacity to work

As outlined above, the amendments proposed in Schedule 2, Part 1 of the Bill will restrict qualification for DSP to people who have a continuing inability to work more than 15 hours per week (Schedule 2, Part 1, point 9). People who are classified as having a "partial capacity to work" under the proposed new s 16B of the Bill (Schedule 1, Part 1, point 6) will generally only be eligible for NSA or YA.

NSA is paid at a significantly lower rate than DSP. The current maximum rate payable to a single person with no dependent children on NSA is $404.50 per fortnight. The equivalent maximum rate of DSP is $488.90 per fortnight. The proposed reduction for a person who has been assessed as only being able to work, study or undertake another approved activity for between 15 and 30 hours per week will be more than $80 per fortnight. The difference for a YA recipient is even greater. This is a significant difference for a person who has been classified as having a limited capacity to work to lose in a fortnight.

We propose that people with a partial capacity to work who are on an activity-tested payment such as NSA or YA be paid at the rate that would be payable to them, were they in receipt of DSP. It is submitted that such an amendment to the proposed Bill is not only necessary but would be relatively straight-forward to achieve.

- Section1064 of the Act currently outlines the way a person's rate of DSP is calculated. That section currently states:

  Rate of age, disability support, wife pensions and carer payments (people who are not blind)

  1064.(1) The rate of:

  (a) age pension; and
  (b) disability support pension or disability wage supplement of a person who has turned 21; and
  (c) wife pension; and
  (d) carer payment; and
  (f) mature age allowance under Part 2.12A; and
  (g) mature age partner allowance;

  is, subject to subsection (2), to be calculated in accordance with the Rate Calculator at the end of this section.

  Note 1:Module A of the Rate Calculator establishes the overall rate calculation process and the remaining Modules provide for the

calculation of the component amounts used in the overall rate calculation.

Note 2: the rate obtained by applying the Rate Calculator may be reduced because of:

- *the receipt of compensation (see Part 3.14); or*
- *overseas portability (see Part 4.2—Division 3); or*
- *the receipt of payments under the New Enterprise Incentive Scheme (see Part 3.15).*

Recommendations

That this section be amended so as to include references to "*NSA recipients with a partial capacity to work*". That, as has been done throughout the Bill, notes should follow these amended sections to clarify who satisfies the definition of "partial capacity to work". The note used throughout the Bill is: "*for **partial capacity to work** see s 16B".* (This would have the effect of calculating an NSA recipient's rate of NSA to the pension rate calculator in section 1064 of the Act, if that person has a partial capacity to work.)

That as the Bill already includes Schedule 16, which deals with proposed amendments to the Pension rate calculator, a new Part be added to this Schedule to introduce further amendments to s1064 of the Act, so that it clearly applies to NSA recipients who have a partial capacity to work.

That similar amendments be made to the rate calculator at section 1065, so that YA recipients with a partial capacity to work are paid at the rate that is payable to DSP recipients under 21.

17. Schedule 17 – Youth Allowance Rate Calculator

The NWRN welcomes changes made to the income test in relation to Youth Allowance payments.

18. Schedule 18 – Austudy Payment Rate Calculator

NWRN welcomes the changes made to the Austudy Payment income test in this schedule. Comments made in relation to the Income Maintenance Period are covered in section 26 of this submission.

19. Schedule 19 – Benefit Rate Calculator B

NWRN welcomes the changes made to the Benefit income test in this schedule. Comments made in relation to the Income Maintenance Period are covered in section 26 of this submission.

The NWRN feels that this rate calculator is inappropriate for anyone who is a principal carer or has a partial capacity to work. This issue is addressed elsewhere in this submission..

20. Schedule 20 – Parenting Payment Rate Calculators

Comments relating to the Income Maintenance Period are covered in section 26 of this submission.

The rate of Newstart Allowance or Youth Allowance paid to principal carers

As outlined above, the amendments proposed in Schedule 4, Part 1 of the Bill will restrict qualification for Parenting Payment, based on the age of a principal carer's youngest child. The new definition of "PP child" outlined in the proposed s 500D (Schedule 4, Part 1, Item 5) will restrict Parenting Payment to sole parents whose youngest child has not yet turned eight, and members of a couple whose youngest child has not yet turned six.

Principal carers who are single and whose youngest child has turned eight or who are a member of a couple and whose youngest child has turned six will generally only be eligible for NSA. NSA is paid at a significantly lower rate than Parenting Payment for single principal carers. The current maximum rate payable to a single person with a dependent child on NSA is $437.60 per fortnight. The equivalent maximum rate of Parenting Payment is $488.90 per fortnight. The proposed reduction for a sole parent when their youngest child turns eight is more than $50 per fortnight. The difference for a YA recipient is even greater. This is a significant amount for a person with dependent children to lose in a fortnight, especially if the person is also being required to look for work or undertake another approved activity in order to meet the activity test for NSA or YA.

We propose that principal carers who are on an activity-tested payment such as NSA or YA be paid at the rate that would be payable to them, were they in receipt of Parenting Payment. It is submitted that such an amendment to the proposed Bill is not only necessary but would be relatively straight-forward to achieve.

- Section 1068A of the Act currently outlines the way a person's rate of Parenting Payment (single) is calculated. That section currently states:

  > **Rate of parenting payment—pension PP (single)**
  > **1068A.(1)** If a person is not a member of a couple, the person's rate of parenting payment is the pension PP (single) rate.
  > **History**

S.1068A(1) inserted by Act No. 197, 1997, by s.3, Schedule 1, Part 1(141);

1068A.(2) The pension PP (single) rate is worked out in accordance with the rate calculator at the end of this section.
Note: For rate of a person who is a member of a couple see section 1068B.

- The table following the end of section 1068A currently has the following preamble:

  1068A-A1. The rate of pension PP (single) is a daily rate. That rate is worked out by dividing the annual rate calculated according to this Rate Calculator by 364 (fortnightly rates are provided for information only).

