21 August 2012

Senate Education, Employment and Workplace Relations Reference Committee
Parliament House,
Canberra
ACT 2600

Via email: eewr.sen@aph.gov.au

Dear Mr Watling,

The National Welfare Rights Network (NWRN) is welcomes the opportunity to provide various documents that were referenced in our submission to the to the Senate Education, Employment and Workplace Relations Reference Committee *Inquiry into the adequacy of the allowance system for job seekers and others, the appropriateness of the allowance system as a support for work and the impact of the changing labor market.*

The following documents are attached:

- *Key Income Support Issues for Aboriginal Australian's in the Northern Territory:* A briefing paper prepared with input from North Australian Aboriginal Justice Agency (NAAJA), the Central Australian Aboriginal Legal Aid Service (CAALAS) and the Darwin Community Legal Centre (DCLS) and endorsed by the National Welfare Rights Network, March 2012.
- Submission to *Senate Education, Employment and Workplace Relations Committee Inquiry into Social Security Legislation Amendment (Fairer Work Incentives) Bill 2012.*
- *Special Benefit – Social exclusion and poverty traps – a call for reform,* NWRN, December 2011.
- *Grey Areas—Age Barriers to Work in Commonwealth Laws (Issues Paper 41)*, Australian Law reform Commission in April 2012, Submission from the National Welfare Rights Network, July 2012.
- *Redressing the Balance of Risk and responsibility through active debt prevention strategies*, NWRN Discussion Paper, 2009.
- Submission to Senate Constitutional and Legal Affairs Legislation Committee, *Inquiry into Government Compensation Payments*, Welfare Rights Centre, Sydney July 2010.

We appreciate the opportunity to provide additional evidence on our submission at public hearings into the matters before the Committee.
Yours sincerely,

Maree O'Halloran, AM
President,
National Welfare Rights Network

JF3610
8 July 2010

Ms Julie Dennett
Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ms Dennett,

Please find attached the submission from the Welfare Rights Centre, Sydney, to the Legal and Constitutional Affairs References Committee review of Government compensation payments. We acknowledge the lateness of this submission and appreciate the Committee's acceptance of this submission.

Our submission provides a brief discussion on the terms of reference related to debt waiver provisions and the scheme for Compensation for Detriment caused by Defective Administration.

We would welcome the opportunity to provide additional feedback to the Committee in its important deliberations.

Should you require any additional information please contact me on

Yours sincerely,
Welfare Rights Centre

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Acting Director

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Welfare Rights Centre is a member of the National Association of Community Legal Centres™

Introduction

The Welfare Rights Centre, Sydney is a community legal centre which specialises in Social Security and Family Tax Benefit law, and any problems people may have with Centrelink in obtaining their Social Security entitlements. It provides free advice and representation on these matters and is entirely independent of Centrelink.

The Centre also undertakes research and analysis, develops policies and position papers, advocates for reforms to law, policy and administrative practice and participates in campaigns consistent with its aim to reduce poverty, hardship and inequality in Australia.

The following analysis draws from the Centre's extensive casework and policy experience.

The Welfare Rights Centre is a member of the National Welfare Rights Network (NWRN). Proposals in this submission draw on suggestions in a discussion paper, *Redressing the balance of risk and responsibility through active debt prevention strategies*, May 2009. A meeting on debt issues was held in Canberra with NWRN members (including three staff members from the Welfare Rights Centre, Sydney) with Centrelink, the Department of Families, Housing, Community Services and Indigenous Affairs, the Department of Employment, Education and Workplace Relations, Centrelink, the Department of Veterans Affairs and the Department of Human Services.

Response to the terms of reference on the debt waiver provisions

The Welfare Rights Centre is of the view that the current debt waiver provisions are unbalanced and unfair, and in a number of aspects lead to perverse and unintended onerous outcomes which can leave individuals and families in significant financial hardship.

Over the last 15 years, governments have tightened the Social Security legislative provisions relating to the raising and recovery of debts. Whereas 15 years ago, not all overpayments were actually recoverable debts, now regardless of the cause almost all are recoverable debts.

This has been part of the massive shift in the balance of risks and responsibilities in the Social Security system. Such an approach has not been conducive to good public administration because it has also encouraged Centrelink to be less efficient and far more careless than it should be.

The Welfare Rights Centre supports legislative reform in this area, and below we outline directions for change.

