



Submission to Senate Employment, Workplace Relations and Education Committee

**INQUIRY INTO THE EMPLOYMENT AND WORKPLACE RELATIONS
LEGISLATION AMENDMENT (WELFARE TO WORK AND
VOCATIONAL REHABILITATION SERVICES) BILL 2006**

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SUMMARY

This submission argues against the proposed recovery of **Financial Case Management “overpayments”** through deductions from social security payments. Such recovery would exacerbate the problems of the inherently unjust Financial Case Management scheme, causing avoidable hardship and unfairly penalising individuals for administrative errors lying beyond their control. Catholic Social Services Australia therefore *recommends* that the Committee recommend against the adoption of Items 50-52 of the Bill. Should the Committee not accept that recommendation, we *recommend* that the Committee propose certain amendments to Item 50 to minimise injustice arising from the proposed “overpayments” recovery mechanism.

We further *recommend* that the Committee recommend against the adoption of Items 21 and 28 of the Bill, regarding access to **Pensioner Education Supplement** for certain “transitional DSP [Disability Support Pension] applicants”.

Finally, this submission *recommends* a minor amendment to Item 53 of the Bill to ensure that current and future income support recipients receive one-off notification of the proposed system of “**deeming**” notice of adjustments to social security payments.

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I Introduction

A About Catholic Social Services Australia

1. Representing 63 member organisations, Catholic Social Services Australia is the Catholic Church's peak national body for social services. It advises the Australian Catholic Bishops Conference on social policy issues and supports the delivery of a wide range of social service programs.
2. For 50 years, Catholic Social Services Australia has assisted and promoted better social policy for the most disadvantaged people in Australian society. This continues a much longer tradition of such engagement by the Catholic Church in Australia.
3. Catholic Social Services Australia has the mission of promoting a fairer, more inclusive society that gives preference to helping people most in need. It is committed to an Australian society that reflects and supports the dignity, equality and participation of all people. To this end, Catholic Social Services Australia works with Catholic organisations, governments, other churches and all people of goodwill to develop social welfare policies and other strategic responses that work towards the economic, social and spiritual well-being of the Australian community.
4. Our 63 members employ over 6,500 people and provide 500 different services to over a million people each year from sites in metropolitan, regional and rural Australia. Services provided by our members encompass aged care, community care, disability services, drug and alcohol addiction, employment and vocational programs (including Job Network, Disability Employment Network and Personal Support Program), family relationship services, housing, mental health, residential care and youth programs.

B Purpose and scope of this submission

5. The purpose of **this submission** is to comment on some issues of principle arising from the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006 ("the Bill").
6. This submission **does not address** the Bill's amendments to the *Disability Services Act 1986*.
7. This submission **addresses** those aspects of the Bill's amendments to the *Social Security Act 1991* concerning (1) recovery of Financial Case Management "overpayments" (Items 50-52), and (2) entitlement to Pensioner Education Supplement of certain "transitional DSP [Disability Support Pension] applicants" (Items 21 and 28).
8. This submission also **addresses** the Bill's amendments to the *Social Security (Administration) Act 1999* (Items 53-54).

II Proposed recovery of “Financial Case Management” “overpayments” through social security payment deductions

A What the Bill does

9. Items 50-52 of the Bill amend the Social Security Act 1991 to enable the recovery, by means of deductions from later social security payments, of “overpayments” made under the Financial Case Management scheme.

10. Background information on the Financial Case Management Scheme is at [Appendix A](#).

11. For shorthand, certain terms are used by this submission as follows:

- “FCM”: the Financial Case Management scheme (see [Appendix A](#)).
- “FCM ‘overpayment’”: an amount paid under the Financial Case Management scheme which “should not have been paid” (see paragraph 14 below).
- “breached individual”: a person whose income support payment was suspended who then participated in the FCM process giving rise to the FCM “overpayment”.

B Catholic Social Services Australia’s concerns

(1) *This Bill must be considered in the context of the inherently unjust FCM scheme*

12. The question of the recovery of FCM “overpayments” cannot be considered in isolation from problems surrounding the FCM scheme. The principles underlying FCM are unjust:

- Rigid eight-week payment suspensions are an unjust and counter-productive penalty.
- Payment suspension has been shown to have a disproportionately harsh impact on those affected, in some cases undermining “participation” objectives.¹
- The FCM program affronts human dignity by making expenditure conditional upon external scrutiny of the appropriateness of the proposed expenditure; thereby removing from the individual the right to decide how to prioritise competing household expenditure claims.
- Only “exceptionally vulnerable” income support recipients and those with “vulnerable dependants” are eligible for FCM. These terms are extremely narrowly defined.² Only 6% of those experiencing eight-week payment suspensions in the first six months of welfare-to-work (July-December 2006) participated in the FCM scheme.³

¹ See T. Eardley, J. Brown, K. Norris and M. Rawsthorne, "The Impact of Breaching and Financial Penalties on Income Support Recipients" (Australian Social Policy Conference, 2005) and Michael Horn and Lucinda Jordan, *Give me a break! Welfare to work - a lost opportunity* (Melbourne Citymission, 2006).

