

## **Chapter 2**

### **Opposition Senators' Report**

2.1 The introduction of the Welfare to Work and Vocational Rehabilitation Services Amendment Bill 2006 represents a continuation of the most significant downgrading of the income support system since the Social Security Act was introduced in 1947. Although this bill was prepared under the guise of maximising the ability of people to find work, especially those with disabilities, Opposition senators believe that it will have the opposite effect.

2.2 Opposition concerns with the proposed new arrangements relate to the implementation of the changes, as well as the changes themselves. The amendments to vocational rehabilitation services and the lack of review mechanisms for financial case management debts are a matter of concern. Opposition senators also take exception to the government's attempt to subvert proper parliamentary process in order to meet unrealistic implementation deadlines.

2.3 There are also some areas of the bill which the Opposition cannot support either in principle or in practice. Of particular concern are the measures to restrict access to the Pensioner Education Supplement (PES). These amendments undermine protections for some Disability Support Pension (DSP) recipients, further embedding the government's punitive approach to welfare reform.

#### **Vocational rehabilitation services**

2.4 Opposition senators do not oppose, in principle, competitive tendering in the vocational rehabilitation services market. The government has been contracting out and increasing number of services, gradually reducing public accountability across the entire human services sector. It is again evident with this bill that the government is relying on the introduction of competition itself to ensure quality of service, as the bill fails to introduce adequate safeguards and regulations. A genuine interest in the welfare of the people who access these services is not the impetus for introducing competition. Rather it is the predisposition to believe that competition will always guarantee efficiency and quality of service. This is not the case. It will depend on particular circumstance. This ideologically blinkered approach is where the Opposition finds the greatest fault in the government's proposal.

2.5 Submissions received from the welfare sector were particularly concerned with provisions allowing private providers to be granted contracts without possessing a certificate of compliance with the Disability Services Act.<sup>1</sup> While Opposition

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1 See Australian Federation of Disability Organisations, *Submission 1*, p. 3; and Mental Health Council of Australia, *Submission 2*, p. 3

senators understand that this is due to potential new providers entering the market, they find themselves in agreement with the Mental Health Council of Australia that this will not assist in any way to ensure an initial high standard of service, appropriate consideration for people with mental health conditions and, more importantly, confidence in the accessibility of the site for people with disabilities.<sup>2</sup>

2.6 Another argument raised against the bill by the National Association of Community Based Children's Services and the Community and Public Sector Union is that the lack of safeguards could lead to a reduction in services, poorer rehabilitation outcomes and fewer specialist services.<sup>3</sup> Where profit margins are tight, quality of service and resources may be reduced and in recognition of this possibility Department of Employment and Workplace Relations (DEWR) has not tendered 'organisations in locations where they are not going to be financially viable and able to deliver the required quality service to the individual.'<sup>4</sup> Opposition senators do not believe this to be an adequate measure. There must be regulatory mechanisms focusing on achieving the best outcomes for people, especially those with specific mental health conditions, and ensuring a consistent national service quality.

2.7 The tender contracts supplied to the committee also fall significantly short of ensuring that people will have adequate appeal mechanisms. This is because the bill removes the requirement that individual rehabilitation programs be approved by the secretary under the *Disability Services Act 1986*. The statutory right to appeal the content of individual rehabilitation programs through either an internal review process or the Administrative Appeals Tribunal has been removed without an equivalent, alternative safeguard in place. The right to review is especially important when an Activity Agreement comprises a compulsory rehabilitation program, as failure to meet the requirements can lead to a 'participation failure' and a possible eight week non-payment period.<sup>5</sup>

2.8 Australian Federation of Disability Organisations submitted that other privatised systems, including job capacity assessments and employment service provisions that have similar provisions for complaint systems which have been found to be inadequate.<sup>6</sup> The extent of the safeguard that the government has provided rests with the independent Complaints Resolution and Referral Service. However this service helps 'people talk about their issues and help[s] find a resolution' and is no more than a counselling service. The Opposition finds this to be extremely unsatisfactory and could potentially make people more reluctant to access these programs.