Proposal 1:
Remove "solely" from Section 1237A of the *Social Security Act 1991*

Section 1237A of the *Social Security Act 1991* ("SSA") requires a person to prove that their debt was 'solely' caused by administrative error in order to have it waived.

This means that Centrelink can be 99% responsible for the debt but it will not be waived because of the 1% contributory error of the individual. The result of which has been even when Centrelink acknowledges it has erred, the balance of risk rests almost entirely with the individual because any slight contributory error on their part makes them liable to repay the debt. Invariably Centrelink relies on the small print on the backs of notices to argue that the person has also contributed to the debt.

The following case studies are illustrative of the unfairness and inequity of taking such an approach.

Case study 1 Centrelink error caused large debt for Mr B

Mr B claimed Parenting Payment (PP) and Family Tax Benefit (FTB) on 10 March 2003. He lodged claim forms for both payments on that day. On the claim form for PP, Mr B advised that he had separated from his ex-partner and that he worked full time earning $560 per week. He advised on the FTB claim form that he expected his income to be about $28,000 for this year.

Despite providing information about his income and being employed full time, Centrelink granted PP to Mr B at the maximum rate from the date of his claim. The first Centrelink review form Mr B received was about 28 months after he applied for PP. He had no interviews with Centrelink in the interim. When he lodged the review form he again advised Centrelink of his income. This led to Centrelink raising the debt and referring the matter to the DPP. The DPP did not

proceed with prosecution action, presumably because Mr B had always notified Centrelink of his income and Centrelink error was the cause of the debt.

However it is highly unlikely that Centrelink will accept that the debt be waived as it will maintain that the debt was not solely due to Centrelink error, as Mr B did not contact Centrelink to advise it that the information it had on the back of the Centrelink notices about his income was incorrect.

Case study 2 Centrelink failed to transfer income

Ms Z was in receipt of Parenting Payment (PP) and Family Tax Benefit (FTB). She was advised that she has a PP debt of just over $17,000 as Centrelink did not take into account her income from employment. During the debt period, Ms Z advised Centrelink of her income.

Centrelink does not dispute this. However, Centrelink's Original Decision Maker did not waive the debt on the basis that Ms Z advised the FTB section of Centrelink of her income but not the PP section. Centrelink's view was that Ms Z contributed to the debt.

The best way to improve the quality of administration within Centrelink is to once again make Centrelink at least partially responsible for its own errors. This could be achieved through removing 'solely' from s1237A of the SSA and requiring Centrelink to waive any debt which was caused 'substantially' by administrative error. Alternatively, 'solely' could be replaced with 'wholly or predominantly'.

The example highlighted in Case study 2 occurs all too frequently. For many years the Welfare Rights Centre has been urging governments to address the profound unfairness experienced by many people who have debts raised against them notwithstanding that they notified one 'limb' of Centrelink (for example, the family payments section) and believed that in doing so this information would be provided to all other 'limbs' (for example, the pensions section).

At many levels government understands that there is significant confusion among Social Security recipients and they recognise that recipients expect that this information will be shared, yet it fails to put in place processes where there will be automatic swapping and checks of relevant information.

The government should take immediate action to waive this class of debts which have arisen because of its failure to put in place adequate processes to update information provided by Social Security recipients.

Proposal 2:
Replace 'received in good faith' with 'acted in good faith' in section 1237A of SSA

For a debt to be waived, it is also necessary for any overpayment to have been 'received in good faith'. Where a person is on the record as having contacted Centrelink to query their payment or to check that it is correct, Centrelink will not accept that any subsequent overpayment was 'received in good faith' even though, at the time of the inquiry, Centrelink had checked the payment and categorically assured the person that they were receiving the correct amount. Again, this provision shifts all responsibility to the customer and simply condones a 'no responsibility, no care' approach by Centrelink which is contrary to sound administrative practice. If the provision was changed to 'acted in good faith' Social Security recipients would not have to carry unfair debt burden and Centrelink would be held accountable.

Proposal 3:
Remove 6 week rule in section 1237A of the SSA

For a debt to be waived under section 1237A of the SSA a final requirement is that it must not have been raised within 6 weeks of the overpayment occurring. This means any debt 'picked up' within 6 weeks of the overpayment occurring cannot be waived under this provision. This rule permits Centrelink to fail to act on an administrative error during a period in which a person is most likely to act in reliance on the original decision and spend the money. As many people live from payment to payment the Welfare Rights Centre recommends the rule ought to be deleted or reduced to 14 days.

