

Submission
from
National Welfare Rights Network
to
Senate Inquiry into Social Security and Veterans' Entitlements
Legislation Amendment
(Schooling Requirements) Bill 2008

October 2008

1. The National Welfare Rights Network (NWRN)

NWRN is a network of community legal centres throughout Australia which specialise in Social Security law and its administration by Centrelink.

NWRN members provide casework assistance to their clients and others in the community sector, in the form of information, advice, referral and representation. NWRN members also conduct training and education for community workers, produce publications to help Social Security recipients and community organisations understand the system and maximize their clients' entitlements, undertake research and policy advocacy and support the NWRN in dealing with these issues at the national level.

Based on the experience of clients of NWRN members, the Network also undertakes research and analysis, develops policies and position papers, advocates for reforms to law, policy and administrative practice and participates in campaigns consistent with its aim to reduce poverty, hardship and inequality in Australia and to build a fair inclusive and sustainable Australia underpinned by a comprehensive, rights based Social Security safety net for all.

The NWRN advocates that the Social Security system in Australia should be characterised by an uncompromising recognition of the following rights:

- the right of all people in need to an adequate level of income support which is protected by law;
- the right of people to be treated with respect and dignity by Centrelink and those administering the Social Security system;
- the right to accessible information about Social Security rights and entitlements, obligations and responsibilities;
- the right to receive prompt and appropriate service and Social Security payments without delay;
- the right to a free, independent, informal, efficient and fair appeal system;
- right to an independent complaints system;
- the right to independent advice and representation; and
- the right to natural justice and procedural fairness.

2. Issues relating to the School Enrolment and Attendance through Welfare Reform (SEAM)

The scope of this Senate Inquiry relates to examining the effectiveness of the proposed measures included in the School Enrolment and Attendance through Welfare Reform (SEAM) and the impact on children and families of these measures.

The National Welfare Rights Network supports the need for students who are socio-economically disadvantaged to be fully engaged in school life. However, the network opposes the extension of conditional welfare in such a punitive and counter-productive measure as SEAM.

2.1 Conditional welfare provisions are already in place for truancy in the form of Income Management Categories for School Enrolment and School Attendance

The former Federal Government introduced in its legislation to support the Northern Territory Emergency Response (NTER) additional national categories of income management beyond those proposed to be used in the Northern Territory Intervention. Two of these national income management categories relate to school enrolment and school attendance which provide

for Centrelink to income manage the Social Security income support payments of parents whose children are not enrolled or attending school.

Additionally in the Cape York Trial (another existing national income management category), a potential precursor for referral to the Family Responsibility Commission is where: “the person's child has three absences in a school term without reasonable excuse or a child is not enrolled in school without lawful excuse”.¹ As such under the Cape York Trial from 1 July 2008 income management can already occur as a result of a child not being enrolled in or attending school.

Because of the confidentiality provisions in the *Family Responsibilities Commission Act 2008* (Qld) (section 147) the Family Responsibility Commission does not report on cases that come before it or that are resolved through the case management process through the making of agreements or orders. This means that organisations such as the NWRN are not able to assess what proportion of trigger events relate to school attendance or enrolment. Early anecdotal reports seem to indicate that there may be a greater need for educational authorities to discuss school attendance closely to ensure that community events such as show days, festivals and family celebrations do not cause unwarranted trigger notices.

Whilst the NWRN is not supportive of income management per se, the existing provisions ensure that where there are issues relating to school enrolment or school attendance, the child's parent/guardian will continue to receive their income support payment - albeit subject to income management. As such, a proportion of their income support entitlement is put into an income management account for expenditure on the person and their family's priority needs (including food, rent, utilities, etc) and they are left with the remaining proportion which may be used for discretionary items.

The introduction of SEAM will result in the immediate suspension of a “schooling requirement payment” (such as Newstart Allowance or Parenting Payment or Age Pension) for up to thirteen weeks.

¹ *Family Responsibilities Commission Act 2008*, Qld

There is the potential for a person to be subject to SEAM and income management simultaneously. Additionally, that person may also be subject to compliance penalties under either the existing compliance framework or the proposed new compliance framework (including penalties for “No Show No Pay”, Connection/Reconnection failures, Serious failures and 8 week preclusion periods for leaving work voluntarily or being dismissed for misconduct). All of these provisions add an additional level of complexity and have the potential for confusion as to why payments have been stopped or reduced and what can be done to resolve the particular infraction.

