

Chapter 1

Committee Majority Report

1.1 The Social Security Amendment (2007 Measures No. 2) Bill 2007 was introduced into the House of Representatives on 16 August 2007. The Senate referred the provisions of the bill to this committee on 12 September 2007 for report on 18 September 2007.

Conduct of the inquiry

1.2 Notice of the inquiry was posted only on the committee's website. The timeframe for the inquiry did not allow for public advertisements to be placed. However, the committee contacted a number of organisations taken to have an interest in the inquiry to seek submissions. The committee received 11 submissions, a list of which is at Appendix 1. The committee did not conduct a public hearing for this inquiry.

1.3 The committee is grateful to those organisations who responded to this inquiry at very short notice.

Provisions of the bill

1.4 This bill amends both the *Social Security Act 1991* (the act) and the *Social Security (Administration) Act 1999*. The amendments arise in part from policy announcements in the 2007-08 budget and from other measures intended to build on the Welfare to Work reforms which commenced on 1 July 2006.

1.5 The estimated cost of the implementation of the bill is approximately \$6.2 million over four years.

Participation exemptions for principal carers

1.6 Item 1 of the bill inserts a new section 5E which defines 'relative (other than a parent)'. The effect will be to extend participation exemptions to principal carers who are relatives but not parents of children. The definition in section 5E includes only principal carers who are related to the child by blood, adoption or marriage or through recognised traditional community kinship ties. Further to this, the bill makes clear that the child must be directed to live with the relative as a result of a family law order under either the *Family Law Act 1975*, a state child order, or an overseas child order registered under the *Family Law Act 1975*. As defined in Item 7 of the bill, a family law order does not include parenting plans.

Work capacity guidelines

1.7 Another significant amendment concerns work capacity assessment provisions. Items 2 to 4, 17, 18, 25 and 33 of the bill provide that the Minister, instead of the departmental secretary, is responsible for making guidelines under legislative instrument regarding the determination of a person's capacity to work. These guidelines can be made in respect of determining if:

- a person is incapacitated for work because of a sickness or an accident;
- the incapacity is caused wholly or virtually wholly by a medical condition arising from the sickness or accident; and
- the incapacity is or is likely to be of a temporary nature.¹

1.8 The specific payment types for which these guidelines apply are the parenting payment, youth allowance, newstart allowance and special benefit. The amendments also require the secretary and review processes—including Centrelink Authorised Review Officers, the Social Security Appeals Tribunal and the Administrative Appeals Tribunal—to comply with the guidelines.

Disability Support Pension impairment tables

1.9 Items 36 to 46 of the bill make amendments to the terminology used in the impairment tables in Schedule 1B of the act which are used in the assessment of work-related impairment to determine a person's qualification for the disability support pension. The amendments will remove references to medical and clinical assessments or officers, for instance, replacing 'medical officer' with 'assessor' and 'medical assessment' with 'assessment'.

Section 12 of the Social Security (Administration) Act 1999

1.10 Item 47 of the bill repeals section 12 of this act and substitutes a new section that limits retrospective transfers between claims to 13 weeks. This item also clarifies that a claim is taken to be made without the need for a claim form. The bill further outlines, in Item 48, that a determination made on or after 1 January 2008 will be made under section 12 as proposed in this bill.

1.11 In addition, Items 29 and 34 of the bill omit references to section 12 in the sub-paragraphs relevant to the mature age allowance and partner allowance which were closed to new applicants in September 2003. This amendment is necessary as the new section 12 is no longer applicable to these closed payments.

Recovery of debt

1.12 Finally, Item 35 of the bill makes a technical amendment to clarify that the recovery of a debt is not able to be waived due to special circumstances if the debt has

1 Explanatory Memorandum, p. 7.

arisen due to a person knowingly failing to comply with the *Social Security (Administration) Act 1999*.

Key concerns

1.13 Many of the submissions raised concerns about the effects of the bill, with organisations representing the interests of people with a disability making up the majority of submitters. Support for the bill was limited to the proposed extension of participation exemptions for principal carers.

1.14 Government party senators also recognise that given the time constraints for this inquiry many of the submissions focussed only on one or two primary issues of concern and given more time would have commented on additional issues.

