SOCIAL SECURITY LEGISLATION AMENDMENT (IMPROVED SUPPORT FOR CARERS) BILL 2009

THE INQUIRY

1.1 On 19 March 2009 the Senate, on the recommendation of the Selection of Bills Committee (Report No.4 of 2009), referred the provisions of the Social Security Legislation Amendment (Improved Support for Carers) Bill 2009 to the Community Affairs Committee for inquiry and report by 7 May 2009.

1.2 The Committee received 9 submissions relating to the Bill and these are listed at Appendix 1. The Committee considered the Bill at a public hearing in Canberra on 28 April 2009. Details of the public hearing are referred to in Appendix 2. The submissions and Hansard transcript of evidence may be accessed through the Committee's website at http://www.aph.gov.au/senate_ca.

THE BILL

1.3 The Bill makes amendments to the *Social Security Act 1991* and the *Social Security (Administration) Act 1999* to improve income support arrangements for carers of children aged under 16 years with severe disability or severe medical condition (or with a care load equivalent to that of the care load associated with caring for a child with severe disability or severe medical condition).

1.4 The Bill amends the qualification criteria for Carer Payment and Carer Allowance will be introduced for carer payment paid in respect of a child under 16 years, based on the level of care required rather than the rigid medical criteria used currently. The amendments include:

- expanded circumstances in which carers can qualify for Carer Payment, encompassing 'single', 'multiple', 'combined' and 'exchanged care' arrangements;
- access to Carer Payment for short term or episodic caring circumstances;
- more sensitive and generous arrangements for carers of children who have been diagnosed with a terminal condition;
- provision for the FaHCSIA Secretary to determine a new assessment for Carer Payment through the *Disability Care Load Assessment (Child)*;
- provision for the FaHCSIA Secretary to determine a wider range of treating health professionals;
- more generous arrangements for carers of children when the child is in hospital by removing the suspension or cancellation of Carer Payment if a child is hospitalised for more than 63 days; and

- automatic qualification for Carer Allowance based on qualification for Carer Payment.[1]

1.5 A new test, the Disability Care Load Assessment (Child), will be introduced to assess the level of care required by a child or children because of their disability or medical condition and the level of care provided to the child or children by their carer. The Disability Care Load Assessment (child) will be contained in a new legislative instrument to be known as the Disability Carer Load Assessment Determination 2009. The Determination will contain the Disability Care Load Assessment (child), as well as scoring algorithms, matrices and qualification thresholds.

1.6 As part of the qualification requirements for Carer Payment the carer must receive a rating of intense under the Disability Care Load Assessment (child) for the child or children to whom they provide care.[2]

1.7 It is estimated that, in the first year, around 19,000 more carers will have access to carer payment. The Minister concluded:

> …these measures will provide a more flexible and accessible income support payment for Australians facing some of the toughest circumstances – caring for a child with severe disability or a severe medical condition.3

BACKGROUND

1.8 In November 2007 the Carer Payment (child) Review Taskforce reported. The Taskforce, chaired by Mr Tony Blunn AO, examined the eligibility criteria for Carer Payment (child), and considered the effectiveness of the payment in providing a safety net for carers of children with severe disabilities or medical conditions. The review was commissioned by the Government in response to concerns raised by carers in the community that the current payment eligibility requirements were too stringent and, therefore, financial support was not going to the people who provided care and were most in need.

1.9 The Taskforce found that many carers were ineligible for Carer Payment (child) because of its overly complex and restrictive qualification requirements. The Taskforce made 32 recommendations covering a range of matters around improved financial support through changes to Carer Payment (child) qualifications. The key to its recommendations was that eligibility should be assessed based on care needed and care provided, where that care precludes carers from substantial workforce

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[1] Department of Families, Housing, Community Services and Indigenous Affairs, *Submission* 6, p. 4.

[2] Department of Families, Housing, Community Services and Indigenous Affairs, *Submission* 6, p. 14.