Proposal 4:
Remove inconsistent provisions for Family Tax Benefit debt waiver

The equivalent administrative error waiver provision for Family Tax Benefit (FTB) debts is contained in section 97 of the *Family Assistance (Administration) Act 1999*. Section 97 includes an additional, significant requirement that the person must also prove that they "would suffer severe financial hardship" if the debt is not waived.

The additional requirement contained in section 97, unnecessarily limits the operation of the administrative error provisions to the extent that innocent recipients of FTB are expected to foot the bill for Centrelink's administrative mistakes.

Numerous Family Tax Benefit debts occur each year through Centrelink's sole administrative error. The "severe financial hardship" test has been set at a very high threshold test and even a family that only receives Social Security income may not qualify as being in "severe financial hardship". Again, why should Centrelink bother to get it right when it can simply raise a debt with no care or responsibility if it gets it wrong. To achieve greater care, accuracy and efficiency and to shift the emphasis to debt prevention rather than debt recovery where it is now, this additional requirement needs to be removed. Alternatively it should be amended so that debts must be waived for any family on income support or where "financial hardship" exists.

Proposal 5:
Remove words "or another person" from section 1237AAD of the SSA

Every year numerous Social Security debts are raised where a woman has received payments at the single rate, yet Centrelink later determines they were a member of a couple.

The Welfare Rights Centre too regularly is contacted by women who have been pressured by an abusive partner to claim a Social Security payment as a single or not declare the correct amounts of their earnings. Social Security debt waiver laws make no allowance for this kind of duress. In criminal law it has been recognised that serious domestic violence can induce what has been called "battered women's syndrome", a condition that robs women of the ability to make decisions for themselves due to "learned helplessness" (see Patricia Easteal, Kate Hughes and J Easter: 'The Reasonable Battered Woman and Duress': Educating the Judiciary (1993) 18(2) *Alternative Law Journal*, p.139).

In some of the cases the Welfare Rights Centre sees, the woman did not receive any financial benefit from the payments yet they are required to repay significant debts and face prosecution long after the relationship has ended.

Section 12377AAD of the SSA provides circumstances in which a debt can be waived if "special circumstances" exist to warrant waiver. However, waiver is

precluded if the debt resulted wholly or partly from the debtor or another person knowingly making a false statement or knowingly omitting to comply with the Act.

This means that the discretion cannot be used where a debt is attributable, even in part, to knowingly false statements or failures to comply by a third party.

In battered wives syndrome cases, the false statements and/or failures to comply are almost always attributable to the abusing male. An example of this would be when the male insists that his partner not report his true income or employment circumstances, or insists his partner not declare his presence in the family home.

Case study 3
Watson v Secretary, Department of Family and Community Services [2002] AATA 311 (6 May 2002)

Mrs Watson was subjected to horrendous verbal and physical abuse from her partner. She was assaulted repeatedly to 'keep her in line', on several occasions ending up in hospital with bruising and broken bones. When she attempted to leave her partner, he told her that 'If you leave I will kill you and your children.' The marriage broke up only when Mr Watson was imprisoned for Social Security fraud. His offence had been to claim Social Security benefits without declaring that he was employed.

Mrs Watson had been receiving social security benefits of her own. These benefits were higher than they should have been because of her husband's undeclared income, and when Mr Watson's fraud became known a substantial overpayment debt was raised against her. Mrs Watson sought waiver under section 1237AAD of the SSA but this was refused because of Mr Watson's knowingly false statements.

We believe that paragraph section 1237AAD of the SSA should be amended to read:

> The Secretary may waive the right to recover all or part of a debt if the Secretary is satisfied that (a) the debt did not result wholly or partly from the debtor or another person acting as an agent for the debtor knowingly...etc.

In our view, this amendment would cover the situation where the debtor was instrumental in procuring the false statement or representation or the failure or

omission to comply with the relevant legislation, but would not capture a wife or partner who was acting under duress.