Payment Type	Loss of \$ per fortnight following suspension under SEAM
Parenting Payment (Single)	\$562.10
Parenting Payment (Partnered)	\$405.40
Newstart Allowance (Single with child)	\$486.00
Newstart Allowance (Partnered)	\$405.40
Age Pension (Single)	\$562.10
Age Pension (Partnered)	\$469.50

The above table illustrates the amount which would immediately be taken from a family’s budget once income support payments were suspended under SEAM. The removal of a significant proportion of regular income support payments from low income families will have immediate and adverse impact on these already vulnerable families and will not be conducive to children/pupils engagement/re-engagement in school.

2.2 Punitive nature of sanctions

This initiative runs contrary to the winding back by the current Federal Government from the more punitive aspects of the welfare reform agenda by

the previous Government and is disproportionately harsh and potentially counterproductive to the desire for every child to be engaged in education.

The NWRN has been critical of the existing punitive 'penalise first' compliance regime for participation payments which result in 8 week no payment periods. The current Government has recognised this in its *Employment Services Reform Bill* where it has sought to redesign the compliance framework from one which "has resulted in thousands of counter-productive, non-discretionary and irreversible eight week non-payment penalties"² to one which encourages engagement with the job network. It has also been recognised:

that stopping payment for eight consecutive weeks places job seekers, particularly already vulnerable job seekers, at great risk of disconnection and in many cases has resulted in personal crisis and homelessness. According to Homelessness Australia "up to 20 per cent of people who underwent an eight week "breach" lost their accommodation or were forced to move to less appropriate housing". Further, the 'penalise first' approach may result in costs to the community in other ways, through imposts on the health, housing and welfare systems, and placing additional pressure on charitable organisations to provide support.³

It must be recognised that removal of payments is not conducive to participation, so it is questionable how the removal of core income support payments for a period of up to 13 weeks is conducive to families with children engaging more fully in the education system. Such draconian measures, as proposed in SEAM will impact on the most disadvantaged in the community who often face complex family and other issues and entrench poverty and lead to further social exclusion.

2.3 Rebalancing Risk and Responsibilities away from Government and towards individuals including children

The proposed school suspension regime squarely moves the responsibility for school attendance and truancy from the State and Territory governments and

² Minister for Employment Participation, Second Reading Speech, Employment Services Reform Bill, 24 September 2008.

³ Ibid

places these responsibilities on parents and their children. Existing legislation, policies and guidelines set out approaches in relation to school enrolment and school attendance with a range of strategies and penalties including prosecution in more serious cases. The NWRN does not consider that the penalties proposed in SEAM should now extend to withdrawal of income support.

As a result of SEAM the role of the school and teachers will change in some communities to incorporate "government surveillance". This may damage the student/teacher relationship and community relationships with schools. It is desirable that schools work with their communities but this requires a level of trust. There is a very real chance that educational outcomes might be adversely affected by the implementation of the proposed measures. This would be counterproductive given the objectives of the bill. Evaluations of similar programs in the United States have found that geographic location was a better predictor of attendance than welfare status, and that illness rather than truancy was the major cause of absence.⁴

The source of a person's income will determine whether or not a person will be subject to SEAM. It is highly problematic that although the underpinning agenda of SEAM is to ensure satisfactory school attendance to contribute to better educational outcomes, these measures will only apply to those who receive "schooling requirement payments" (i.e. those receiving pensions and benefits). Other payments made by the Commonwealth pertaining to the support of children such as Family Tax Benefit will not be impacted by SEAM. The approach taken to target those on a pension or benefit appears consistent with the approach taken in the proposed Child Protection Income Management Trials, where if a person is not receiving a Category H welfare payment then they are not impacted by these measures. SEAM clearly targets the most disadvantaged within our community - who have less capacity to withstand an interruption to income support.

⁴ Professor Larissa Behrendt, (2008) , *Rethinking Welfare School-Attendance Policies*, Social Service Review, March 2005, Volume 79, No 1)

Apart from SEAM targeting those on income support payments there will be an increased impact on Indigenous people. Though SEAM is to be trialled in eight sites across Australia, six of the trial sites will be in the Northern Territory. These six trials will be in communities already subject to income management through the Northern Territory Intervention and thus it will have most impact on Indigenous people. Indigenous people have already been over represented in incurring eight week no payment penalties under the current compliance framework for participation payments since the introduction of Welfare to Work in July 2006. The announced SEAM metropolitan trial site in Cannington is a trial site for Child Protection Income Management and is a community in which there is a high proportion of Indigenous people. SEAM will also have a disproportionately higher impact on women who make up the greater number of parents receiving income support payments.⁵

SEAM will unfairly target those reliant on income support, Indigenous people and women whose children are not enrolled or attending school whilst disregarding the actions of parents whose source of income is other than Centrelink and Department of Veterans Affairs payments.