Principal carers

1.15 This aspect of the bill was broadly welcomed by those submitters who canvassed the issue.² The Department of Employment and Workplace Relations (DEWR) submitted that this amendment would recognise the contribution of relatives who take care of a child 'where parent(s) are unable or unwilling to do so'. The extension was also stated to be appropriate as this contribution from relatives, including grandparents, often reduces the need to place the child into formal foster care.³

1.16 The National Council of Single Mothers and their Children (NCSMC), in support of this amendment, stated that it would:

reduce the incidence and level of harm being experienced by children whose primary carer is required to comply with the demands of the workforce participation system and care for dependent children.⁴

1.17 Where unfavourable comments were made on this issue, the general concern was that the amendments did not go far enough. Both the National Council on Intellectual Disability (NCID) and NCSMC recommended that the exemptions be broadened and both provided examples where this would be appropriate.

1.18 The National Welfare Rights Network (NWRN), however, took particular issue with the narrow definition of a family law order. It submitted that:

Principal carers should be in a position to seek an exemption from participation requirements without the existence of a "family law order" as defined in item 7...[as this] undermines the utility and appeal of parenting

2 See the National Council on Intellectual Disability, *Submission 1*; National Welfare Rights Network, *Submission 2*; and the National Council of Single Mothers and their Children, *Submission 8*.

3 Department of Employment and Workplace Relations, *Submission 11*, p. 3.

4 *Submission 8*, p. 3.

plans that include non-parents, and stands in direct contrast to the current policy and legislative drive towards parenting plans and family relationship centres as alternatives to the Family Courts.⁵

1.19 In response to this, Government party senators note DEWR's assertion that this limitation in definition does not in any way preclude a relative who does not have a family law order made under the *Family Law Act 1975* from obtaining benefits. Short-term periods of exemption can still be granted on a case by case basis under the current laws.⁶

Changes to impairment tables

1.20 The majority of submissions expressed disapproval of the proposed amendments to the impairment tables in Schedule 1B of the act. The Mental Health Council of Australia (MHCA) stated that it:

appreciates that assessors may have knowledge and experience in occupations and the type tools that can be used to improve work capacity, however, [MHCA] does not agree with the assertions...that medical officers should not have a role in determining work functionality.⁷

1.21 Other submissions expressed similar concerns, for instance the NWRN argued that:

points under the Impairment Tables are given according to the actual impairment caused by an identified medical condition. They are not given according to their likely impact in the workplace. It therefore makes more sense that a person's impairment rating be assessed by that person's treating doctor or by another medical professional.⁸

1.22 Australian Council of Social Service (ACOSS) also provided examples from the act of situations in which 'assessors', such as Job Capacity Assessors (JCAs), would be unlikely to reliably determine the availability and likely effects of medical treatment. ACOSS concludes that the act should therefore retain the references to 'medical officer'.⁹

1.23 The committee notes these concerns and strongly agrees that medical professionals are best placed to make such assessments. Government party senators however believe these concerns to be unwarranted in this instance. As DEWR stated in its submission, these amendments are neither intended to remove nor negate the

5 *Submission 2*, p. 2.

6 Department of Employment and Workplace Relations, *Submission 11*, p. 4.

7 *Submission 3*, p. 2.

8 *Submission 2*, p. 4.

9 *Submission 10*, p. 3.

requirement to consider advice from medical practitioners. DEWR outlined the rationale for the amendments as follows:

While the diagnosis and prognosis of a person's condition...is a function which is appropriately undertaken by doctors, the impact of such conditions on a person's work functionality is a role which Job Capacity Assessors are best placed to undertake.

However, the Impairment Tables retain outdated references to medical officers and medical assessments. It is understood that these references were included in the Impairment Tables when all functional work assessments were undertaken by Government employed medical officers.¹⁰

1.24 Government party senators assert that these amendments have no ulterior purpose and rejects speculation that these amendments are intended to counter 'over generous' assessments in favour of applicants by medical officers.¹¹ Government party senators agree that these changes will ensure continued consistency for income support decisions and reviews.

