LF0307

25 January 2006

Committee Secretary
Senate Employment, Workplace Relations and Education Committee
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Dear Mr. Carter,

Re: Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006

The National Welfare Rights Network (NWRN) welcomes the opportunity to provide comment on a number of aspects of the Bill before the Committee. We would appreciate our concerns being taken into consideration by the Committee in its important deliberations.

1. Recovery of Financial Case Management Payments

The Bill seeks to introduce a provision into the *Social Security Act 1991* that will allow the Government to recover monies paid to a person under the Financial Case Management Scheme, where it is considered that payment "should not have been made". It is proposed that recovery would be made via deductions from the person's ongoing Social Security payments. The Explanatory Memorandum for the Bill proposes that payments made under the Scheme would be recovered if, for example, the person failed to declare earnings during the period payments were made under the Scheme or if they receive arrears of income support payments for the period in the event of a successful appeal.

The Financial Case Management Scheme was introduced from 1 July 2006 to provide limited financial assistance to "vulnerable" people who face an eight week non-payment period of their Social Security payment. Under the Scheme a person who is assessed as "vulnerable" or has "vulnerable dependants" can have essential expenses paid, equivalent to their notional Social Security entitlement. The Scheme is not established or regulated by legislation. The payment of expenses under the scheme is provided under the Commonwealth Executive Power. Payment is not made directly to the "vulnerable" person; it is made to third parties such as a landlord or utility company.

Our concerns regarding the proposal to recover payments made under the Financial Case Management Scheme relate to the fact that these payments are not made under legislation, yet the Government now seeks the legislative right to recover these payments, with no appeal rights for the person affected. Thus, if Centrelink decides that payment under the Scheme "should not have been made", it may simply impose withholdings on the person's ongoing Social Security payment.

Generally, an amount that can be recovered by the Commonwealth via deductions from a person's Social Security payment meets the definition of a "debt" under the Social Security Act or under other Commonwealth legislation such as the Veterans' Entitlement Act. Any such debt constitutes an amount paid to a person for which they were not qualified or entitled to under the relevant legislation. Given that legislative base, the person had rights and obligations in respect of the payments made to them during the period of the debt, and Centrelink (or other department or agency) had clearly defined responsibilities in relation to informing the person, in writing, of those rights and obligations. The person has the statutory right to appeal any debt raised and any failure on the part of Centrelink to meet its obligations in administering payments
made to the person is relevant to the question of whether recovery should be waived.

Unlike the statutory eligibility and payability criteria for income support payments, the criteria for determining eligibility for assistance under the Financial Case Management Scheme are not subject to the scrutiny of Parliament. Departmental policy does not proscribe what conditions are attached to receipt of payments under the Financial Case Management Scheme, or how these conditions are disclosed to recipients, or if there are any notification obligations associated with these conditions. Without these details being clearly spelt out in a Legislative Instrument, it is unclear on what basis a decision can be made that an amount paid under the Financial Case Management Scheme "should not have been paid".

A further difference between the recovery of payments made under legislation and payments made under the Financial Case Management Scheme is that person who is deemed to be "vulnerable" and eligible under the strict criteria for Financial Case Management does not have control of how the payments are expended, and funds can only be spent on what are deemed to be "essential expenses". Yet it is proposed that Centrelink would have the authority to recover payments that the person did not personally receive, an agency having determined that payment to a third party (for example, a landlord) was essential given the person's financial and personal vulnerability at the time.

Overlaying all the issues identified above, is the fact that people affected by the case management decisions made in their respect under the Scheme have no appeal rights – neither against refusal of assistance nor, if assistance is approved, against decisions to recover from their Social Security entitlements payments made to third parties.

Given the absence of legislative criteria setting out recipients' and providers' rights and obligations under the Scheme, providing for recovery of payments made under the Financial Case Management Scheme would expose "vulnerable" Social Security recipients to potentially unfair and arbitrary decision-making, with no rights of redress for the people affected.

Recommendation: For the above reasons monies received under the Financial Case Management Scheme should not be recoverable by deductions from Social Security payments. We submit that the proposed amendment at item 50 be withdrawn.

2. Restrictions to the Pensioner Education Supplement

The Bill seeks to restrict eligibility for Pensioner Education Supplement (PES) for some people currently in receipt of Disability Support Pension (DSP) in the "transitional" group, that is, people who became qualified for DSP between 10 May 2005 and 30 June 2006.

PES provides a modest level of financial assistance to recipients of some Social Security payments, such as DSP and Parenting Payment Single, at the rate of $31.20 a week, to assist with the costs of study.

One of the 1 July 2006 changes to the *Social Security Act 1991* is that a person in the "transitional group" can be reviewed under the new (more restrictive) DSP eligibility criteria. If the person does not qualify for DSP under the post 1 July 2006 rules they can be transferred to another payment, such as Newstart Allowance, which does not attract eligibility for PES. The 1 July 2006 changes provided a protection that if a person is transferred from DSP to Newstart Allowance or Youth Allowance because they have a "partial capacity to work", whilst in receipt of PES, they maintain eligibility for PES until they complete their course of study.

The Bill seeks to limit the extent of this protection by restricting it to people who are transferred from DSP to Newstart Allowance or Youth Allowance after their <u>first</u> post 1 July 2006 review. If they are transferred from DSP to the other payment after a <u>second or subsequent</u> post 1 July 2006 review they will lose their eligibility for PES.

This provision seeks to erode an important protection that was put in place with the 1 July 2006 changes.

The NWRN opposes the proposed changes to PES on the basis that it is unreasonable to change the rules for PES after a person has begun their study. It could lead to people discontinuing study altogether. For many people on DSP who are undertaking study, the decision to study was undertaken in the knowledge that they would get financial assistance to help cover the costs of study.

The loss of PES, at the time of transfer from a pension to an allowance compounds the financial difficulties faced by people with a disability undertaking study. The loss of PES alone means a financial loss of $1,600 a year. Being placed on the lower rate of Newstart Allowance ($210.45 a week) as opposed to DSP ($256.05 per week) means the loss of up to $45.60 per week. A person affected by the proposed changes to PES eligibility, may be worse off by approximately $4,000 per year.

The Government's Explanatory Memorandum to the *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Bill 2005,* which introduced the protection, states:

> "Whilst the focus of the measures in this Bill is about participation in paid work, the Government recognises that people who have been undertaking a course of education or study in preparation for work, and have been assisted by receiving the pensioner education supplement should not be disadvantaged either financially, or because they are unable to complete their course of study. 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, being the pensioner education supplement, until they complete their course."

In light of the Government's statements in the Explanatory Memorandum (extracted above), we find it difficult to understand why the Government would seek to disadvantage allowance recipients who only have a partial capacity to work because of their disability. It would appear contrary to the Government's intention to assist people with disabilities to complete education or study.

Recommendation: For the above reasons we submit that the proposed amendment at items 21 to 28 be withdrawn.

If we can be of any further assistance please contact, in the first instance, Gerard Thomas, Policy Officer, Welfare Rights Centre, Sydney on 02 9211 5300, or Kate Beaumont, Acting President of the NWRN on (08) 9328 5170.

Yours sincerely,
National Welfare Rights Network

Kate Beaumont
Acting President of the NWRN