[3] The Hon J Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, *Second Reading Speech*, House of Representatives Hansard, 18.3.09, p. 3029.

participation. Importantly, the Taskforce also talked about increased recognition for carers, increased support for carers to participate in the workforce and better support for carers more generally through improved service delivery. The Bill is the first part of the Government's response to the report.

ISSUES

1.10 Most submitters, including the Mental Health Council of Australia (MHCA) and Carers Australia, supported the proposed amendments to the social security legislation. Carers Australia commented:

> We see the introduction of the bill as an important step in addressing many of the unfair and inequitable rules and provisions that currently exist in the carer payment system and the broader income support system.[4]

1.11 National Disability Services also commented positively on the bill:

> I strongly think that the direction of this bill is the right one and in a number of ways it will allow more people to receive carer payment (child), and streamline the receipt of carer allowance for those who are not already receiving carer allowance as well.[5]

1.12 However, some concerns were raised in relation to the proposed amendments.

The assessment

1.13 The Bill provides that, as part of the qualification criteria for Carer Payment in respect of a child aged under 16 years, a carer must receive a qualifying rating of intense under the Disability Care Load Assessment (child). The Disability Care Load Assessment (child) will assess the level of care required by a child or children because of their disability or medical condition, and the level of care provided to the child or children by their carer.

1.14 The Disability Care Load Assessment (child) comprises two components:

- the Assessment of Care Load questionnaire – to be completed by the carer; and
- the Professional questionnaire – to be completed by a treating health professional, including registered nurses, registered psychologists, physiotherapists, occupational therapists and Aboriginal health workers.[6]

1.15 Carers Australia commented that the replacement of current assessment measures for Carer Payment (child) with the new Disability Care Load Assessment

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[4] Carers Australia, *Committee Hansard* 28.4.09, p. 1.

[5] Dr K Baker, National Disability Services, *Committee Hansard*, 28.4.09, p. 12.

[6] Department of Families, Housing, Community Services and Indigenous Affairs, *Submission* 6, pp 14–15.

should be a positive change for carers, allowing greater flexibility in the qualifying criteria for Carer Allowance.[7]

1.16 Submitters noted that the Disability Care Load Assessment Tool was not available and raised concerns about lack of consultation.[8] Carers Victoria commented that 'there needs to be transparency about the tool to be used'.[9] National Disability Services commented that a tool will need 'to be developed and shaped with a great deal of care and consultation, but the concept of measuring disability care load is sound'.[10]

1.17 Carers Australia stated that:

> …it is difficult to predict the content or the impact of the new disability care load assessment as it is not yet publicly available, and we have concerns around that. Policy will determine much of the new assessment and it is hoped that Centrelink and FaHCSIA will provide very extensive consultation processes with relevant parties—with family carers themselves—as they will play a very significant role in its development.[11]

In particular, Carers Australia noted its concern that the tool may not capture what it considered to be crucial aspects including the psychological impact: 'It is not only about hours of support, it is not only about the sorts of things that you can measure easily like medication, treatments and therapies but really about looking at the impact of the care'.[12] NDS commented that the tool should take into account aspects of the environment in which the carer and the child they care for operate.[13] In addition, it should take into account:

- geographical location and the impact of living in rural and remote regions;
- the carer's ability to easily access support services, networks and structures both formal and informal;
- whether the child has received the appropriate aids and equipment, such as a wheelchair or lifting system;
- whether a child needs additional care when growth or other changes occur, either episodically or longer term; and

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[7] Carers Australia, *Submission* 9, p. 5.

[8] Ms J Hughes, Carers Australia, *Committee Hansard*, 28.4.09, p. 2.

[9] Carers Association Victoria, Association of Children with a Disability (Victoria) and Palliative Care Victoria, *Submission* 4, p. 5.

[10] Dr K Baker, National Disability Services, *Committee Hansard*, 28.4.09, p. 9.

[11] Ms J Hughes, Carers Australia, *Committee Hansard*, 28.4.09, p. 1.

[12] Ms J Hughes, Carers Australia, *Committee Hansard*, 28.4.09, p. 2.

[13] Dr K Baker, National Disability Services, *Committee Hansard*, 28.4.09, p. 9.