Ministerial guidelines

1.25 Many of the submissions were concerned that neither the content nor the intent of the new ministerial guidelines had been made available. The NWRN stated that:

[NWRN] has not been made aware of the proposed content of these legislative guidelines. The NWRN does not know if the legislative guidelines will mirror what is currently in the Department's oft-amended policy, 'The Guide to the Social Security Law'...It is therefore impossible for us to comment on the likely effect of this provision.¹²

1.26 The Australian Federation of Disability Organisations (AFDO) also echoed this concern, stating:

If the Government wishes to provide more detail about the conduct and interpretation of work capacity assessments, this should be provided in the Social Security Act and not left to a disallowable instrument. In the absence of this scrutiny we cannot be assured that the measures contained in the Bill will not simply entrench the factors that are currently leading to many poor and inadequate work capacity assessments.¹³

1.27 In addition, ACOSS and the National Ethnic Disability Alliance (NEDA) were concerned that ministerial guidelines under legislative instrument would reduce

10 *Submission 11*, pp 8-9.

11 Social Security Amendment (2007 Measures No. 2) Bill 2007, Bills Digest No. 41, Parliamentary Library, 11 September 2007, p. 14.

12 *Submission 2*, p. 3.

13 *Submission 4*, p. 3.

the necessary flexibility and discretion currently available for determining a person's capacity to work. NEDA argues that the current flexibility provides the greatest amount of certainty that the individual will be assessed appropriately.¹⁴ ACOSS argues this point more extensively, stating that:

It would be inappropriate for detailed guidelines in such a complex and sensitive area to be legislated which could lead to an excessively rigid and prescriptive approach to decision making.¹⁵

1.28 The committee notes that the guidelines under a legislative instrument will oblige all decision makers to adhere to the guidelines when determining a person's capacity to work. This process will undoubtedly assist, as DEWR states, to ensure appropriate and consistent reviews of income support decisions.¹⁶ The committee also notes that this amendment would increase parliamentary scrutiny of the guidelines as they will be published on the Federal Register of Legislative Instruments and are disallowable.

1.29 The DEWR submission has also outlined the intent of the guidelines and provided an overview of the process.¹⁷ This should be of value to those organisations concerned with the content of the guidelines.

Amendments to section 12

1.30 Three submission specifically raised concerns with the amendments to section 12 of the act.¹⁸ AFDO stated that it could see no reason to place a time limit on the transfer between payments.¹⁹ Further to this, the NWRN's submission provided a detailed explanation on the purpose and application of section 12. The submission also outlined case studies illustrating how this section, as currently applied, has benefited both the individual applicant and the department. The NWRN concludes that:

relieving a person of a debt that they would not have incurred had they claimed an alternative payment earlier is merely a useful application of beneficial legislation. It puts the person in the position they would have been if not for their lack of knowledge or other circumstances...and the Commonwealth is thereby not out of pocket by applying the legislation in this way.²⁰

14 National Ethnic Disability Alliance, *Submission 6*, p. 2.

15 *Submission 10*, p. 2.

16 *Submission 11*, p. 7.

17 *Ibid*, p. 8.

18 See Mental Illness Fellowship of Australia, *Submission 5*; National Welfare Rights Network, *Submission 2*; and Australian Federation of Disability Organisations, *Submission 4*.

19 *Submission 4*, p. 3.

20 *Submission 2*, p. 6.

1.31 DEWR, however, outlined in its submission that section 12 operates in contrast to other similar provisions in social security law which already place restrictions on retrospective transfer payments. The committee considers it reasonable that a limit also be placed on section 12 transfers in line with other such limits contained in the act.

1.32 DEWR also identified that the lack of a retrospective transfer provision creates an undesirable administrative anomaly, potentially allowing a retrospective transfer to a closed or grandfathered payment. This is inconsistent with the Welfare to Work legislation, as DEWR stated in its submission:

the potential transfer of a recipient from a payment which has participation requirements to a closed payment type which does not have participation requirements undermines the effect and intention of the Welfare to Work measures.²¹

Conclusion

1.33 Government party senators consider that the bill effectively builds on current legislation, with improved arrangements for principal carers as well as provisions for increased clarity in the application of social security law.

Recommendation

Government party senators recommend that the bill be passed.

Senator Gavin Marshall

Deputy Chair, on behalf of the chairman, Senator Troeth

21 *Submission 11, p. 5.*