² See [Appendix A](#) for definitions of “exceptionally vulnerable” and “vulnerable dependants”.

³ Based on data in: Patricia Karvelas, “5,000 cut off dole in blitz on jobless, *The Australian*, 5 January 2007.

(2) *Proposed “overpayment” recovery mechanism would exacerbate injustice inherent in FCM*

13. The proposed “overpayment” recovery mechanism would operate to exacerbate the problems of the inherently unjust FCM scheme, causing avoidable hardship and unfairly penalising individuals for administrative errors lying beyond their control. For reasons of justice, amounts assessed as FCM “overpayments” should not be regarded as debts recoverable from the individual, but rather as an additional cost of an imperfect compliance system.

14. The Bill purports to apply the “overpayment”-recovery-via-payment-deduction mechanism in cases where “the [FCM] amount should not have been paid”, as if this state of affairs were an objectively ascertainable fact. Partly because of the problems identified at paragraph 12 above, a great deal of subjectivity and discretionary judgement will inevitably attach to determinations of what amounts “should” be paid under the FCM scheme. The Bill does not provide or refer to any guidelines or criteria by which this crucial question is to be judged. And it fails to stipulate which bodies or authorities are to be regarded as competent to make authoritative determinations in this regard (either in general terms or in specific cases where an “overpayment” question arises).

15. A breached individual will generally lack any meaningful decision-making power over the precise nature of the expenditure made under FCM: it is the FCM provider, not the breached individual, who recommends which “essential expenses” should be met; and generally the transaction itself will be completed not by the individual but by Centrelink on his/her behalf. Nor would that individual appear to have any right or mechanism by which to appeal *either* (i) the amount or usage of sums expended on his/her behalf, *or* (ii) any subsequent determination that an “amount should not have been paid” (the phrase used in Item 50 of the Bill).

16. Moreover, there appears to be some doubt about the legal basis of the FCM scheme. The Bill merely refers to “the scheme administered by the Commonwealth known as Financial Case Management” (Items 50 and 52). If adopted, Items 50-52 of the Bill would enshrine in legislation the procedures for the recovery of “overpayments” arising from the FCM scheme, while the FCM scheme itself remained without any legislative basis and constantly subject to change – in nature, scope and effects – by administrative fiat. This outcome would be both incongruous and inappropriate, because all manner of “overpayments” unforeseen and unintended by the current Parliament could be captured by the legislation as the result of relevant future administrative changes to the FCM scheme, provided only that the scheme’s name remained “Financial Case Management”.

17. As noted above, only people regarded as having special vulnerabilities are eligible for FCM in the first instance. Especially in the absence of other income sources such as earnings or any post-appeal payment of the suspended social security payment, these vulnerable persons would suffer undue hardship if – as provided for by the Bill – alleged FCM “overpayments” were deducted from their income support payments after the expiry of the eight-week non-payment period.

18. The wording of the Bill raises the disturbing spectre of “overpayment” recovery from an individual other than the person whose income support payment was suspended (i.e., a person other than the breached individual). Deductions to recover an FCM “overpayment” may be made from a person’s social security payment if an amount was paid under the FCM scheme “to, *or for the benefit of*” that person (Item 50 of Bill at paragraph (3)(a); emphasis added). So the “vulnerable dependant” of a breached individual, for whose benefit the relevant FCM payment may have been expended, might be held liable under the proposed legislation for the amount of the FCM “overpayment” if he or she subsequently qualified for a social security payment. This would hypothetically allow deductions from a young person’s Youth Allowance to recover a past FCM “overpayment” for, say, certain school-related expenses which had benefited the young person –

even though at the time of the FCM “overpayment” the young person was a “vulnerable dependant” of the mother and the FCM process itself related to “participation failures” on the part of the mother and not the young person.

(3) *Catholic Social Services Australia’s position*

19. In light of the above, Catholic Social Services Australia’s position is that:

(a) The Bill’s provisions regarding recovery of Financial Case Management (FCM) “overpayments” (Items 50-52) should not be adopted at all (see Recommendation 1) in view of:

- The problematic underpinnings of the FCM scheme, and
- Persistent uncertainties about the legal nature of both:
 - FCM amounts expended on behalf of individuals, and
 - The FCM scheme itself.

(b) Should Parliament wish to adopt those provisions, however, it should be in amended form – as set out in Recommendation 2 below – to minimise attendant injustice.