- the impact of challenging behaviours and mental health issues on the level of care required.[14]

1.18 The Association for Children with a Disability also commented on the assessment tool and stated that it hoped that the questions will be able to clearly identify the extent to which parents and family members are caring for their child. The Association went on to comment that:

> We believe that the way in which those questions are couched will be very important in order to capture, from a family's perspective or a carer's perspective, the actual care load. It is a lot more difficult to do that if the questions are not couched correctly than it would be if the question was: 'How many hours are you providing personal care in a day?' We feel that a significant focus needs to be placed on those questions so that they do accurately capture the level of care that is provided.[15]

1.19 The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) considered that the introduction of the new assessment is the 'most significant reform' in the bill. The assessment will recognise and assess the total care load of the child, the care required by the child and the care provided by the carer. The assessment of care load questionnaire was developed by the Centre for Health Services Development at the University of Wollongong. The questionnaire was developed in consultation with carers and paediatric medical and allied health professionals and was piloted with over 1,200 carers of children with disability or a medical condition. FaHCSIA advised that:

> We went through a fairly robust process under very tight time frames. Some additional steps, if we had more time, would have been to engage a broader group of carers. The reassurance we had was that 1,200 carers—so people who provide care—gave very direct input both in completing the form and in their comments on a feedback sheet which was then looked at by the expert reference group. That is the sort of process that we went through, which is probably a bit more technically oriented. There was certainly no deliberate exclusion of those other groups.[16]

1.20 In response to concerns about what was included in the assessment, FaHCSIA indicated that it focuses on what the carer provides but does not look at the emotional or psychological impact on the carer or the carers ability to access support services, networks and structures. However, FaHCSIA further commented that:

> In the disability care load instrument, we give an opportunity for the carer to describe the impact that the child's behaviour, disability or special needs have on them and how that impacts on the everyday care that they provide. That can be a trigger for a complex assessment team to take some further

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[14] National Disability Services, *Submission* 3, p. 3.

[15] Ms E McGarry, Association for Children with a Disability, *Committee Hansard*, 28.4.09, p. 15.

[16] Ms L Emerson, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 28.4.09, p. 21.

> interest in the case if there seems to be a discrepancy between the measurement of care load and the fact that someone has described the impact on their life as very significant. I was trying to answer before about the psychological and emotional impact. While we do not specifically have another tool which measures that, there is some fail-safe—some sort of device within the questionnaire—which allows it to be identified and could be referred to the complex assessment team.[17]

1.21 Other matters that NDS considered should be included in the assessment were addressed by FaHCSIA which indicated that the impact of living in remote and rural areas will be taken into account through questions on travel to appointments. The aids and equipment the child receives will be assess as the care load for the carer will be greater if these are not available. In relation to the additional care needs that arise when growth or other changes occur, these will be taken into account in that a person who did not previously qualify for a payment may do so because of a change in a child's condition. FaHCSIA also noted that the impact of challenging behaviours and mental health issues will be recognised in that 'of the four domains in the questionnaire, two of them are behavioural, including to do with the child's own behavioural issues and the amount of intervention, supervision, prompting or whatever is required by the parent on a regular basis'.[18]

1.22 FaHCSIA also stated that it would be undertaking an evaluation of the tool from the time of implementation and would also meet with key stakeholders to explain how it operates.[19]

1.23 FaHCSIA responded to concerns about the definition of 'constant care' and 'personal care'.[20] It was stated that while 'constant care' is not defined in the Act 'it is the term which has been used for the present qualification provisions so it is understood both by the department and the tribunals as to what that means'. That is, as 'personally providing care on a daily basis for a significant period during each day'.[21]

1.24 In response to concerns about the availability of the assessment tool, FaHCSIA informed the Committee that a draft had been received and would be available within 24 hours. FaHCSIA provided the Committee with a draft on 29 April.

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[17] Ms L Emerson, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 28.4.09, p. 25.

[18] Ms L Emerson, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 28.4.09, pp 23–24.