Recommendations

That these sections be amended so as to include references to "pension PP (single) *and NSA (single) for principal carers*". That, as has been done throughout the Bill, notes should follow these amended sections to clarify who satisfies the definition of "principal carer". The note used throughout the Bill is: "*for **principal carer** see s5(15) to (24)".* (This would have the effect of calculating a single principal carer's rate of NSA according to the Parenting Payment single rate calculator in section 1068A of the Act.)

That as the Bill already includes Schedule 20, which deals with proposed amendments to the Parenting Payment rate calculator, a new Part be added to the Schedule to introduce further amendments to section 1068A, so that it clearly applies to NSA recipients who are not members of a couple and who are the principal carer of one of more children.

21. Schedule 21– Overpayments and Debt Recovery

21.1 Overview

The Bill sets up a regime for imposition of a 10% penalty to be applied to earnings related debts.

Most Social Security recipients are in financial hardship and cannot afford to repay debts, let alone an additional 10% penalty. Further, in the experience of the NWRN, most debts are at least partly a result of administrative complexity and are unexpected by the recipient.

The NWRN opposes the introduction of the 10% penalty. However, if a 10% penalty is to be imposed the NWRN believes a number of substantial amendments are required to the proposed s1228B.

21.2 Proposed section 1228B

Section 1228B will require a 10% penalty to be added to debts caused wholly or partly because a person:

(i) refused or failed to provide information in relation to the person's income from personal exertion; or

(ii) knowingly or recklessly provided false or misleading information in relation to the person's income from personal exertion.

The penalty will not apply if the Secretary is satisfied that the person had a reasonable excuse for refusing or failing to provide the information.

21.3 Concerns

(a) s1228B(1)(c)(i)

The NWRN is primarily concerned about s1228B(1)(c)(i) which allows for the imposition of the penalty where a person has failed to provide information about their earnings.

The Explanatory Memorandum advises that the objective behind this measure is to "deter all people from deliberately providing wrong information about their earnings." **We note that s1228B(1)(c)(i) will in fact penalise people who did not deliberately give wrong information.**

Centrelink notices are generally deficient in providing clear instructions about a person's obligations. Further, it is often unclear how a person should declare their earnings to Centrelink, and many of our clients report being given inconsistent advice from various Centrelink call centre staff and customer service officers. The Guide to Social Security Law does not provide clear guidance on how many people should declare their earnings. We refer the Committee to a recent decision of the Administrative Appeals Tribunal, Lampard and Secretary, Department of Family and Community Services [2005] 20 May 2005, that concerned a person's failure to correctly declare their earnings to Centrelink. In this case the Tribunal member asked the Department's representative to give the Tribunal a copy of the guidelines that reveal how the person should have declared their earnings. The representative advised no such guidelines existed.

We are concerned that people who do not deliberately fail to declare heir earnings, but rather under-declare or fail to declare earnings because of lack of knowledge of their obligations, or confusion due to inconsistent advice will be penalised under this provision. The defence of "reasonable excuse" will not protect all these people.

We recommend that the 10% penalty only apply where a person **knowingly or recklessly** provides false or misleading information about their earnings. This reflects the current breaching provision relating to earnings.

(b) Complexity
We are concerned that the provision will be too complex for Centrelink to properly administer. Based on our clients' experiences with Centrelink, it is our belief that the 10% penalty is likely to be applied to a person's entire debt, notwithstanding that the legislation requires the 10% to only be imposed on the part of the debt that arose due to the refusal or failure to provide information, or the false or misleading information provided.

(c) Onus of proof
The legislation should clearly state that the onus is on the Secretary to be satisfied that a debt arose because a person knowingly or recklessly provided false or misleading information, before it can be imposed. Further, Centrelink should be required to send the person a notice advising of the 10% penalty that is being imposed and this notice should explicitly state the reasons for the imposition of the penalty and the evidence supporting this decision to impose a penalty. Such a notice should also explain a person's right to appeal the decision to impose the 10% penalty.

Without these safeguards we are concerned that due to the complexity of the provision, the lack of resources within Centrelink to make detailed assessments, and the lack of resources of Social Security recipients, that these recipients will be paying a penalty that they do not owe.

Recommendations

That the proposed 10% penalty section 1228B be deleted.

That, if the proposed section is to be enacted, it be amended so that the 10% penalty only apply where a person "knowingly or recklessly" provides false or misleading information about their earnings.

That the legislation clearly state that there is an onus on the Secretary to be satisfied that the debt arose because a person "knowingly or recklessly" provided false information about their earnings before the 10% penalty can be imposed.

That the legislation clearly state that the penalty only applies to that portion of the debt which the Secretary is satisfied arose because a person "knowingly or recklessly" provided false or misleading information about their earnings.

That the provision that provides for a retrospective application of the penalty be removed.

22. Schedule 22 – Administration

22.1 Part 1 – RapidConnect

- Schedule 22 of the Social Security Administration Act makes amendments which give effect to the new rapid connect provisions of the Social Security Act. Of particular concern are those amendments which replace references to the Secretary's power to give a written notice with **a more nebulous requirement to merely "notify the person".**

- The explanatory memorandum asserts at page 172 that these changes bring the section into alignment with section 63(3) which uses the language "notify a the person". This is unconvincing as we note that that subsection is to be repealed by item 21 of schedule 22!

- We understand that with the proposed introduction of the RapidConnect scheme it will be necessary for Centrelink to have a fast and effective method of notifying its customers of their "rapid connect" requirements to attend interviews and so on. However, we are gravely concerned that, because of the broad application of sections 63 and 64 throughout Social Security law, these amendments will undermine the quality of notices issued under the Social Security law generally.