Debt recovery policy

Once Centrelink determine that a person owes a debt, they will commence debt recovery action. If a person is in receipt of Social Security payments, Centrelink policy is to deduct 15% of their payment each fortnight. This commences even when a person is appealing against a debt, for example, seeking debt waiver. As the Department of Families, Housing, Community Services and Indigenous Affairs points out at page 6 of its submission, a person can seek a lower rate of debt recovery if they are experiencing financial difficulty.

However, from 1 January 2011 people repaying Centrelink debts at a rate below the standard rate of 15% will be subject to a review of their circumstances every three months. The Welfare Rights Centre understands that around 70 percent of those with a Centrelink overpayment currently pay less than the standard rate of 15%. The quicker rate of recovery is expected to result in $42 million of debts repaid sooner.

The convention has been that the recovery of debts should not place Centrelink recipients in financial hardship – but this is exactly what this change may result in.

This change should not go ahead on its scheduled commencement date of 1 January 2011, as there is not a clear understanding of the nature of indebtedness amongst those on welfare payments. Not enough is known about how households cope with debt repayments when they owe multiple debts to organisations such as the Australian Taxation Office, child support, state debt recovery officer, utilities and credit card providers, as well as Centrelink. There should be less focus on Centrelink meeting its debt recovery “key performance indicators” and more energy put into exploring how Australian households experience debt and financial hardship.

Response to the terms of reference on the scheme for Compensation for Detriment caused by Defective Administration

The Welfare Rights Centre advises people about making claims under the scheme for Compensation for Detriment caused by Defective Administration (CDDA) and Act of Grace scheme. We would welcome the opportunity to discuss

our experiences with these schemes. However, we place on record our strong support for the submission from the Acting Commonwealth Ombudsman to this review.

In particular, we draw attention to the Acting Commonwealth Ombudsman's comments highlighting the faults in the administration of the CDDA scheme, including its lack of visibility, lack of assistance to claimants in accessing the scheme and making a claim, poor communication with claimants, and a defensive and legalistic approach to CDDA decision making.

The Acting Ombudsman highlights the blurring of responsibilities and service gaps in relation to the inability to access the CDDA scheme where the defective administration is committed by a contracted service provider. Given the increasing contracting out of government services, the resolution of these gaps is a priority.

Additionally, there is an urgent need to consider the interactions between various government agencies and to clarify which agency should take responsibility if there is defective administration that is shared between a number of agencies.

This is an important task which should be built into service delivery reform at the outset as we see the move to more integrated service delivery across all government agencies, as articulated by the Government's service delivery reform announced on 16 December 2009 and under its banner *Works for You*.

Key Income Support Issues for Aboriginal Australian's in the Northern Territory

A briefing paper prepared with input from North Australian Aboriginal Justice Agency (NAAJA), the Central Australian Aboriginal Legal Aid Service (CAALAS) and the Darwin Community Legal Centre (DCLS) and endorsed by the National Welfare Rights Network

March 2012

About the Welfare Rights Outreach Project

The North Australian Aboriginal Justice Agency (NAAJA), the Central Australian Aboriginal Legal Aid Service (CAALAS) are the primary sources of information, advice and assistance on welfare rights issues, including income management, social security law, and remote housing, for Aboriginal people[1] in the Northern Territory.

This briefing paper was prepared with input from the North Australian Aboriginal Justice Agency (NAAJA), the Central Australian Aboriginal Legal Aid Service (CAALAS) and the Darwin Community Legal Centre (DCLS).

All three organisations receive funding from the Commonwealth Attorney General's Department to provide legal advice, casework, community legal education and law reform input regarding welfare rights law, termed the Welfare Rights Outreach Project (WROP).

The Darwin Community Legal Centre DCLS' WROP provides assistance to Indigenous and non-Indigenous people largely located in the Darwin region on welfare rights issues.

CAALAS and NAAJA and DCLS are members of the National Welfare Rights Network (NWRN). The National Welfare Rights Network NWRN is a network of community legal centres throughout Australia which specialise in Social Security law and its administration by Centrelink. Based on the experience of clients of NWRN members, the Network also develops policy and advocates for reform.

NWRN member organisations provide casework assistance to their clients, generally by phone, at least in the first instance. NWRN members also conduct training and education for community workers and produce publications to help Social Security recipients and community organisations understand the system. The NWRN also engages in policy analysis and lobbying to improve the current Social Security system and its administration.

This issues paper was prepared for the March 2012 Delegation meetings that are held regularly between NWRN members and the Department of Human Services.