2.4 Mutual Obligation imposed on third parties (children)

Whilst acknowledging that individuals do bear responsibilities in relation to participation requirements, these new provisions will result and tie ongoing income support to an unrelated issue. SEAM will see the payments of parents being impacted by the actions of a third party, namely their children through their school enrolment and school attendance.

2.5 Lack of Evidence Base for SEAM

In 2005 the previous Federal Government commenced suspending the income support payments of Indigenous parents in Halls Creek where children had school attendance problems. Due to legal concerns the initiative

⁵ Australian Bureau of Statistics, Australian Social Trends 2001, Income support: Income support among people of workforce age'
<http://www.abs.gov.au/Ausstats/ABS@.nsf/2f762f95845417aeca25706c00834efa/33ab68b17185bc28ca2570ec000cbb47!OpenDocument>

was stopped as the requirement for parents to attend interviews relating to their children's school attendance was not supported. A subsequent voluntary trial in the same community commenced in 2005 whereby there was intensive work conducted by Centrelink and the local Job Network provider to engage parents in activities to encourage children's participation in school.

Participation in the initial Halls Creek trial, which included penalties for non compliance, showed an increase in the school attendance rates of the children of those participating in the trial. The difficulty with this trial is that there were only sixteen participants; the small number makes the findings unreliable. The later voluntary trial did not result in a consistent increase in school attendance, was particularly resource intensive and as such deemed too difficult and costly to replicate or roll out in other communities. The main factors impacting on inconsistent attendance at school during the voluntary trial related to parenting behaviour, teacher quality and school culture (including bullying). It was also cited in the Evaluation Report that a lack of housing stock in Halls Creek would likely impact on school attendance due to the impact of overcrowding on at least 31% of trial participants.

The focus of SEAM is firmly linked to parental behaviour through sanctions, however, it is questionable from the Halls Creek Voluntary Trial whether altering parental behaviour will have a flow on effect of increasing school attendance. In the Halls Creek Voluntary Trial it was found that:

*Encouraging parents to make sure their children attended school regularly did not work in this trial. However, this was not because the parents did not want to get their children to school. On the contrary, the parents volunteered to be in the trial because they very much wanted their children to go to school. But, as it turned out, they did not get their children to change.*⁶

Further it was stressed that it in order to improve school engagement “(t)he main means for doing this was stated to be through access to high quality teachers and a strong leadership culture within the school.”⁷

⁶ *Halls Creek Engaging Families Trial – July 2006 Evaluation Report*, Department of Employment and Workplace Relations, <http://mediacentre.dewr.gov.au/NR/rdonlyres/2B10D46E-592B-4531-B149-A5B91E69A13E/0/KA265HallsCreekEngagingFamiliesReport4October.pdf>

⁷ McCausland, Ruth , *A Hard Way to Learn Simple Lessons*, National Indigenous Times, 29 May 2008

There is thus a lack of evidence from Australia or overseas to support that SEAM will lead to improved educational engagement or outcomes.

2.6 Legislative Protections

It is a flaw of the proposed legislation that important aspects of these provisions will not be detailed in law and therefore will not be scrutinised before Parliament - they will instead be set out in legislative instruments and guidelines. Of particular concern is that “reasonable excuse” and “special circumstances” for non compliance, and “reasonable steps” to comply with a notice are not defined in the proposed legislation. There is no requirement for notices to clients in relation to either school enrolment or school attendance to be in writing, which is problematic.

Assurances have been made by the Minister for Education, Employment and Workplace Relations that:

Suspension of payments would only be used as a last resort following repeated attempts to engage a parent over a considerable period of time and would only be applied in those cases where a parent has not provided a reasonable excuse or there are some other special circumstances accounting for their inability to comply.⁸

We are concerned that it has not been made clear what support services or programs (if any) will be made available to parents in order to facilitate their child's enrolment and attendance at school.

The Minister acknowledged:

that some children, particularly young adults, do not have satisfactory school attendance despite concerted actions by parents to encourage regular school participation. Under the measure, parents who are taking reasonable steps to ensure their children attend school will be considered to be satisfying their requirements.⁹

There is little clarity as to how SEAM will be operationalised by Centrelink and the NWRN is concerned as to the responsiveness of Centrelink decision

⁸ Minister for Education, Employment and Workplace Relations, Second Reading Speech, 27 August 2008

⁹ Ibid

makers in ascertaining whether a parent has taken reasonable steps to ensure their child is enrolled and attends school. It is also of concern that it may only be after a suspension has been imposed that the family's circumstances become known.