- The importance of written notice as a baseline requirement cannot be underestimated. The postal system is generally more reliable than other forms of communication. Using the postal system results in a more accurate and reliable record of what was information was provided than the alternative of "file notes" by Centrelink officers who, unavoidably, must interpret and paraphrase telephone conversations. Such file notes are inherently vulnerable to the possibility of error and inaccuracy.

- Furthermore, notification by telephone assumes that Centrelink's customers have the capacity to understand and retain the crux of the "notice", for example, the requirement to attend an interview, as well as the "details" of the notice, for example, time, day, place, purpose etc. It further assumes that the Centrelink officer responsible for the notification has the skills to use appropriate wording, effectively communicate all aspects of the notice, ascertain level of understanding or comprehension (which is not specifically required anyway), provide details of the consequences of failure to comply and details of appeal rights. We contend that in many situations, neither the Centrelink officer nor the customer will be capable of satisfying all that would be required for such notice to be effective.

- There are practical difficulties affecting the certainty of "notice". The Explanatory Memorandum uses the example of mobile telephone SMS messaging. Some foreseeable problems include the continued availability and affordability of mobile telephones (particularly where payments have not been granted or have been cancelled or suspended), prepaid credit running out, flat batteries, misplaced telephones and phones which are shared by communities (particularly indigenous communities).

- While it is clear that the new "rapid connect" and compliance regimes will require some amendment to notice requirements, it is essential that written

notice be retained as the basic legislative standard for notices generally and should only be departed from where it is absolutely necessary.

Recommendations

That **written** notice be the basic standard for Social Security notices issued under sections 63 and 64.

That, if necessary, a specific provision in relation to RapidConnect notices be drafted as an exception.

22.2 Part 2 – Disability Support Pension

The National Welfare Rights Network generally endorses these amendments for people who wish to return to the Disability Support Pension within 2 years of their return to work as a significant improvement on the existing provisions.

22.3 Part 3 – Participation

These are consequential amendments.

22.4 Part 4 – Compliance

The proposed Social Security Act compliance sections 500ZB or 500ZE (PP) 550B or 551 (YA) 576A or 577 (Austudy) 626 or 629 (NSA)742 or 745 (SPB) have resulted in a number of proposed changes to the Social Security (Administration) Act. Our major concern with these changes is the substitution of the requirement for written notices for the less certain and less reliable requirement that the Secretary "notify a person".

The reasons for our concern are the same as those discussed above in relation to Part 1 – RapidConnect. We refer to those reasons in relation to the changes proposed in Part 4 also. It is an essential precept of administrative law that a person be given adequate notice of both demands made upon them and decisions which affect them. Provision of a written notice is a matter of procedural fairness and should not be removed from the Act.

We refer to our discussion of the start date provisions for the new compliance regime which can be found at section 24 of this submission.

22.5 Part 5 – Information Exchange

Whilst we are concerned by the breadth of this proposed section, we are not in a position to comment on it in detail at this time.

22.6 Part 6 – Seasonal Work Preclusion Period

We refer to our discussion of the changes to the season work preclusion period which can be found at section 25 of this submission.

22.7 Changes to "automatic payment" provisions pending review

The Social Security (Administration) Act 1999 gives the Secretary certain powers to continue a person's payment after an "adverse decision" is made affecting it, if that person has sought a review of the cancellation by an Authorised Review Officer or the Social Security Appeals Tribunal - ss 131, 145. These sections leave it to the Secretary's discretion to formulate guidelines as to when payment will continue pending review.

The "payment pending review" powers were augmented by the *Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003* (No. 35, 2003). That Act introduced the concept of *"automatic payment"* pending review, where a decision is made to impose a penalty period if a NSA, YA or Special Benefit recipients delays entering into an activity agreement or seeks a review of the agreement's terms: current ss 132A-134A, and 146A-148A. These sections were inserted in order to recognise the care that must be taken before a person is penalised in relation to actions they have taken in negotiating their activity agreement. If a decision if made to penalise a person in relation to their actions in negotiating an activity agreement, then the person should at least be entitled to be paid at the full rate of payment until the decision is reviewed.

The provisions allowing for *"automatic payment"* pending review in these cases are to be repealed by the Bill - Schedule 22, Part 3. These provisions of course require amendment following the changes made to the participation compliance regimes by Schedule 4, Part 2 (Parenting Payment), Schedule 5, Part 3 (YA), Schedule 6, Part 1 (Austudy Payment), Schedule 7, Part 3 (Newstart Allowance) and Schedule 10, Part 2 (Special Benefit). Given that a wider range of people will be forced to enter into activity agreements following these amendments to the Act, it is imperative that the *"automatic payment"* provisions remain for those seeking a review of a decision to suspend their payments for delaying entering into an activity agreement or seeking a review of its terms.

This Bill will force vulnerable groups who have hitherto not had to come to grips with the agreement negotiation process, such as parents of young children and people with only a partial capacity to work, to enter into activity agreements. These people will be ill-equipped to handle such negotiations and their inexperience in such matters could lead to hasty conclusions being made by Centrelink staff that they are reticent to enter into activity agreements.

These groups should be entitled to the automatic continuation of their payments if they are suspended under the proposed new compliance provisions, should they seek a review of the decision by either an Authorised Review Officer or the Social Security Appeals Tribunal. If the decision to suspend their payment is affirmed upon appeal, then the suspension can be served after the person has had the opportunity to obtain a review.

Recommendation

That the Bill be amended to provide for the *automatic continuation of payment pending the outcome of a review* where payment is suspended on the basis of a person's alleged failure or delay to enter into an activity agreement or to agree to its terms, should that person seek a review of the decision to suspend their payment.

23. Schedule 23 – Other Amendments

NWRN has no comments on this schedule at this time

24. Compliance regime – across all payments

24.1 Issues

The National Welfare Rights Network generally welcomes the cessation of the current “rate reduction” breach and penalty regime because of its excessively harsh penalties and emphasis on punishment well after the breach.

