Chapter 3

Dissenting Report from the Australian Greens

3.1 The *Social Security Amendments (2007 Measures No 2) Bill 2007* attempts to fill a gap in relation to principal carers and has important implications for people in receipt or applying for the Disability Support Pension. While the Australian Greens welcome the recognition by the Government that there is a need to address problems with these existing provisions in relation to principal carers (which we raised at the time these measures were enacted) we are not convinced that these amendments properly address these outstanding issues.

3.2 The Australian Greens are also concerned that there has been insignificant time for the Committee to adequately consider the Bill. Submissions to the inquiry indicated a number of issues that would have benefited from a lengthier inquiry. The Australian Greens are very concerned about a number of unintended consequences from the amendments proposed by the Government.

3.3 For the purposes of our Dissenting Report, the Greens will focus primarily on issues relating to principal carers, changes to Disability Support Pension and the amendments to section 12 of the *Social Security Act*.

Principal Carers

3.4 The Bill provides for an extension of participation exemptions to principal carers who are relatives but not parents of children – where the principal carer is providing care for a child as a result of a family law order (as defined in the Act). These amendments also allow the person in this new category of a relative who is a principal carer but not a parent to access the higher PPS rate of Newstart or Youth Allowance.

3.5 The Australian Greens are pleased that the Government is finally recognising the role of kinship care through these amendments. However, while we welcome the intent of these amendments, we are concerned that they do not go far enough to effectively address the reality of kinship carer's circumstances.

3.6 The fact the Government belatedly recognised the need for this amendment is a demonstration of the flawed approach of the Government's Welfare to Work laws. These laws end up punishing the people who ought to be supported by our welfare system. Having implemented such a punitive regime, the Government then finds itself needing to make these sorts of amendments on a seemingly *ad hoc* basis to rectify the extreme harshness of its unintended impacts and knock-on effects on particular groups of people.

3.7 We note the comments of the National Council of Single Mothers and their Children (NCSMC) welcoming this amendment because it "will 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."[1] However,

[1] NCSMC, S*ubmission* 8, p.3.

while these changes will undo some of the damage done by Welfare to Work in this regard, there are many more gaps that need to be addressed.

3.8 For example, we note the submission of the National Welfare Rights Network that there is a need to recognise less formal arrangements than those that fall under the definition of a "family law order". They comment:

> There exist many circumstances where a relative of a child may become a principal carer without court orders being made. The narrow scope of the definition as detailed in this item undermines the utility and appeal of parenting 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.

3.9 In many kinship care arrangements, family members who care for a child but do not have a family law order (or where protracted family law processes are still ongoing) still face the same demands as those with a formal order, and yet can still be subject to onerous activity requirements. There is no justification for the discrepancy, particularly when the Government is encouraging less formal arrangements through the establishment of Family Relationship Centres. These informal care arrangements are also particularly important in Aboriginal communities.

3.10 The Australian Greens agree with the recommendation from the National Welfare Rights Network that the definition of 'family law' should be extended to include parenting plans and other less formal care arrangements.

3.11 The Australian Greens also believe the Government should use this opportunity to fix broader principal carer inequities – particularly the contradiction between the presumption of equal shared care within the Family Law Act and the definition of a unitary principal carer within the Social Security Act. We have outlined this inequity in the past and will continue to draw it to the attention of the Senate until it is rectified. For the purposes of income support, the Government says that there is only one principal carer and that person is [treated as wholly or substantially] responsible for the care of the child. If you are the nominated principal carer you receive certain benefits under the Welfare to Work laws, whereas if you are the other parent in a shared parenting arrangement you receive exactly the same entitlements as someone with no parenting responsibilities.

3.12 The problem is that, at the same time as introducing Welfare to Work, the Government has made changes to family law which has moved to a model of equal shared care as the preferred social model. This is resulting in increasing numbers of parents with 50-50 shared caring arrangements within an income support system under which only one parent in a 50-50 shared care agreement can be determined to be the principal carer.

3.13 We are now seeing a significant number of people coming forward who nominally have 50-50 shared care, but are in reality shouldering an unequal part of the parental care burden because their shared care has not been recognised through the principal carer provisions of Welfare to Work. They are suffering and their children are suffering as a result of the Government not recognising that the move to a presumption of shared care within the family law system must be properly recognised within the income support system. The current situation is leading to disadvantage and inequality in the lives of many children.

3.14 The Australian Greens recommend that the income support definition of ‘principal carer’ be aligned with the intent of the family law changes to reflect the concept of shared parenting such that, where parents sharing the care of children each receive income support and the difference in percentage shared caring responsibility is 12 per cent or less, both are deemed to be principal carers.

Recommendation 1
That the definition of 'family law order' be extended to include parenting plans and other less formal care arrangements.

Recommendation 2
That the definition of 'principal carer' be amended to reflect the concept of shared parenting such that, where parents sharing the care of children each receive income support and the difference in percentage shared care responsibility is 12 per cent or less, both are deemed to be principal carers.

