

# Chapter 1

## Government Senators' Report

### Introduction

1.1 The Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006 was introduced into the House of Representatives on 7 December 2006. On the same day, the Senate referred the provisions of the bill to the committee for inquiry and report by 20 February 2007.

### Conduct of the Inquiry

1.2 Notice of the inquiry was posted on the committee's website and advertised nationally in *The Australian*. The committee also contacted a number of organisations likely to be affected by the bill, notifying them of the inquiry and requesting submissions. The committee received ten submissions and two supplementary submissions. A list of those who made submissions is at Appendix 1.

1.3 The committee conducted a public hearing in Melbourne on 30 January 2007, followed by a brief hearing in Canberra on 8 February. A list of the witnesses who gave evidence is at Appendix 2. The committee would like to thank all those who contributed to the inquiry.

### Background

1.4 When the principal Act was being considered by the Community Affairs Committee in 2005, the Department of Employment and Workplace Relations (DEWR) provided detailed information on the welfare dependence of people of a working age. They stated that in September 2005, 19 per cent of working age people were receiving an income support payment, with more people receiving the Disability Support Pension (DSP) and Parenting Payment than any other form of income support.<sup>1</sup>

1.5 The Welfare to Work legislation, which commenced on 1 July 2006, aimed to reduce this welfare dependency and increase workforce participation. It was supported by a \$3.6 billion expenditure on extra services, including employment services and other assistance to support people to re-enter the workforce and find a suitable job. This package specifically included an additional \$192 million over three years for

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1 Chapter One, in Senate Community Affairs Committee, *Inquiry into Employment and Workplace Relations Legislation Amendment (Welfare to Work and other Measures) Bill 2005 and Family and Community Services Legislation Amendment (Welfare to Work) Bill 2005*, November 2005, p. 2

vocational rehabilitation services to ensure access for all eligible people with new part-time activity tests or participation requirements. These services are intended to provide a range of employment and related facilities to assist people on income support locate and retain employment, especially those with an injury, disability or particular health condition.<sup>2</sup>

### **Purpose of the bill**

1.6 There are two key components of the bill. Firstly, it provides for changes to the delivery of government funded vocational rehabilitation services, allowing for the staged introduction of partial competitive tendering by 1 July 2007 by amending the *Disability Services Act 1986*. The amendments remove the current requirement for individual rehabilitation programs to be approved under that Act. It also broadens the delegation powers of the DEWR Secretary to allow for additional providers of vocational rehabilitation services.

1.7 Second, the bill amends social security laws to ensure that measures in the Welfare to Work legislation accord with policy intent and are internally consistent.<sup>3</sup> These amendments include:

- clarifying the definition of the transitional group of DSP recipients and their entitlement to keep the Pensioner Education Supplement (PES) if moved to Newstart or Youth Allowance;
- allowing for Financial Case Management debts to be deducted from social security payments;
- reflecting changes in terminology, replacing the term 'pension period' with 'instalment period', and removing references to the redundant payment of rehabilitation allowances in the New Enterprise Incentive Scheme provisions;
- making changes to the income test arrangements for the Community Development Employment Project Scheme to reflect the new higher rates and to clarify the income calculation process for particular members of a couple; and
- clarifying the intended treatment of indexation decisions.

1.8 In summary, the committee majority sees these amendments as improving the Welfare to Work legislation. It notes that the amendments are the latest measures to increase workforce participation and improve employment rates.<sup>4</sup>

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2 Department of Employment & Workplace Relations, *Submission 7*, p. 2

3 *ibid.* p. 1

4 Hon. Dr Sharman Stone MP, Minister for Workforce Participation, 'Second Reading Speech', Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006, *House of Representatives Hansard*, 7 December 2006, p. 18

1.9 The committee majority now turns its attention to three specific matters of concern raised during the inquiry. These include the changes to the provision of Vocational Rehabilitation Services, the Pensioner Education Supplement changes and the raising of debts through the Financial Case Management system.