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2 *Submission 2*, p. 2

3 Community and Public Sector Union, *Submission 6*, p. 4

4 Mr Tony Waslin, *Committee Hansard*, 30 January 2007, p. 32

5 National Welfare Rights Network, *Submission 10a*, p. 1

6 *Submission 1*, p. 1

2.9 Opposition senators are also concerned about the possibility of 'difficult' cases being passed over by rehabilitation providers in favour of less complex ones. The Mental Health Coordinating Council submitted that they are:

Aware of consumers/clients remaining on the books indefinitely in job network services because they are “too difficult” to place, and the system remunerates agencies for successful placements. It is a perverse incentive that makes it more attractive for agencies to focus on easier-to-place clients at the expense of those who may prove more challenging. It is important to bear in mind the risk of a similar phenomenon occurring under the proposed contestability in vocational rehabilitation when developing guidelines under the Act.<sup>7</sup>

2.10 It is also completely unacceptable for the government to promote this bill as allowing people with disability or injuries 'greater choice of rehabilitation providers to assist them to re-enter the workforce.'<sup>8</sup> This bill will only give some people choice in areas wealthy enough to sustain the profitability of a private provider. It is unlikely that rural areas or small regional centres will benefit from increased choice. DEWR has also not ruled out private providers replacing CSR Australia altogether in some areas, delivering a change in providers rather than a choice.<sup>9</sup> Opposition senators note the risk here of 'socialising the losses while privatising the gains', especially in the 'unprofitable' rural and regional centres which may be left to the Commonwealth to service.

### ***Subversion of political processes***

2.11 The committee has noted that the government has opened up the rehabilitation market for tender even before this bill has been passed by the parliament. This takes no account of any outcome of debate on the details of the bill, and is to be adopted as a signal of the government's contempt for parliamentary process.

2.12 Opposition senators are concerned by the government's continued erosion of parliamentary scrutiny provisions. Item 17 of this bill provides a limited time override of the right of both houses to amend the Disability Services (Rehabilitation Services) Guidelines under section 5 of the *Disability Services Act 1986*. The rationale behind this amendment, as outlined in the explanatory memorandum, is that as section 5 allows both houses fifteen sitting days in which to amend the guidelines this could delay their approval beyond 1 July 2007, the proposed starting date of the changes.<sup>10</sup>

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7 *Submission 3*, p. 2

8 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

9 Mr Tony Waslin, *Committee Hansard*, 30 January 2007, p. 31

10 Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006, *Explanatory Memorandum*, p. 5

2.13 Although the committee has been assured by DEWR that the guidelines will still be subject to disallowance under the *Legislative Instruments Act 2003*, Opposition senators are uncertain of this fact and of the strong belief that the rights of parliament should not be overridden in any case as a matter of convenience. The government should have retained existing legislative scrutiny requirements, instead of amending them to suit doubtful timetables. This is yet another example of the contempt the government has shown for the parliament.

2.14 Opposition senators are also incensed that the government would begin the tendering process for vocational rehabilitation services before the bill has been introduced into parliament. The Minister for Workforce Participation released an industry alert for the tendering process as far back as June 2006, with applications for tender closing on the 8 November. The entire tendering process was completed, save for the awarding of the contracts, a month before the bill was introduced into parliament in December 2006. This illustrates great arrogance on behalf of the government and a contempt for political process.

### **Pensioner Education Supplement**

2.15 Over the next three years, through the government's Welfare to Work changes, approximately 81,000 people with disabilities will be put onto lower payments, mainly Newstart Allowance.<sup>11</sup> This is because the DSP is now only available to those who are unable to work at least 15 hours per week, instead of the previous benchmark of 30 hours. Currently, people on Newstart Allowance are only allowed to undertake short courses of study or training whereas people on the DSP can be supported through the PES to undertake a university or TAFE course.

2.16 Opposition senators note that during the previous Senate inquiry into the Welfare to Work legislation no evidence could be provided to support the government's policy of reducing income support payments in order to increase rates of participation in the workforce despite hearing from approximately 60 witnesses over four days of hearings.<sup>12</sup> The reason for this is that it simply does not work. Instead, it has been shown that countries that have invested heavily in employment assistance have been the most successful in reducing unemployment and welfare dependency in the long term.<sup>13</sup> This is why the Opposition cannot support any further reductions in the benefits given to welfare recipients.

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11 Australian Council of Social Service, *Welfare to Work – effects & solutions*, 2006, p.8

12 Dissenting Report, in Senate Community Affairs Legislation Committee, *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.71

13 Australian Council of Social Service, *Payment Levels and Unemployment – The Facts*, 2005, p.2

2.17 Opposition senators find themselves in agreement with the majority of submissions, believing this amendment to be a backward step, and inconsistent with the government's previous commitment to the transitional group of DSP recipients. As the explanatory memorandum for the original Act stated:

This Schedule gives effect to this by providing that people who receive newstart allowance or youth allowance and who have been undertaking a course whilst receiving a disability support pension....will continue to receive the same study assistance...until they complete their course.