Over many years, NWRN's members have sought to bring a focus on service delivery issues that are of specific concerns to Aboriginal people on income support. In particular, we have focussed on overpayments, appeals, employment assistance and, of course, income management and the multitude of issues related to the Northern Territory intervention. The paper expands on these areas and focuses on improving communication, information on exemptions, BasicsCard issues and other important issues affecting remote clients and provides a series of options for improving access to services and opportunities for Aboriginal people.

For more information contact: welfarerights@welfarerights.org.au

[1] In this briefing paper, "Aboriginal people" refers to Aboriginal and Torres Strait Islander peoples.

Northern Territory Issues

1. Debt prevention in the Northern Territory

1.1 Managing the high rate of Centrelink debt amongst Aboriginal people

1.1.1 Issue: High rate of Aboriginal Centrelink debt

We are aware that the Northern Territory has a high rate of Centrelink debt. We are further aware that Aboriginal and Torres Strait Islander customers comprise the vast majority of this debt, approximately 90%.

There are a number of factors which impact on the lack of knowledge amongst Aboriginal people of reporting obligations to Centrelink about changes in circumstances and their ability to comply with Centrelink reporting obligations, including:

- the historical absence of Centrelink as a regular presence in remote communities. Some communities have only been receiving regular visits from the Remote Servicing Teams in the past three or four years;
- widespread language, literacy and numeracy barriers amongst Aboriginal people in the Northern Territory, which impacts on the utility of the written communication of Centrelink obligations (including Centrelink letters) and on the understanding of words widely used such as “income”, “circumstances”, “gross” and “net”;
- general lack of financial literacy skills and the historical absence of financial counselling services and money management services in remote communities; and
- remoteness from Centrelink.

Centrelink needs to take these factors into account. Firstly, when designing, planning and implementing its debt prevention strategies; and secondly, when making decisions to raise or waive debts.

We note that the National Indigenous Debt Strategy has not been updated for some time. It is unclear to what extent this strategy has been effective. However, CAALAS and NAAJA have not seen a reduction in the amount of Centrelink debt in our practices. We understand that the vast proportion of Aboriginal debt is preventable and is generally earnings related debt.

There are several interesting debt prevention projects being undertaken by the Indigenous Debt Reduction and Prevention Team, which is located in Darwin.

Prison project

The Indigenous Debt Reduction and Prevention Team are working with NT Corrections to identify persons incarcerated with non-lodger debts. Centrelink is being provided with a list of the persons incarcerated, which is cross-checked to identify those people with Centrelink debts. People incarcerated without submitting

application for payment forms (SU19s) are being assisted to complete those forms by the Centrelink Prison Outreach workers. To date, around 800 SU19s have been issued.

Centrelink is also resisting raising debts against people in custody and is aiming to get Prison Liaison Officers to speak to prisoners prior to a debt being raised.

New Futures Alliance project

The New Futures Alliance (NFA) is one of the contractors delivering services under the Strategic Indigenous Housing Infrastructure Project. It employs a number of Aboriginal workers.

NFA approached Centrelink seeking to streamline the process of providing payslips as its administrative staff were being overburdened with requests for payslips.

Centrelink has entered an agreement with NFA, whereby (with the consent of the customer) NFA provides payslips for those employees on Centrelink benefits direct to Centrelink on a fortnightly basis.

Centrelink then codes these payslips and makes a review of entitlement each fortnight - which looks at the amount on the payslip and the amount that has been declared by the customer. Once a review is conducted, the Remote Servicing Team (RST) speaks to the customer about their debt and reporting their earnings.

There has been a significant improvement in the amount of earnings that are being declared as a result and a consequent reduction in the number of customer debts being raised.

An unintended consequence of this initiative is an increase in the incidence of partner earnings debts. There are a number of reasons for the non-disclosure of true income between couples, despite the obligation to report partner earnings to Centrelink. People on limited incomes may be unwilling to fully disclose their income to their partner, for fear they will be made to share it or lose their income entirely, particularly in relationships characterised by domestic violence.

For this reason, we are supportive of Recommendation 9-7 of the Australian Law Reform Commission's (ALRC) *Family Violence and Commonwealth Laws – Improving Legal Frameworks* Report*.* This recommendation would allow the waiver of debts when a person or their nominee did not knowingly make a false statement or representation, or knowingly fail to comply, with a requirement of the social security laws.