The capacity to resolve issues will depend on the ability of parents to articulate and disclose issues to Centrelink. There need to be protections and safeguards where a family may already have involvement with a child protection department/authority in relation to care and protection issues. There is the potential with these measures that a parent may not challenge a decision or provide information for fear of further action from child protection authorities – a particularly sensitive issue for Indigenous communities.

As these suspensions will have an immediate and severe impact on the parents and guardians capacity to care for their children, the NWRN has concerns over the ability to resolve such issues quickly and easily with Centrelink. The NWRN would be cautious about any suspension system which did not provide for automatic payment pending the outcome of review, and for financial hardship provisions (including financial case management).

2.7 Vulnerable Parents and Guardians

The NWRN is particularly concerned with how SEAM will impact on vulnerable parents/guardians, particularly where there is disability in the family (physical or psychiatric), drug or alcohol abuse or where members of the family have been subject to domestic violence. We are also concerned regarding the effect on children and teenagers who may be forced to leave home. Currently there is the potential for those who have limited capacity due to the above factors to be exempted either fully or partially from certain participation requirements to receive their income support payments. It is not clear as to whether this type of vulnerability or a reduced capacity to comply will be permitted under SEAM.

There are many cases where separations are acrimonious and there are disputes about the care and custody of children. Imagine a case where one child in such a family truants and the parent loses their income support. The truancy may have arisen because of the family breakdown and subsequent

court cases. The income suspension may then become ammunition for future court battles and disputes.

2.8 Vulnerable Children

Respective child protection department/authority are charged with monitoring children judged to be “at risk”. In a family with children ranging from 2 years old to 13 years old, where the younger children may be known and monitored by the relevant child protection department/authority the truancy of the oldest child may result in the suspension of income support for the family and place the family in an even more fragile situation. The last thing that a child protection department/authority would want under such circumstances was the loss of income to the family.

The proposed system of suspensions fails to observe our obligations under Articles 26 and 27 of the United Nations Convention on the Rights of the Child, as these measures will potentially reduce significantly the money available to provide for “every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development”.¹⁰ Additionally it abrogates our responsibility to “provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing”.¹¹ The Convention on the Rights of the Child does not qualify school attendance as a precursor that provides for “every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.”¹²

2.9 Family Breakdown

The NWRN is concerned that SEAM could contribute to the breakdown of families where a young person refuses to attend school. With “schooling requirement payments” being linked to the attendance at school of young

¹⁰ Office of the High Commission for Human Rights, *Convention on the Rights of the Child*, <http://www.unhchr.ch/html/menu3/b/k2crc.htm>

¹¹ Ibid

¹² Ibid

people there is capacity that parents could make decisions to ask the child unwilling to attend school to leave home. This potentially could result in increased claims for payments from young people under the Unreasonable to Live at Home (UTLAH) Provisions. It would likely be that many of these claims would be rejected, as it would be deemed reasonable for a young person to return home on the condition of school attendance. In effect young people unwilling to attend school could therefore be without any type of support from parents or the Commonwealth.

SEAM will be applied to any person receiving a “schooling requirement payment” who has at least 14% care of a child. That is to say that a parent who may only care of a child one day per week could be impacted by these requirements and the suspension regime if their child is not enrolled or attending school. It would be questionable as to the impact that a parent or grandparent or other significant person in receipt of a “schooling requirements payment” could have on the attendance of a young person at school when their contact is one day per week. The potential implications of this initiative are that two families could be without income support due to the school attendance of one young person. It could create a disincentive for a person (including foster carers and grandparents) to be involved in the care of their child or another person’s child if the child’s behaviour through non attendance at school may jeopardise their core ongoing income support.

2.10 Suspension leading to Cancellation of Income Support Payments

The NWRN is concerned that under SEAM a consequence of being unable to comply with school enrolment and school attendance requirements will following suspension of payments lead to the cancellation of a parent or guardian’s primary income support payments. It is unclear whether in any reapplication for a participation payment that prior to payment being granted that a person will have to provide proof of enrolment or school attendance. New claims for these types of payments are routinely not backdated and so there could be significant periods without payment.

An unintended consequence for someone who has been in receipt of Parenting Payment under the pre-Welfare to Work provisions whose conditions for payment are currently saved may lose those protections if they have a break in payment of over 13 weeks. This will result in them having to

go onto Newstart Allowance at a lower rate and with a less generous income test.

3. Conclusion

The NWRN is opposed to the proposed bill in its entirety and considers that it should be withdrawn.