In this context, there is much about the new compliance regime, as presented in the Bill (as opposed to the provisions announced at Budget time) that NWRN also welcomes, in particular the shift towards an emphasis on encouraging re-connection and compliance rather than punishment. However there are a number of problems with the provisions in the Bill, precisely because they do not adhere to these principles or directions despite the ExMem claiming that “the new compliance framework focuses on re-engagement as its key principle” (p.71).

The main problems that remain are:

- the 8 week no payment period for a third failure in a 12 month period
- the introduction of a number of immediate 8 week no payment penalties
- the inconsistency in the provisions relating to the re-commencement of payment when a period of non-payment ends
- the removal of the distinction between activity and administrative breaches which can mean that under the new compliance regime a person can face penalties that are 100% higher than currently imposed
- the extension of the new compliance regime to people with disabilities and parents who are highly vulnerable and unfamiliar with Centrelink and Job Network procedures, and
- the lack of any provision for an 8 week no payment penalty to be lifted upon subsequent compliance.

24.2 Parenting Payment – Schedule 4

- allows the Secretary to either cancel or suspend payment if a person fails to comply with a requirement under s67, s68 or s192 of Administration Act
- however, a “participation failure” for PP does not include:
  - failure to satisfy the activity test;
  - employer contact sheets; or job seeker diary

The proposed s500ZD provides that for any "participation failure":

- the person will be required to comply with that requirement, or with a new requirement/activity, within the next instalment period. This is called the "participation failure instalment period"
- if the person complies in the “participation failure instalment period”, there will be no suspension or no payment period
- if the person fails to comply with the requirement by the end of next fortnight, ie by the end of the “participation failure instalment period”, Parenting

Payment will not be payable for a period starting from the first day of the "participation failure instalment period"

- payment will recommence from date of compliance (see comments on this under Newstart Allowance section).

Under the proposed s500ZE, for serious failure, there will be an 8 week non-payment if:

- this is the person's third participation failure within 12 months; or
- the person is unemployed due "either directly or indirectly" to a voluntary act; or
- the person is unemployed due to misconduct; or
- the person has not complied with a work for the dole requirement.

In addition to the comments made in 24.5 Newstart Allowance, a major concern with the 8 week penalty provision relates to the definition of "voluntary act" and the concept of a person's unemployment being "indirectly" due to a voluntary act. A provision whereby a person can be denied Parenting Payment for 8 weeks should be clear and precise. This is too vague and has no place in this provision.

Recommendation
That the the words "either" and "or indirectly" be deleted.

24.3 Youth Allowance – Schedule 5

-allows the Secretary to either cancel or suspend payment if person fails to comply with a requirement under s67, s68 or s192 of Administration Act.

24.4 Austudy Payment – Schedule 6

-allows the Secretary to either cancel or suspend payment if person fails to comply with a requirement under s67, s68 or s192 of Administration Act.
-introduces the concept of *"austudy participation failure"* where a person fails to satisfy the activity test *or* fails to comply with a reasonable requirement under subsection 63(2) or 64(2) of Administration Act.
-also introduces concept of *"participation failure instalment period",* being the "the next (fortnightly) instalment period to start after the day on which the Secretary first becomes aware that the person has committed the failure".

24.5 Newstart Allowance – Schedule 7

This provision introduces the concept of *"newstart participation failure"* where a person fails to satisfy the activity test *or* the terms of a Newstart Activity Agreement *or* complete a job seeker diary *or* fails to comply with a reasonable requirement under subsection 63(2) or 64(2) of Administration Act.

It also introduces concept of *"participation failure instalment period",* being the "the next (fortnightly) instalment period to start after the day on which the Secretary first becomes aware that the person has committed the failure" *or*, in some cases where a notice has been issued giving a period of time to undertake certain requirements (eg specified number of job applications, employer contact certificates and job seeker diary), then the next instalment period to start after the end of a period covered by the certificates or diary as specified in the notice.

Newstart Allowance is not payable /suspended if:

-the person fails to comply with a requirement, **and**
-the Secretary requires *further compliance* during the *"participation failure instalment period"* (except in the case of job seeker diary or employer contact certificate matters), **and**
-the person fails to comply with the requirement.

24.6 Analysis of new compliance provisions

In other words, under s626, suspension (or a period of no payment) does **not** commence unless these three conditions are met. That is, if a person fails to comply in one fortnight, is subsequently required to comply with the same or another requirement during the "participation failure instalment period" and they do comply, then no suspension or period of no payment applies although one "strike" or failure is recorded against the person's name.

The Ex Mem states that "if a job seeker fails to meet a participation requirement they will generally be able to **avoid any financial penalty** by quickly re-engaging with their provider or programme" however, s628 does not seem to implement this assurance. Rather it is achieved through the s626 provisions outlined above.

Newstart Allowance is payable if the person has a reasonable excuse. There is also a general discretion not to apply the suspension.

Commencement and cessation of no payment period

The suspension or non-payment period starts at the start of the "participation failure instalment period".

The suspension or non-payment period ceases once the Secretary is satisfied that the person has complied with the original (or a subsequent) requirement:

- this re-commencement of payment could be part way through a fortnightly instalment period if the compliance does not occur in the "participation failure instalment period" but rather in the next, or a subsequent, fortnight.
- this re-commencement provision is inconsistent with the principle of only starting the suspension prospectively from the start of the "participation failure instalment period" and re-introduces the possibility that the length of a person's "penalty" or no payment period could depend more on when Centrelink sets an appointment or compliance opportunity than on a person's willingness to comply.
- for example, if a person fails to comply with a rescheduled appointment in the "participation failure instalment period" their payment will not recommence until day 5 or day 10 of the next payment fortnight, depending on when Centrelink sets the next compliance opportunity.
- the Government has attempted to remove this inconsistency and the consequent unfairness in relation to the initial failure by ensuring that no payment or suspension only commences prospectively, from the start of the "participation failure instalment period".
- this should be carried over to apply to subsequent failures by ensuring that a person gets full payment for any fortnight in which they eventually meet the activity requirement.
- the legislation should provide, through an amendment to "s628 when the period of non-payment ends" that any no payment or suspension period should end at the end of the fortnight immediately preceding the one in which the person complies.