C Recommendations 1-2

20. Our recommendations are as follows:

Recommendation 1

*Catholic Social Services Australia recommends that the Senate Employment, Workplace Relations and Education Committee (“the Committee”) recommend against the adoption of **Items 50-52** of the Bill (regarding deductions from social security payments for recovery of Financial Case Management “overpayments”).*

Recommendation 2

*Should the Committee decide against Recommendation 1 above, Catholic Social Services Australia recommends that the Committee recommend the amendment of **Item 50** to ensure that deductions from social security payments for the recovery of Financial Case Management “overpayments” may be made only:*

- (a) *From the payment of the person whose payment suspension was the subject of the FCM process which gave rise to the “overpayment” for which deductions are being made; and*
- (b) *In circumstances where either:*
- (i) *It becomes known to Centrelink that the individual whose payment was suspended had had undeclared income which, if declared, would have rendered him or her ineligible for the relevant social security payment and/or for Financial Case Management; or*
 - (ii) *As the result of a successful appeal, and prior to any deductions for recovery of the FCM “overpayment”, the individual has received the full value of income support payments for the period for which payment was initially suspended and FCM amounts paid.*

III Proposed restriction of entitlement to Pensioner Education Supplement (PES) for certain “transitional DSP [Disability Support Pension] applicants”

A What the Bill does

21. The intended effect of Items 21 and 28 appears to be the stripping of continuing entitlement to Pensioner Education Supplement (PES) from those “transitional DSP [Disability Support Pension] applicants” receiving PES who are moved from DSP to Newstart Allowance (NSA) or Youth Allowance (YA) as the result of a second or subsequent DSP review conducted after 30 June 2006.

22. The current situation for “transitional DSP applicants” moved to NSA or YA as the result of any DSP review conducted after 30 June 2006 is as follows:

“A person granted DSP between 11 May 2005 and 30 June 2006 may be reviewed after 1 July 2006 and reassessed against the new DSP eligibility criteria, particularly the 15 hours work capacity criterion. If the person's work capacity is assessed at 15 hours or more, the person will be transferred to NSA or YA (jobseeker) (if all eligibility criteria [sic] is met). **If the person was receiving PES at the time of the DSP review, they will retain access to PES for the duration of the qualifying course**, providing the recipient continues to receive NS or YA (job seeker).”⁴

23. The Bill appears to remove that ongoing PES access from all “transitional DSP applicants” transferring to NSA or YA except those whose transfer resulted from their *first* DSP review after 30 June 2006.

B Catholic Social Services Australia's concerns

24. Assuming the correctness of our interpretation of the Bill's effect, we have serious concerns. Any policy or budgetary objectives served by the adoption of Items 21 and 28 of the Bill are more than outweighed by the likely adverse consequences.

25. Education and training play a crucial role in individuals' employment prospects and earnings outcomes. For “transitional DSP applicants” whose capacity to work remains “partial”, their course duration and learning commitment must be considered in light of their continuing disability. This is especially so for those individuals affected by this Bill, each of whom was assessed not to have a 15-hour work capacity at his/her first DSP review after 30 June 2006. It is also relevant that a “transitional DSP applicant” has no way of predicting the timing of his or her next DSP review.

26. Foreseeable outcomes of Items 21 and 28 of the Bill are a negligible financial saving for the Commonwealth accompanied by a high cost in economic, productivity, social and human terms. Many individuals in difficult circumstances who have invested considerable time and effort in furthering their employment prospects are likely to be forced to jettison half-completed courses – courses commenced and continued in good faith in the expectation that the Commonwealth's Pensioner Education Supplement would be available for the duration of the course. A person so affected could be forgiven for some scepticism, disillusionment and even bitterness during their next phase of complying with participation requirements. Employment prospects would be impeded, educational resources wasted, and motivation far from enhanced – thereby undermining the Government's objective of increasing paid labour force participation by people with a disability.

⁴ *Guide to Social Security Law*, Version 1.117, released 2 January 2007, at 3.8.3.10, emphasis added (http://facsia.gov.au/guides_acts/ssg/ssguide-3.8/ssguide-3.8.3.html, visited 21 January 2006).

27. We are therefore opposed to the amendments set out in Items 21 and 28 of the Bill.

C Recommendation 3

28. Our recommendation regarding Items 21 and 28 of the Bill is as follows.

Recommendation 3

*Catholic Social Services Australia recommends that the Committee recommend against the adoption of **Items 21 and 28** of the Bill (regarding access to Pensioner Education Supplement for certain “transitional DSP [Disability Support Pension] applicants”).*

IV Proposed “deeming” of notice of certain adjustments to social security payments

A What the Bill does

29. The Bill provides for the amendment of the *Social Security (Administration) Act 1999* to deem social security recipients to have been given notice of certain adjustments to social security payments.