[19] Ms L Emerson, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 28.4.09, p. 23.

[20] See Carers Association Victoria, Association of Children with a Disability (Victoria) and Palliative Care Victoria, *Submission* 4, p. 5.

[21] Mr S Francis, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 28.4.09, p. 23.

Episodic care

1.25 The proposed amendments will enable a person to qualify for carer payment if the person is providing care for someone under 16 who is likely to require care for a period of three to six months.

1.26 This provision was welcomed as a real benefit to caring families and has the potential to allow quick access to carer payment in extreme circumstances'.[22] Carers Australia commented:

> These provisions will mean that people across a wider range of caring situations can be assured of receiving the support they need during highly stressful life events.[23]

1.27 The Mental Health Council of Australia noted that this provision will be of particular benefit to carers of children who experience mental illness, due to the episodic nature of many mental illnesses. However, the MHCA considered that there would be enormous potential benefits if this provision was extended to carers of adults with mental illness and would reduce the financial burden on carers.[24] The Disability Services Commission also commented that the minimum period of three months may be too restrictive.[25]

1.28 Carers Australia raised concerns about the need for ongoing assessment and compliance measures in relation to episodic or short-term payments and the requirement for a carer to meet measures for ongoing qualification, and review processes will need to be reasonable.[26] Carers Victoria commented that the qualification period should be kept open for two years.

1.29 FaHCSIA responded to Carers Victoria's comments on the qualifying period:

> It is by implication rather than actually specifically being there. Because you could qualify so long as the care is likely to last between three to six months, then you would come back and put in a shortened application if you are one of those people who are having an episodic care requirement.[27]

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[22] Carers Association Victoria, Association of Children with a Disability (Victoria) and Palliative Care Victoria, *Submission 4*, p. 4.

[23] Carers Australia, *Submission* 9, p. 3.

[24] Mental Health Council of Australia, *Submission* 2, p. 2.

[25] Disability Services Council, *Submission* 7, p. 3.

[26] Carers Australia, *Submission* 9, p. 3.

[27] Mr S Francis, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 28.4.09, p. 32.

The shortened assessment 'would basically assure that other circumstances remain the same and that you still qualify under income and assets'.[28]

Exchanged care

1.30 The Bill introduces a new qualification for Carer Payment for 'exchanged care' situations. The aim is to address the fact that currently parents caring for children in 'exchanged care' situations may not meet the Carer Payment qualification requirement for the provision of constant care to the same child and that care is to be provided in the home of the care receiver. The proposed changes will allow carers to qualify for Carer Payment despite the fact that they are not providing constant care to the same care receiver(s) and that the care receiver may have more than one home.[29]

1.31 Both Carers Australia and Carers Victoria, while commenting that the proposed legislation recognises complex arrangements for divorced or separated parents, stated that the provision applies only to the care of two or more children and not to shared care of a single child who requires an intensive care load. In the latter case, it was noted that the capacity for either parent to adequately participate in paid employment is likely to be limited.[30] Carers Australia also commented that this may act to discourage shared care arrangements in families of a single child with a disability or illness.[31] In addition, it does not recognise care shared with other family members, for example, grandparents.[32]

1.32 Carers Australia stated that the shared care arrangements are a clear improvement. However, Carers Australia considered that multiple health professionals should be able to contribute to the qualification process in cases where treating health professionals may differ as care is shared. This would more accurately reveal an overall picture of the caring situation.[33]

1.33 In reference to the shared care arrangements FaHCSIA noted that they had been introduced to recognise that in some families there are a number of children with a disability: 'While each parent, while separated, has a continuing care load, it is

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[28] Ms L Emerson, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 28.4.09, p. 33.

[29] Department of Families, Housing, Community Services and Indigenous Affairs, *Submission* 6, pp 8–9.

[30] Carers Association Victoria, Association of Children with a Disability (Victoria) and Palliative Care Victoria, *Submission 4*, p. 7.

[31] Carers Australia, *Submission* 9, p. 5.

[32] Ms J Hughes, Carers Australia, *Committee Hansard*, 28.4.09, p. 4.