Recommendation

That s628 "when the period of no payment ends" be amended to provide that a no payment or suspension period ends at the end of the fortnight immediately preceding the one in which the person complies with the requirement of the Secretary in relation to the Newstart participation.

24.7 Eight week no payment penalties

The proposed compliance regime for Parenting Payment, Newstart Allowance, Youth Allowance and Special Benefit, includes provisions suspend a person's payment for a period of 8 weeks.

The Bill introduces a concept of a "more serious" offence which attracts an immediate no payment period of 8 weeks. This is imposed where a person:

- "is unemployed due, either directly or indirectly, to a voluntary act;
- is unemployed due to misconduct;
- has refused, or failed, without a reasonable excuse, to accept a suitable job offer,
- fails to commence, complete or participate in an approved program of work; or
- fails to comply with the conditions of an approved program of work."

In the 2004-2005 year:

- 3,331 people had an activity test breach because they were dismissed for "misconduct",
- 7,460 received an activity test breach for leaving work without "good reason" (voluntarily unemployed); and
- 2,559 people were breached for failing to undertake part-time "Work for the Dole".[1]

Analysis by the National Welfare Rights Network, using a conservative estimate based on current trends, is that under the proposed new compliance regime, approximately 12,000 people in 2006-2007 will face an immediate 8 week no payment period under the "more serious" offences category.

However, the total number of people who face a loss of payment for 8 weeks is likely to be even higher still, as these figures do not include those people who progressively accumulate three "participation failures" over a one year period. Factoring this component in (3,813 last year) the number of 8 week no payment period penalties handed out in 2006 – 2007 could be as high as 16,000.

The NWRN has major problems with this approach, and the consequences of such a draconian measure.

Major concerns with this aspect of the legislation include:

- thousands will be left without income support for 8 weeks

[1] [1] Data in this paper is compiled from Public Breach Data, found at www.workplace.gov.au. Accessed 27 October 2005.

- Centrelink to administer a cumbersome and unworkable “case-management” system of paying bills and rent, etc for parents and other vulnerable clients who lose all payment for 8 weeks
- retrospective unfairness in the legislation, in that activity test penalties accrued in 2005-06 will count towards an 8 week no payment penalty
- a total loss of income for 8 weeks reduces ability of recipients to comply with obligations, and is counterproductive
- all “participation failures” after a third failure result in an immediate and additional 8 week no payment period
- people affected will increase demand for services of already stretched charities and homeless services
- in some electorates, (particularly in rural and remota areas), the combination of these penalties and the reduced payment levels will actually effect the local community.

Extension of 8 week no payment penalties to people with disabilities and parents

A major feature of the proposed compliance regime is that the following groups who were previously not subject to a no payment penalty system will be subject to it from 1 July 2006:

- people with disabilities who are able to work more than 15 hours per week but less than 30 hours per week;
- sole parents whose youngest child is six or older but less than 13; and
- people on Parenting Payment partnered where their youngest child is six but less than 13.

The new compliance regime therefore includes a sudden death component for these new groups of vulnerable people. So that it is clear who will be subject to the new compliance regime, we refer to the example of Brendan, which is a case study taken from the *Explanatory Memorandum* of the Bill (p.18):

Brendan has an acquired brain injury. He lodges a claim for disability support pension and attends a Comprehensive Work Capacity Assessment to determine his work capacity and qualification for disability support pension. At the assessment, Brendan is assessed as currently being able to work less than 15 hours per week at award wages, but with the provision of a Disability Open Employment Service to help him prepare for and find employment and provide him with support to maintain that employment, within 2 years he will be able to work more than 15 hours per week at award wages and will no longer need that support. Even though Brendan will be exited from Disability Open Employment Service following his 2 year program, Brendan’s employment consultant will claim an intermittent support fee as he thinks Brendan may require one off assistance (e.g. 2-3 hours to develop new job skills) at some time over the next 12 months. As Brendan will only need occasional support, he will not qualify for disability support pension.

As Brendan is not eligible for Disability Support Pension he will be forced onto Newstart Allowance and will be required to satisfy the relevant activity test. If he does not satisfy his obligations he may be subject to an 8 week no payment period.

Is this the intention of the legislation in relation to such people as Brendan and many others like him?

Section 500ZE of the Bill details the circumstances in which an 8 week no payment period is to be imposed where a person is in receipt of Parenting Payment. The section states:

> **Payment not payable because of repeated or more serious failure**
> (1) A parenting payment is not payable to a person, for the period of 8 weeks starting in accordance with section 500ZF, if the person:
> (a) commits a parenting payment participation failure (the repeated failure), having committed parenting payment participation failures (the earlier failures) on 2 or more other occasions during the period of 12 months preceding that failure; or
> (b) is unemployed due, either directly or indirectly, to a voluntary act of the person; or
> (c) is unemployed due to the person's misconduct as a worker; or
> (d) has refused or failed, without reasonable excuse, to accept a suitable offer of employment; or
> (e) fails:
> (i) to commence, complete or participate in an approved program of work for income support payment that the person is required to undertake; or
> (ii) to comply with the conditions of such a program.
> (2) For the purposes of paragraph (1)(a), disregard any earlier failure that is a failure to which subsection 500ZB(1) does not apply because of subsection 500ZB(2).
> (3) Subsection (1) does not apply in relation to the repeated failure if the Secretary is for any other reason satisfied that subsection (1) should not apply to the failure.
> (4) Paragraph (1)(b) does not apply if the Secretary is satisfied that the person's voluntary act was reasonable.
> (5) Paragraph (1)(e) applies only if:
> (a) the person is under 60; and
> (b) a determination under paragraph 28(4)(b) is in force in relation to the person.