### **Vocational rehabilitation services**

1.10 At present, Commonwealth Rehabilitation Services (CRS) Australia, a business unit of the Department of Health and Ageing, is the sole provider of government funded Vocational Rehabilitation Services under Part III of the *Disability Services Act 1986*. The bill will mean that, in selected regions, CRS Australia will effectively become a competitor within a wider vocational rehabilitation market. This competition should provide more choice, in some areas, improving the range of assistance needed for people on welfare to re-enter the workforce.<sup>5</sup> Not only will competition advantage recipients of income support but as the Minister for Workforce Participation, the Hon Dr Sharman Stone MP, has also observed:

The competition that results will promote innovation [by providers] and better ways to help people overcome disability and rejoin the workforce as soon as possible.<sup>6</sup>

1.11 The government has decided to introduce competition in stages. The first stage introduces partial competition for the two-year period beginning 1 July 2007. DEWR has advised the committee that it has already begun the tendering process and aims to offer up to 20 per cent of the current fixed places (about 23,000 people each year) and up to 50 per cent of the new demand driven stream (about 34,000 people a year) to private rehabilitation providers.<sup>7</sup> The committee majority believes that this staged introduction of competition will achieve the best outcome for beneficiaries. The department explained:

You want to take it slowly and actually test the capacity of the market to provide a quality service and, in future years...you go in and look at the market again. The market changes and the demands change.<sup>8</sup>

1.12 Many submissions were concerned about DEWR's ability to regulate the private market and ensure that quality services continue to be provided. The Community and Public Sector Union (CPSU) forcefully argued that CRS Australia is best placed to deliver quality vocational rehabilitation services as they are bound by the *Public Service Act 1999*, giving people access to review decisions before the Administrative Appeals Tribunal, as well as other protections. Although the

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5 Department of Employment & Workplace Relations, *Submission 7*, p. 1

6 Hon. Dr Sharman Stone MP, Minister for Workforce Participation, 'Industry Alert for Vocational Rehabilitation Services,' Media Release, 27 June 2006.

7 Department of Employment & Workplace Relations, *Request for Tender for Vocational Rehabilitation Services 2007-2009*, p. 10

8 Mr Barry Sandison, *Committee Hansard*, 30 January 2007, p. 32

government commends the work that CRS Australia has undertaken (they serviced 43,945 clients in the last financial year<sup>9</sup>) the committee majority does not believe that they are the only quality provider of vocational rehabilitation services or that the *Public Service Act 1999* is the only appropriate regulatory mechanism.

1.13 Other vocational rehabilitation providers include workers' compensation authorities, motor accident compensation authorities, compulsory third party scheme authorities and non-governmental organisations.<sup>10</sup> They work in different regulatory environments including those associated with the *Occupational Health and Safety (Commonwealth Employment) Act 1991* and the *Safety, Rehabilitation and Compensation Act 1988*. There are also various state-based workers' compensation and motor accidents/transport accidents legislation.<sup>11</sup> The committee is satisfied that there are other standards and regulations outside of the *Public Service Act 1999* which could ensure quality of service.

1.14 Furthermore, the committee was provided with a copy of the draft contract and the request for tender document compiled by DEWR.<sup>12</sup> The contract outlines a service guarantee, code of practice, performance review and star ratings systems which are continually monitored by DEWR, ensuring "that those that can deliver the services at the high standard are the ones that are supporting the people that need the assistance."<sup>13</sup> In the case of non-compliance, the contract outlines penalties, including whole or partial termination of the contract, suspension of referrals of clients to providers and reduction in, or suspension of, allocated business.<sup>14</sup> The committee majority is satisfied that the draft contract would provide a comprehensive monitoring and compliance regime resulting in a comparable or better quality of service.