B Catholic Social Services Australia’s concerns

30. We have no problem with the notion of “deeming” notice of fairly routine adjustments to social security payments arising from indexation and the like.

31. However, it will be important to ensure that all current and future recipients of affected payments are aware of the fact that their payments will be adjusted from time to time without notice. This would minimise the scope for recipients to become concerned about changes in their payment (e.g. about overpayment problems), and thus also minimise associated calls to Centrelink.

C Recommendation 4

32. Our recommendation regarding Items 53-54 is as follows.

Recommendation 4

*Catholic Social Services Australia recommends that the Committee recommend adoption of **Items 53-54**, with appropriate amendments to **Item 53** to ensure that all affected recipients of social security payments receive a “one-off” written notification of the nature, frequency and timing of payment adjustments for which notice will be deemed (a notification which could, in future, be incorporated into existing information letters sent to recipients upon commencement of payments).*

V Conclusion and list of Recommendations

33. Catholic Social Services Australia appreciates this opportunity to contribute to the Committee's Inquiry into the Bill.

Recommendation 1

*Catholic Social Services Australia recommends that the Senate Employment, Workplace Relations and Education Committee ("the Committee") recommend against the adoption of **Items 50-52** of the Bill (regarding deductions from social security payments for recovery of Financial Case Management (FCM) "overpayments").*

Recommendation 2

*Should the Committee decide against Recommendation 1 above, Catholic Social Services Australia recommends that the Committee recommend the amendment of **Item 50** to ensure that deductions from social security payments for the recovery of Financial Case Management "overpayments" may be made only:*

- (a) From the payment of the person whose payment suspension was the subject of the FCM process which gave rise to the "overpayment" for which deductions are being made; and*
- (b) In circumstances where either:*
 - (i) It becomes known to Centrelink that the individual whose payment was suspended had had undeclared income which, if declared, would have rendered him or her ineligible for the relevant social security payment and/or for Financial Case Management; or*
 - (ii) As the result of a successful appeal, and prior to any deductions for recovery of the FCM "overpayment", the individual has received the full value of income support payments for the period for which payment was initially suspended and FCM amounts paid.*

Recommendation 3

*Catholic Social Services Australia recommends that the Committee recommend against the adoption of **Items 21 and 28** of the Bill (regarding access to Pensioner Education Supplement for certain "transitional DSP [Disability Support Pension] applicants").*

Recommendation 4

*Catholic Social Services Australia recommends that the Committee recommend adoption of **Items 53-54**, with appropriate amendments to **Item 53** to ensure that all affected recipients of social security payments receive a "one-off" written notification of the nature, frequency and timing of payment adjustments for which notice will be deemed (a notification which could, in future, be incorporated into existing information letters sent to recipients upon commencement of 6 payments).*

BACKGROUND INFORMATION ON THE “FINANCIAL CASE MANAGEMENT” SCHEME

The social security compliance system was revised as part of the “welfare-to-work” package.

An eight-week non-payment period will be imposed where, without “reasonable excuse”, a job seeker has either three “less serious” participation failures in a twelve-month period or a single instance of a “more serious” participation failure. Eight-week non-payment periods cannot be waived by re-engaging with participation requirements.

The “Financial Case Management” scheme was introduced in 2006 to enable some income support recipients with eight-week payment suspensions to continue to meet essential expenses.

Eligibility for Financial Case Management is limited to people regarded as being “exceptionally vulnerable” or as having “vulnerable dependants”.

Definition of “exceptionally vulnerable”

“While Centrelink will have some discretion, eligibility for financial case management under the *exceptionally vulnerable* criterion will generally be limited to job seekers who meet all of the following conditions:

- (1) they have a recognised disability, medical condition or physical or mental impairment;
- (2) they require medication to manage that condition or impairment; and
- (3) they do not have sufficient funds available to purchase essential medication.”⁵

Definition of “vulnerable dependants”

- (1) A dependent child; and/or
- (2) Any other person who:
 - o lives with the income support recipient,
 - o “has expenses in addition to living expenses as a result of illness or incapacity, which they normally would rely, at least in part, on the [income support recipient] to help meet”, and
 - o Is unable to meet these expenses because of the eight week non-payment period.⁶

⁵ Centrelink, *Invitation for Registration on Centrelink’s Register of Financial Case Management Non Government Organisations (No. 2005/84112) – Application Form*, ([http://www.centrelink.gov.au/internet/internet.nsf/filestores/financial_case_management/\\$file/financial_case_management.pdf](http://www.centrelink.gov.au/internet/internet.nsf/filestores/financial_case_management/$file/financial_case_management.pdf)), pp.3-4 at paragraph 1.1(e).

⁶ *Ibid*, p.3 at paragraph 1.1(d).