[33] Carers Australia, *Submission* 9, p. 4.

sometimes for a different child. In the past, those people were precluded from qualifying, because it was a different child.'[34]

1.34 FaHCSIA continued that:

> The issue of shared care remains somewhat problematic because, as…a full careload, reaching that intense qualification, would possibly not be realised by all people in a shared care environment. It would by some. Certainly in conjunction with the 63-day respite rule and other aspects of qualification, some shared care arrangements, one parent certainly would be able to qualify for carer payment. But, more realistically, if there was actually 50-50 shared care for one child neither parent would qualify under the proposed arrangements, because neither of them would be providing continuous personal care or meet the qualification…
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> So, if those parents are precluded from work because of their unavailability for that work every second week, for example, obviously Centrelink would look at whatever other assistance can be provided, but it would not be carer payment under the current proposition.[35]

1.35 FaHCSIA also noted that to be recognised under these provisions the care arrangements must be determined under one or more registered parenting plans or parenting orders, which are in force. In addition, for the purposes of this provision a 'parent' can be a natural or an adoptive parent, or person who has been granted legal guardianship under state, territory or Commonwealth law. Accordingly, the proposed exchanged care provisions could apply to grandparents or other kinship carers who have adopted the child/children or who have been granted legal guardianship under state, territory or Commonwealth law and who are party to one or more registered parenting plans, parenting plans or parenting orders in respect of the child/children.[36]

1.35 FaHCSIA responded that in relation to multiple health professionals:

> There is nothing to stop collaboration. I think we would ask, though, for a single treating health professional to sign the form in terms of a practical administrative thing for Centrelink to be able to deal with a form as opposed to multiple forms. But with regard to multidisciplinary teams who actually work with children, I think that, in practice, we would probably ask someone to take the lead but certainly to collaborate and consult would be fine. The questionnaire should be able to lend itself to that quite readily.[37]

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[34] Ms L Emerson, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 28.4.09, p. 27.

[35] Ms L Emerson, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 28.4.09, pp 27–28.

[36] Department of Families, Housing, Community Services and Indigenous Affairs, Answer to Question on Notice following hearing of 28.4.09.

[37] Ms L Emerson, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 28.4.09, p. 25.

Transitional arrangements

1.36 Carers Australia welcomed the new staged approach to Carer Payment transitions as it will ease the transition significantly. Transitional arrangements will be introduced so that if a person qualifies for carer payment for providing care to someone under 16, they will remain qualified for that payment for up to three months after the child turns 16.

1.37 The MHCA commented that this arrangement will allow carers more time to apply for carer payment and stated:

> As caring commitments can compete with requirements and timeframes for the completion of forms and assessments, this is a very valuable amendment, and one that is strongly supported by the MHCA.[38]

1.38 Carers Australia however argued that consideration needed to be given as to whether another assessment at this transition point was required as if carers have qualified for Carer Payment (child) using one set of assessment reports, surely these could be utilised to qualify them for ongoing payments.[39]

1.39 FaHCSIA informed the Committee that one of the reasons the Taskforce felt strongly that Carer Payment (child) was not reaching the right group was the large group of people who became eligible at age 16 under Carer Payment in respect of a child over 16 compared to those who were becoming eligible below that age. The proposed arrangements will make the assessment for the child much closer to that of an adult, 'so in essence the overall nature and underpinnings of the reform are to ease that transition'.

1.40 FaHCSIA also noted that the transitional arrangements will give carers a longer period to have a new assessment done under the adult disability assessment tool. Furthermore:

> This amendment, however, will not apply to grants provided on a short-term or episodic basis or for a care provider to a child with a terminal condition; there are some different rules around that. Qualification for carer payment for care provided on a short-term or episodic basis may continue for the duration of the term or the episode, so even if the care receiver does turn 16 then they still get it for whatever period. So, if the doctor said, 'This is a five-month thing,' they will get the full benefit even if they turn 16 the day after. They would be able to get it for the five months without any requirement there.[40]

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[38] Ms J Hughes, Carers Australia, *Committee Hansard*, 28.4.09, p. 1.