1.15 The committee also notes that the Australian Federation of Disability Organisations (AFDO) and the National Welfare Rights Network, supported by the Physical Disability Council of Australia, raised important concerns about a number of cases where Job Capacity Assessment providers operated from sites which were not accessible for people with disabilities who were required to attend an assessment.<sup>15</sup> While these are legitimate concerns, these were contracts administered by the

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9 Department of Human Services, *Annual report 2005-06*, p. 89

10 Australian Rehabilitation Providers Association, *About Us*, [http://www.arpa.org.au/About/About\\_ARPA.aspx](http://www.arpa.org.au/About/About_ARPA.aspx) (accessed 14 February 2007)

11 Department of Family & Community Services, *The Assessment & Contestability Trial Evaluation Report*, 2003

12 Department of Employment & Workplace Relations, *Request for Tender for Vocational Rehabilitation Services 2007-2009*

13 Mr Barry Sandison, *Committee Hansard*, 30 January 2007, p. 25

14 Department of Employment & Workplace Relations, *Request for Tender for Vocational Rehabilitation Services 2007-2009*, p. 72

15 Australian Federation of Disability Organisations, *Submission 1a*, p. 2; National Welfare Rights Network, *Submission 10a*, p. 2

Department of Human Services. The committee majority regards the DEWR contractual requirement of compliance with the Disability Services Standards, as recommended by AFDO,<sup>16</sup> as a satisfactory measure to avoid the occurrence of similar incidents.

1.16 The Mental Health Coordinating Council (MHCC) and the Mental Health Council of Australia (MHCA) raised specific concerns about the adequacy of rehabilitation services for people with mental health problems, citing a concern over the possible lack of tenders from specialist services.<sup>17</sup> The MHCC supports the amendments in principle providing there is guaranteed access to mental health specialist vocational rehabilitation services.<sup>18</sup> The committee was assured by DEWR that there is an incentive payment structure within the tender arrangements, which allows for an intermittent support fee of an additional \$605 specifically for supporting a job seeker with an assessed mental health condition.<sup>19</sup> In light of this advice the committee takes the view that the legislation addresses this concern.

1.17 Some submissions also raised concerns about the right to review the assessment of needs made by the private vocational rehabilitation provider. As CRS Australia is a government authority, people currently have the right to appeal a decision to the Administrative Appeals Tribunal. The committee put this question to DEWR and was assured that people will still have clear access to complaints procedures. This could initially be by addressing the issue with the organisation concerned and if their issues are not resolved they will be able to contact the Complaints Resolution and Referral Service (CRRS), an independent body responsible for resolving complaints.<sup>20</sup>

1.18 Finally, there was a technical concern raised with the committee regarding item 17 of the bill, which was revisited at the supplementary hearing. The amendment provides for a limited time override of subsection 5(2), (3) and (4) of the *Disabilities Services Act 1986* between Royal Assent of the Act and 1 July 2007. Currently, section 5 requires any guidelines to be tabled in parliament, followed by 15 sitting days, before they will take effect. The explanatory memorandum stated that the guidelines would still be subject to the *Legislative Instruments Act 2003* and thus subject to disallowance by parliament. The committee sought an assurance from DEWR that the guidelines would remain subject to disallowance under the *Legislative Instruments Act 2003*. DEWR advised that it had sought advice from the Office of

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16 *Submission 1a*, p. 3

17 Mental Health Council of Australia, *Submission 2*, p. 2

18 *Submission 3*, p. 1

19 Mr Tony Waslin, *Committee Hansard*, 30 January 2007, p. 25

20 Department of Employment & Workplace Relations, *Request for Tender for Vocational Rehabilitation Services 2007-2009*, p. 5

Parliamentary Counsel during the drafting of the bill and was certain that the Act would apply and the guidelines would be subject to disallowance by parliament.<sup>21</sup>

## **Pensioner Education Supplement**

1.19 A number of submissions, and several witnesses who gave evidence, indicated strong concern about the proposed amendments to the Pensioner Education Supplement (PES), a weekly allowance of \$31.20 to assist people with the costs of study while on the DSP. The National Welfare Rights Network (NWRN) submitted that the government is seeking to disadvantage allowance recipients in contradiction to a prior commitment to assist people with disabilities to complete their studies.<sup>22</sup> Catholic Social Services Australia (CSSA) argued that the amendments illustrate the government's desire to make negligible financial savings at the expense of increased productivity and other long-term social benefits.<sup>23</sup>

1.20 The committee majority considers the concerns in regard to the PES to be overstated, and based on a misunderstanding of the intent of the government. This amendment is not about financial savings, as the number of people potentially affected is nominal, and DEWR advised that there are no savings expected from the amendment to the legislation.<sup>24</sup> Neither is this amendment intended to persecute people with disabilities. The Welfare to Work package specifically provided protections for people with disabilities in the transitional group (about 20,000 to 25,000 people)<sup>25</sup> and the PES remains a valuable support for those eligible for the DSP.