With regard to Youth Allowance, Section 551 of the Bill replicates the above provision. Section 629 of the Bill replicates it for Newstart Allowance and Section 745 replicates it for Special Benefit.

24.8 Current restoration upon compliance provisions removed

The Social Security Act currently provides that where a person in receipt of Parenting Payment incurs a breach and within 13 weeks the person starts or resumes taking reasonable steps to comply with:

- the terms of a current participation agreement, or
- if the customer does not have such an agreement, the participation agreement that was in force when the penalty period commenced,

the breach is lifted and full arrears are paid. This is even the case where the full 8 week penalty period may have been completed, providing the person begins to comply within 13 weeks of the start of the penalty period.

The explanation for the above legislation is provided in the Guide to the Administration of the Act (section 3.5.1.290) which states:

> "The intention of the PP participation support framework is to encourage and help parents plan and prepare for an eventual return to the full-time

workforce, not to penalise parents. It is important that the penalty provisions be administered sensitively and with a view to helping each affected person set and meet an appropriate and individually tailored participation requirement wherever possible."

The proposed Bill disregards the above current provisions which enable a person's payment to be restored where they subsequently comply with their Agreement. Under the proposed Bill there is no recourse for a person to have their payment restored during the 8 week non-payment period should they subsequently comply with their activity requirement.

This should be rectified so that a person is given an incentive to engage with Centrelink and their Job Network Providers, which is the support many need to return to the workforce, which is the ultimate aim of this Bill. This argument is as valid for people in receipt of NSA, YA and Special Benefit as it is for people in receipt of Parenting Payment. The new compliance system should not be designed to punish a person but rather there should be the incentive for a person to satisfy their obligations and have full payment restored at all times.

Recommendation
That the Bill be modified with respect to PP, NSA, YA and Special Benefit so that where a person is subject to an 8 week no payment period, payment is restored where the person complies with their respective agreement.

24.9 Removal of administrative breach and activity test breach distinction

Schedule 7, Item 76 relates to removal of the distinction between relatively minor administrative breaches and activity test breaches which are imposed for more serious "offences". The financial impact of this change is particularly harsh and from 1 July 2006, could result in a person facing a loss of 100% more income support than under the current penalty system (see box below).

Unfairness in the proposed system: financial penalties increase by 100%

The current system: Person who has four administrative breaches under the current system in a 12 month period would face 8 weeks (four by two weeks) of no payment, or a financial penalty of $1,600 (up to $2,000 if receiving Rent Assistance and without children).[2]

From 1 July 2006: Where a person commits the same four offences after 1 July 2006, the total loss of payment would be 16 weeks without income support, with a loss of $3,200 in Newstart Allowance payments (and up to $4,000 if eligible for Rent Assistance). In addition to the financial penalty, a person would have spent 16 weeks disengaged from Job Network assistance and cannot be required to undertake any activity requirements during this period.

The Bill confirms that there will be no "clean slating" of the records of all job seekers with breaches on their files when the new system begins. All people serving administrative or rate reduction penalties as at 1 July 2006 will continue to serve out those penalties. In addition, all activity test breaches in the 12 months prior to 1 July

[2] The maximum rate of Rent Assistance (RA) for a single unemployed person living alone is almost $50 pw. RA is not payable if a person's payment is suspended. Rent Assistance is payable as a supplement to Family Tax Benefit, so if a parent on Newstart Allowance is suspended for 8 weeks, they will still be entitled to receive RA.

2006 will actually carry over into the new system and will immediately count towards the Government's "three strikes" and 8 weeks no payment regime.

There could be up to 40,000 Newstart Allowance recipients who will start the new suspension regime with at least one (and possibly more) "participation failure" against their name.

An 8 week no payment penalty of $1,600 (up to $2,000) is not consistent with the 'Welfare to Work' aim of encouraging jobseeker engagement and compliance with the system. Rather, it is a hang-over from the current punishment oriented system. Cutting a person's payment totally for 8 weeks is likely to be counterproductive as it will lead to the total disengagement of jobseekers for this 8 week period as it is not possible to require a person to undertake activity requirements during this period.

A further problem with the 8 week no payment component of the proposed compliance regime is that recipients will not be able to reduce the penalty by re-engaging with service providers or undertaking mutual obligation activities. Again this is counterproductive and a hang-over from the current punishment oriented regime and has no place in the new system.

Unless the new compliance regime is significantly modified before 1 July 2006, it poses extreme risks for individuals and families and will see thousands of vulnerable Australians knocking on the doors of already over-stretched charities and emergency relief agencies.

Any compliance regime that seeks to be effective must be fair, reasonable and encourage re-engagement, as opposed to offering only punishment. The Government's current proposals fail to meet all of these benchmarks.

Recommendations

That the maximum no payment period be reduced from 8 weeks to 2 weeks.

That a no payment period penalty cease and that payment be immediately restored once a person complies with the original requirements.

That any person faced with a "participation failure" be provided the opportunity to undertake "mutual obligation" activities, or other steps to comply, and that where they do so, the participation failure be removed from a their record.

That minor "participation failures", such as failing to attend a Centrelink interview, not count towards the "three strikes" no payment regime.

That activity test penalties imposed between 1 July 2005 and 1 July 2006 not count towards the "three strikes" no payment regime.

That any rate reduction penalty period in force on 1 July 2006 be discontinued and payment restored.