[39] Carers Australia, *Submission* 9, p. 7.

[40] Ms L Emerson, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 28.4.09, pp 25–26.

1.41 Witnesses also commented on the proposed arrangements for carers of children when the child is in hospital. The amendments will enable carers to continue receiving Carer Payment and Carer Allowance whilst the care receiver is in hospital as long as they continue to participate in the care of the child. Currently, access to Carer Payment is suspended or cancelled if a child is hospitalised for more than 63 days.

1.42 The MHCA, while supporting the removal of the 63 day restriction for children, commented that if the care receiver is an adult, the restriction applies. The MHCA saw no clear reason to apply the restriction only to carers of adults and considered that it should be removed.[41]

Centrelink

1.43 Carers Australia commented on the requirement for Centrelink staff to understand the new provisions:

> It is absolutely essential that all Centrelink staff have an adequate understanding of the new provisions and can pass this knowledge on to carers. That is probably one of our largest concerns, in that often policy does not keep pace with the training that is required of the people that have to deliver services, and we have concerns that in some Centrelink offices there is still a long way to go for those staff to truly understand the impact of caring on individual carers.[42]

1.44 Carers Australia went on to state that it met regularly with Centrelink senior management to discuss the impact of caring on carers when they are required to attend Centrelink and that Carers Australia was happy to provide Centrelink staff with training about improving their understanding that 'some of their customers are going through really tough times'.[43]

1.45 FaHCSIA responded that it had been working with Centrelink to identify how the proposed bill will impact on carers in order to prevent negative experiences and develop solutions to any problems as appropriate. FaHCSIA indicated that Centrelink will:

- issue new Carer Payment forms as soon as possible after the legislation is passed;
- provide onsite servicing at major paediatric hospitals for a number of weeks from the date that legislation is passed;
- stream any claim forms lodged prior to the 1 July 2009 implementation date to facilitate speedy assessment from 1 July 2009 when staff will be available to process claims; and

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[41] Mental Health Council of Australia, *Submission* 2, p. 3. See also ms G Pierce, Carers Victoria, *Committee Hansard*, 28.4.09, p. 14.

[42] Ms J Hughes, Carers Australia, *Committee Hansard,* 28.4.09, p. 1.

[43] Ms J Hughes, Carers Australia, *Committee Hansard,* 28.4.09, p. 7.

- establish new specialist carer assessment teams to undertake the assessment of Carer Payment in respect of a child aged under 16 years.[44]

1.46 FaHCSIA and Centrelink are also working together to coordinate complementary communication strategies to inform carers of the proposed changes to Carer Payment.

1.47 In evidence, FaHCSIA also responded to Carers Australia's offer of training and commented:

> We will talk to Centrelink about that. I think they usually welcome overtures from Carers Australia, and they have quite frequent interactions with groups. I think the reference and training tools that they are developing probably have aspects of what Carers Australia were asking for. So we will take that up with them. I think it is an excellent suggestion.[45]

CONCLUSION

1.48 The Committee welcomes the proposed amendments to the Carer Payment (child) arrangements. The arrangements will ensure that more carers who are unable to support themselves because of the demands of caring for children with disability or medical conditions are receiving financial support.

1.49 The Committee notes the concerns raised in relation to consultation processes. The draft Disability Care Load Assessment (Child) Determination 2009 is now available. As the determination contains the assessment questionnaires, the Committee considers that all peak groups should be invited to provide comments on the draft before the implementation of the new regime.

1.50 The Committee also considers that there is great benefit in Centrelink and Carers Australia working together to improve Centrelink's understanding of the concerns and needs of carers of children with disability or medical conditions.

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[44] Department of Families, Housing, Community Services and Indigenous Affairs, *Submission* 6, pp 17–18.

[45] Ms L Emerson, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 28.4.09, p. 32.

Recommendation

1.51 The Committee recommends that the Social Security Legislation Amendment (Improved Support for Carers) Bill 2009 be passed.

Senator Claire Moore
Chair

May 2009