1.21 The committee majority accepts that the legislation does not contain a sufficient definition of the transitional group and the circumstances under which the protections would apply. The initial intention of the government was to encompass only those people who qualified for the DSP between 11 May 2005 and 30 June 2006 and who were transferred to Youth Allowance or Newstart Allowance after their first review. If after that first review they remain on the DSP, the amendment aims to clarify that at future reviews they will be considered an ordinary DSP recipient, in line with policy intent.

1.22 The committee majority commends the government's ongoing commitment to supporting people to undertake study in preparation for work and welcomes the protection granted to the transitional group of DSP recipients.

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21 Ms Elizabeth Bundy, *Committee Hansard*, 8 February 2007, p. 12

22 *Submission 10*, p. 4

23 *Submission 9*, p. 7

24 Department of Employment & Workplace Relations, *answers to question on notice*, 30 January 2007, p.1

25 Mr Barry Sandison, *Committee Hansard*, 30 January 2007, p. 27

## Financial Case Management

1.23 Submissions sent to the committee make it clear that there is considerable concern about the amendment to enable deductions to be made from income support payments to repay debts raised through financial case management. Opposition to this amendment by the welfare agencies appears to be based on a general dislike of the financial case management system, rather than opposition to the amendment which deals with the method for recovering the debt.

1.24 The Australian Council of Social Services (ACOSS), supported by AFDO,<sup>26</sup> acknowledges the need for Centrelink to recover overpayments of income support, provided the legislation also defines circumstances in which debts could be raised.<sup>27</sup> However, CSSA would prefer any overpayments made under this system to be deemed unrecoverable and seen as "an additional cost of an imperfect compliance system."<sup>28</sup> The NWRN also expressed the view that payments should not be recoverable by deductions from social security payments, with their main concern being the lack of a statutory right of appeal.<sup>29</sup>

1.25 The committee sought information from DEWR regarding the financial case management payment process, as there was some uncertainty over whether these payments could be mistaken for charity. DEWR provided the committee with the forms given to a job seeker under the program, one an initial registration form and the other an expense lodgement form signed before each payment is made. Both forms clearly state the conditions under which payments are made, acknowledging that any incorrect payments made on a job seeker's behalf will have to be repaid to Centrelink.<sup>30</sup> The committee majority is of the view that these payments are clearly not gratuities and that the recipient should be well aware of the obligations and the possibility of a debt being raised.

1.26 It should also be noted that debts incurred under the financial case management system can already be recovered under statute or common law, or according to legal principles of equity.<sup>31</sup> It is not currently possible for the debt to be recovered through the process of fortnightly income support payment deductions, a well established mechanism used for other government welfare programs. This amendment intends only to modify the means of debt recovery, making it easier and simpler for all concerned, and does not seek the right to raise or recover debts. It is

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26 *Submission 1*, p. 4

27 *Submission 4*, p. 2

28 *Submission 9*, p. 5

29 *Submission 10*, p. 3

30 Department of Employment & Workplace Relations, *answers to question on notice*, 30 January 2007, p. 4

31 *ibid.*

also important to note that of the 247 job seekers who have taken up an offer of case management, none have so far incurred a debt.<sup>32</sup>

## **Conclusions and recommendation**

1.27 A key objective of the government is to maximise the ability of people to find work, particularly those who face the most severe barriers to work, and to reducing welfare dependency.

1.28 In considering the evidence to this inquiry, the committee concludes that the provisions of the bill are consistent with the intent of the existing Welfare to Work package. Amendments to the provision of vocational rehabilitation services will pave the way for increased choice as well as encouraging innovation in the provision of services.

## **Recommendation**

**The committee majority recommends that the bill be passed without amendment**

**Senator the Hon Judith Troeth**

**Chairman**

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32 Department of Employment & Workplace Relations, *answers to question on notice*, 30 January 2007, p. 4