The changes would mean that some DSP recipients, who may have not completed their course at the second review, and having been promised continued support, could subsequently move to a lower payment as well as lose the PES, compounding already difficult financial situations with a potential loss of up to \$4000 a year.<sup>14</sup>

2.18 Although the government may not be intending to further reduce incentives to undertake education, Opposition senators believe that any restriction to the PES will ultimately have this effect, and will discourage people trying to move from welfare to work. The government's actions also come at a time when, as ACOSS has noted, 60 per cent of people with disabilities and jobless single parents have 10 years of schooling or less and the country is experiencing serious skills shortages.<sup>15</sup> The Opposition strongly believes in encouraging people to undertake further education to increase their skills, and can only see this amendment as short-sighted and inconsistent with the government's public commitments to address the current skills crisis.

2.19 The basis for this amendment is even more perplexing when the department states that it expects no financial savings to be made from these changes.<sup>16</sup> If these changes apply to such a nominal group of people, around 100 according to the department, then opposition senators can find no credible reason, beyond internal consistency, for imposing greater hardship for some of the most vulnerable people in society. And as such, the opposition take the view that instead of further restricting access to PES there should be a concerted effort to better support people move from welfare to work through education.

## **Financial Case Management**

2.20 Opposition senators fully support giving Centrelink the appropriate powers to recover overpayments through Financial Case Management (FCM) and believe that the current provisions are inadequate. This inadequacy exists primarily because FCM is a discretionary program outside of existing social security law. It is a poor attempt by the government to lessen the impact of the harsh Welfare to Work compliance

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14 National Welfare Rights Network, *Submission 10*, p. 4

15 *Submission 4*, p. 1

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

regime. Opposition senators agree with the National Welfare Rights Network 'that this quick fix should not now be compounded by another sort of slapdash or quick fix.'<sup>17</sup>

2.21 The discretionary and undefined nature of the system was evident throughout this inquiry. Many of the submissions received by the committee seemed unaware that there was currently a process to recover overpayments. Even the evidence DEWR gave at the hearing in relation to recovering overpayments was initially incorrect.<sup>18</sup> Finally, DEWR advised the committee that debt recoveries are only possible through statute or common law or according to legal principles of equity.<sup>19</sup> Opposition senators believe this to be unsatisfactory as there is a lack of transparent guidelines and the right to a review.

2.22 This amendment will also create an inconsistency in the legislation, where the right to recover overpayments is outlined in legislation yet the making of payments under FCM is not. There seems to be no justifiable reason for this inconsistency. Opposition senators call on the government to instead legislate to put the entire FCM system, both payments and recovery, into existing social security law, automatically guaranteeing transparent guidelines, appeal mechanisms and debt recovery systems.

## Conclusion

2.23 This bill is a poor attempt by the government to rectify some of the many oversights in the Welfare to Work legislation which has only succeeded in compounding existing mistakes as well as creating new ones.

2.24 The main concern arises from the changes to PES which will limit opportunities for further education and discourage workforce participation. The approach taken by the government to the introduction of competition in the vocational rehabilitation services market does not provide appropriate safeguards to ensure quality of service and access for people with disabilities. The provision relating to the temporary overriding of parliamentary scrutiny is also strongly opposed.

2.25 The Opposition would welcome any welfare reforms properly addressing the reasons for long-term unemployment. Such reforms should provide 'more reward for effort and support training opportunities for the jobless. After all, a person can only get a job in our society if they have the skills an employer needs.'<sup>20</sup> Nevertheless, with this bill, the government has once again ignored overwhelming evidence in support of this approach and will thus continue to make education and training less accessible for the unemployed.

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17 Mr Michael Raper, *Committee Hansard*, 30 January 2007, p. 17

18 Mr Barry Sandison, *Committee Hansard*, 30 January 2007, pp. 28 & 31; Department of Employment & Workplace Relations, *answers to question on notice*, 30 January 2007, p.3

19 Department of Employment and Workplace Relations, *answers to questions on notice*, 30 January 2007, p. 3

20 Ms Julia Gillard MP, *House of Representatives Hansard*, 15 February 2007, p. 11

## **Recommendations**

2.26 The Opposition will be moving a number of amendments to this bill, including retention of access to the PES as previously provided for. Unless this and other substantial amendments are made to this bill, the Opposition will **oppose** the passage of this bill.

Senator Gavin Marshall

Deputy Chair