25. Seasonal Workers Preclusion Period – across all payments

25.1 Issues

The Bill extends the Seasonal Workers Preclusion Period and the Income Maintenance Period to Disability Support Pension, Carer Payment and Parenting Payment. In addition, the Income Maintenance Period is to be affected by redundancy payments received on termination of employment.

Applying the Seasonal Workers Preclusion Period to new Disability Support Pensioners who qualify under the very tight, amended qualification criteria is unreasonable. By definition, a new Disability Support Pension recipient will have little or no capacity to work and their working days may in fact be over. A person qualifying for Disability Support Pension under the new legislation certainly could not realistically be regarded as still a "seasonal worker".

Similarly, extending the Income Maintenance Period and the Seasonal Workers Preclusion Period to Carer Payment claimants and to PP claimants with new-born babies means that people who are claiming income support due to new care responsibilities will be forced to expend payments that they should be able to and will need to retain as savings. The Income Maintenance Period is arguably reasonable for unemployed people claiming Newstart Allowance and Youth Allowance but not for Disability Support Pension (nor Carer Payment or Parenting Payment). The rationale in the Ex Mem for extending these provisions to these payments is to target high income earners with consistent work patterns. This rationale makes no sense as "consistent work patterns" are very unlikely for people with a severe disability, for new mothers and for people with substantial caring responsibilities.

25.2 Seasonal work preclusion period – current provisions

The Act currently provides specific provisions for some seasonal and contract workers whose employment is terminated for a period, but who expect to commence employment again. Depending on the nature of their employment and whether their income was paid at higher than the Average Weekly Ordinary Time Earnings (AWOTE) – a figure provided by the Australian Bureau of Statistics, they may have to serve a “seasonal work preclusion period” before they can commence receiving certain income support payments. “Seasonal work” is considered to be work that is available for a time of the year that is approximately the same time each year. The “seasonal workers preclusion period” particularly affects:

- workers in the fishing, fruit picking and shearing industries;
- contract teachers and people undertaking locum positions; and
- workers affected by Christmas shutdowns.

The Seasonal Workers Preclusion Period currently applies to NSA, YA, Special Benefit, Mature Age Allowance (repealed), Widow Allowance (repealed) and Partner Allowance (repealed) as well as Parenting Payment (partnered).

25.3 Extension to all workforce age payments

The Bill extends the scope of the Seasonal Workers Preclusion Period so that it also applies to Carer Payment, Disability Support Pension, Sickness Allowance, Parenting

Payment (single) and Austudy Payment. The specific amendments in the Bill affecting each payment are listed below:

- Schedule 2, Part 2 extends the Seasonal Workers Preclusion Period to Disability Support Pension ;
- Schedule 3 extends the Seasonal Workers Preclusion Period to Carer Payment;
- Schedule 4, Part 3 extends the Seasonal Workers Preclusion Period to Parenting Payment (single);
- Schedule 6, Part 2 extends the Seasonal Workers Preclusion Period to Austudy Payment; and
- Schedule 9 extends the Seasonal Workers Preclusion Period to Sickness Allowance.

The comments above in 25.1 in relation to the expansion of the Income Maintenance Period to Disability Support Pension recipients are also pertinent here. It is expected that a person who has been granted Carer Payment, Disability Support Pension, Parenting Payment or Austudy Payment will be unable to obtain full-time paid employment at a level to support themselves for a prolonged period of time. It is expected that a person on Carer Payment will be out of the workforce while they care for someone on a full-time basis, likewise someone on Parenting Payment caring for a child, someone on Austudy Payment studying full-time, and someone on Disability Support Pension who has satisfied the stringent eligibility criteria. These are categories of income support recipients who cannot have consistent work patterns due to the nature of their disabilities and study or caring responsibilities. Such people will be forced to expend payments from employment that they should be able to and will need to retain as savings, as they are precluded by their disabilities and caring responsibilities from fully supporting themselves by paid employment.

25.4 Expansion of the definition of "seasonal work"

The definition of "seasonal work" has been expanded by Schedule 1, Part 2 of the Bill. That Schedule amends the definition of "seasonal work" in s 16A(1) of the Act. The amended definition would also catch:

> (aa): "work:
> (i) that is intermittent; and
> (ii) that is to be performed for a period of less than 12 months; and
> (iii) that is to be performed for a specified period or a period that can reasonably be calculated by reference to the completion of a specified task; and
> (iv) for which the person performing the work does not accrue leave entitlements…."

According to the Ex Mem, the reason for this expansion is to force people with higher than average earnings from intermittent and contract work to support themselves for a period after ceasing a work spell (p15). However, it is the nature of intermittent and contract work that it is unpredictable. It makes no sense at all to classify most contract workers as "seasonal workers". The entire concept of seasonal work is that it is predictable and regularly occurring- eg fruit picking work will be available in the season the fruit in question is always ready for picking. A lot of the contract work that will be caught as "seasonal work" by this amendment will be highly unpredictable. People will not be able to foresee when it will arise or how much they can expect to earn from it. Further, an expansion in operation of the Seasonal Workers Preclusion

Period could potentially be seen as a disincentive to picking up intermittent and contract work for some people.

Recommendations
That the proposed amendments to apply the Seasonal Workers Preclusion Period to Disability Support Pension, Carer Payment, Parenting Payment (single), Sickness Allowance and Austudy Payment claimants be omitted from the Bill.

That the proposed amendments in Schedule 1, Part 2 to expand the definition of "seasonal work" be omitted from the Bill.

26. Income Maintenance Period – across all payments

26.1 Expansion of the operation of waiting periods

The *Social Security Act* currently provides a set of rules governing periods of time an income support claimant must wait before their payment can start. These are generally known as "waiting periods". This Bill makes substantial changes to expand the operation of two of these waiting periods: the "income maintenance period" and the "seasonal work preclusion period" (see section 25 above).