Changes to Disability Support Pension

3.15 There are two key issues with respect to the proposed changes to the Disability Support Pension: Firstly, the power given to the Minister to make guidelines by legislative instrument relating to the determination of a person's continuing inability to work, the application of impairment ratings, partial capacity to work and incapacity exemptions; and secondly, the changes to allow impairment ratings to be made by non-medically qualified assessors.

3.16 The Inquiry received a number of submissions from disability groups expressing concern over both of these changes.

Ministerial Guidelines

3.17 The main concern expressed by disability groups and the Australian Council of Social Services (ACOSS) on the issue of the Minister setting Guidelines by legislative instrument is the fear that such a change will restrict the discretion of the initial job capacity assessments and the Social Security Appeals Tribunal and Administrative Appeals Tribunal in reviewing the merits of assessments.

3.18 The Australian Greens share these concerns. Given that the proposed amendments provide that the Secretary must comply with the Guidelines determined by the Minister, the ability of the Secretary or a Job Capacity Assessor to take particular individual circumstances into account may be reduced. Discretion would necessarily be circumscribed by the fact of a legislative instruments setting out the Guidelines.

3.19 As ACOSS notes, the issues to be addressed in capacity assessments are highly complex, and accurate assessments require a high degree of discretion. The ACOSS submission makes a very important point on the complexity of assessments and the importance of this discretion:

> This is especially so under the present eligibility requirements for Disability Support Pension (DSP), which seek to make fine distinctions between those able to work for less than 8 hours per week, 15 hours per week, or 30 hours per week.

3.20 The Australian Greens are opposed to the idea of the Minister unilaterally creating guidelines for work capacity assessments. We believe that the creation of guidelines of this nature needs to involve a public consultation process to ensure that any such Guidelines are both credible and transparent. Given the great variation in individual circumstances and the corresponding complexities of the impacts and interactions of various disabilities on an individual's capacity to work, it is important that capacity assessment guidelines recognise that the experience and expertise of the assessor is a crucial factor – that they do not seek to be too prescriptive, and that they recognise the importance of expert discretion in capacity assessment.

Recommendation 3
That the changes relating to the Minister making guidelines by legislative instrument and those requiring the Secretary to then comply with those Guidelines be removed from the Bill.

Changes to impairment ratings

3.21 The second main issue with respect to changes to the DSP relates to the replacement of 'medical officers' with 'assessors' in the context of the impairment tables.

3.22 The key concern with this amendment is that it will make it even less likely that the job capacity assessment process will result in accurate assessments. This is likely to have significant consequence for persons in respect of accessing DSP.

3.23 As ACOSS points out, there are essentially two steps in assessing a person's work capacity: determining the person's impairment rating; and then assessing the effect of the impairment on the capacity of the person to work a certain number of hours each week. ACOSS suggests that the effects of the amendments are:

> …to remove any presumption in the Social Security Act that a qualified medical practitioner should conduct certain assessments, particularly the assessment of impairment rating using the Impairment Tables in Schedule 1B of the Act.

3.24 The ACOSS submission goes on to provide examples of where there should still be a presumption of a medical officer undertaking the assessments, because non-medically qualified professionals would be unlikely to make the expert assessments required. These examples include assessing the likely effects of medical treatment and pain or fatigue being assessed in terms of the underlying medical conditions which causes it.

3.25 The Inquiry also received submissions from organisations dealing with mental illness concerned that medical officers were best placed to make a decision about the impact of mental illness on a person's capacity to work, particularly when many such people may have a fluctuating capacity to work.[2]

3.26 The Mental Health Council of Australia comments that:

> Determining the ability of a person with mental illness to work can be a very complex process, and is not as simple as referring to a table and

[2] Mental Health Council of Australia p.2

applying points. A person may present well on the day of the assessment but then experience a relapse of their condition. This will not be picked up in the assessment if the assessor does not have the necessary medical information or an understanding of the mental illness.

3.27 The Australian Greens are not suggesting that there is no role for non-medical Job Capacity Assessors, and we recognise that JCAs come from a wide range of allied health professionals. However, we believe that there is no good reason for these amendments and we are concerned about their consequences on the quality and consistency impairment assessments.

Recommendation 4
That the changes which would allow impairment ratings to be made by non-medically qualified professionals be removed from the bill.

Amendments to Section 12

3.28 The Australian Greens take note of the submission by the National Welfare Rights Network in relation to section 12 and agree with their recommendation that the 13 week restriction be removed from the Bill.

3.29 The Greens can see no good reason why the 13 week restriction is necessary. We also agree with the National Welfare Rights Network that the application of Section 12 as a means of relieving debt is reasonable, given the unfairness of many debts and the limitations on waiver.

Recommendation 5
That the 13 week restriction on the application of section 12 of the Social Security Administration Act be removed from the bill.

Senator Rachel Siewert
Australian Greens