26.2 The "income maintenance period" – current provisions

When a person leaves employment they may receive from their employer a lump sum payment to cover the leave entitlements they are owed. This payment can affect their Social Security entitlement as it will be treated as income for a period of time. This is known as an "income maintenance period" ("IMP") and currently applies when any of the following payments are being claimed:

- Newstart Allowance;
- Youth Allowance;
- Sickness Allowance;
- Partner Allowance;
- Parenting Payment;
- Widow Allowance;
- Austudy Payment; and
- Mature Age Allowance.

The leave entitlements used to work out the length of the Income Maintenance Period are currently

- annual leave;
- sick leave;
- long service leave; and
- maternity leave.

26.3 Extension to Disability Support Pension claims

Schedule 16 (Parts 1 and 2) of the Bill extends the application of the Income Maintenance Period to Disability Support Pension claims. This means that a person whom the Secretary has considered incapable of working at least 15 hours a week on a long term basis will have to serve an Income Maintenance Period before they can be paid any Disability Support Pension. The only rationale provided for such an expansion in the Ex Mem is to "achieve consistency in the eligibility conditions for income support for working age people" (p137).

Applying the Income Maintenance Period to Disability Support Pension claimants who qualify under the tight, amended qualification criteria is unreasonable. By definition, a new Disability Support Pension recipient will have little or no capacity to work and their working days will most likely be over forever, especially given current levels of assistance and the current enormous workforce participation barriers faced by people with disabilities. As such, by extending the Income Maintenance Period to Disability Support Pension recipients the legislation is forcing them to expend payments that they will need and should be able to retain as savings. The Income

Maintenance Period is arguably reasonable for unemployed people who could reasonably be expended to find full-time paid employment quite readily. However, this argument makes no sense when applied to a person who satisfies the new restrictive qualification criteria for Disability Support Pension, most likely has high medical costs and who may never again be in a position to accumulate even modest savings.

26.4 Expansion to include redundancy payments

The Bill makes provisions for the inclusion of redundancy payments, when working out the length of the Income Maintenance Period to be applied to a person. Schedules 17, 18, 19 and 20 have this effect by including redundancy payments in the calculation of a person's ordinary income, for the purposes of working out the length of their Income Maintenance Period.

It is the nature of a redundancy payment that it is made to a person who has had no say in the loss of their employment. They have been left without paid employment through no fault of their own and often without reasonable warning. Their paid out leave payments will already preclude them from payment for a period of time. To lengthen this period by including their redundancy payment is unreasonable and harsh.

Recommendations
That the proposed amendments to apply the Income Maintenance Period to Disability Support Pension claimants be omitted from the Bill.

That the proposed amendments to include redundancy payments in the calculation of a person's Income Maintenance Period be omitted from the Bill.

26.5 Reducing the length of a waiting period

It is argued that the proposed expansion of the operation and scope of the Income Maintenance Period and Seasonal Workers Preclusion Period is both unnecessary and harsh. However, if these proposed amendments are to take effect, it is recommended that the existing provisions in the Act for the reduction of waiting periods be expanded.

The Act, and Bill, provide that these waiting periods can be shortened at the Secretary's discretion where a person is in "severe financial hardship" because the person has incurred "unavoidable or reasonable expenditure". Section 19C of the Act defines both "severe financial hardship" and "unavoidable or reasonable expenditure":

The Act defines ***unavoidable or reasonable expenditure*** *as:*

"19C.(4) ***Unavoidable or reasonable expenditure***, in relation to a person who is serving a liquid assets test waiting period or is subject to a seasonal work preclusion period, or a person to whom an income maintenance period applies, includes, but is not limited to, the following expenditure:

(a) the reasonable costs of living that the person is taken, under subsection (6) or (7), to have incurred in respect of:

(i) if the person is serving a liquid assets test waiting period—that part of the period that the person has served; or
(ii) if the person is subject to a seasonal work preclusion period—that part of the period that has expired; or
(iii) if an income maintenance period applies to the person—that part of the period that has already applied to the person;

(b) the costs of repairs to, or replacement of, essential whitegoods situated in the person's home;
(c) school expenses;
(d) funeral expenses;
(e) essential expenses arising on the birth of the person's child or the adoption of a child by the person;
(f) expenditure to buy replacement essential household goods because of loss of those goods through theft or natural disaster when the cost of replacement is not the subject of an insurance policy;
(g) the costs of essential repairs to the person's car or home;
(h) premiums in respect of vehicle or home insurance;
(i) expenses in respect of vehicle registration;
(j) essential medical expenses;
(k) any other costs that the Secretary determines are unavoidable or reasonable expenditure in the circumstances in relation to a person.

However, ***unavoidable or reasonable expenditure*** does not include any reasonable costs of living other than those referred to in paragraph (a).

Meaning of ***reasonable costs of living***

19C.(5) The ***reasonable costs of living*** of a person include, but are not limited to, the following costs:

(a) food costs;
(b) rent or mortgage payments;
(c) regular medical expenses;
(d) rates, water and sewerage payments;
(e) gas, electricity and telephone bills;
(f) costs of petrol for the person's vehicle;
(g) public transport costs;
(h) any other cost that the Secretary determines is a reasonable cost of living in relation to a person."

It is disappointing that the Bill has not expanded the scope for the Secretary to shorten a preclusion period by expanding the above categories. Given that this section will become relevant to a whole new group of more vulnerable Social Security recipients, this section should be given a much wider application.

Recommendation
That with the expansion of the Income Maintenance Period and Seasonal Workers Preclusion Period to even more parents, people with disabilities, and carers, the legislation be amended to make explicit mention in ss19c(4) and ss19C(5) of such things as:
- costs associated with activities, sport and other needs of children;
- a carer's costs associated with caring for a caree;
- costs associated with a person's disabilities;
- costs associated with a person's job search requirements under, for instance, the, RapidConnect amendments; and

- child care costs not covered by the Child Care Benefit.