We are broadly supportive of this approach provided that Centrelink properly codes the payslips. We are also supportive of this being expanded to other employers of Aboriginal people, namely the Aboriginal Interpreter Service (AIS), DET, the Shire Councils, the Northern Territory Department of Health and Commonwealth Agencies.

Action: Further resources

Whilst we are encouraged by the projects that the Indigenous Debt Reduction and Prevention Team is undertaking, we consider that it is imperative that Centrelink

invest further resources in debt prevention work. We are aware that there are only two dedicated workers in the Northern Territory dealing with these issues.

Action: **National Indigenous Debt Prevention Strategy**

We have yet to be provided with a current debt prevention strategy for Aboriginal people. Centrelink to provide our legal services with a current strategy, which takes in to account the different approaches required in the urban, regional and remote settings.

Action: Appropriate communication of Centrelink obligations

Centrelink to undertake to appropriately and comprehensively communicate to customers their reporting obligations in a range of culturally appropriate and accessible formats. For example, through radio advertisements and printed materials translated into language.

Action: Debt Prevention Outreach

Centrelink to allocate a debt prevention worker to travel with each RSDT to identify customers with repeated debts.

The aim of this position would be to provide information and support (with the assistance of AIS interpreters) to customers regarding their reporting obligations and how to report correctly.

2. Income management

There are currently 17,215 people compulsorily and voluntarily income managed in the Northern Territory, of which 15,575 are Aboriginal. 90.5 per cent of income managed customers in the Northern Territory are Aboriginal.

The issues presented here should be viewed in light of the fact that they disproportionately affect Aboriginal people, despite the purported non-discriminatory intent of the income management regime.

2.1 Exemptions from Income Management

WROP workers at NAAJA and CAALAS have guided clients through the process of claiming an exemption from the “new income management”. We have found the system to be onerous, difficult to navigate and to place an unfair administrative and proof burden on the individual seeking the exemption.

We consider that this is reflected in the low rate of exemptions granted to Aboriginal people. Aboriginal people represent nine out of ten people on income management but account for just 22.9 per cent of the exemptions granted by Centrelink.

Date released during Senate Estimates shows that non-Aboriginal people account for 9.5 per cent of those on income management, but 77.1 per cent of all exemptions granted in the Northern Territory.

There are a number of factors which impact on the low rate of exemptions from income management for Aboriginal people including:

- the restrictive nature of the exemption criteria;
- lack of communication by Centrelink regarding the ability and criteria to obtain an exemption and the process by which to do so;
- lack of knowledge amongst Centrelink staff regarding the correct criteria for obtaining an exemption;
- lack of co-ordination by Centrelink with Northern Territory Department of Education and Training (DET) and Job Services Australia (JSA) staff around the ability of customers to obtain an exemption and to facilitate the pathways to an exemption, in particular in relation to the full time study exemption;
- Centrelink's failure to clearly communicate with people who request exemptions;
- Centrelink's lack of follow up of people who request exemptions but are rejected;
- Centrelink's failure to log customer complaints about income management as a request for a review or an opportunity to provide information on exemptions;
- difficulties encountered by people trying to get immunisation and health check information/evidence from health clinics – some clinics are helpful, some can be hostile and uncooperative.

There are a number of legislative changes that would assist to further the aims of the income management regime. We have detailed these changes elsewhere however, in brief, we propose:

- amending the 15 hours of work per week requirement to allow the hours to be averaged out over the test period, to allow for people whose work hours may fluctuate between weeks;
- allowing CDEP participants and voluntary workers who average 15 hours of work per week over the test period to be eligible for an exemption;
- extending the above criteria to enable an exemption for people who combine part time study and part time work to;
- allowing exemptions for persons who otherwise comply with the requirements for an exemption, but do not have access to work or study opportunities in their home community; and
- greater flexibility in the application of 5 unexplained absences rule.

2.1.1 Issue: Lack of communication regarding the ability and criteria to obtain an exemption and the process by which to do so.

The ability to gain an exemption is not widely understood in the Northern Territory, nor is it widely promoted by Centrelink.

Action: Developing and implementing a communication strategy

Centrelink to develop and implement a comprehensive communication strategy including radio, print, notifications on Indigenous Call Centre and BasicsCard line and other forms of culturally appropriate communication detailing the ability and criteria to obtain an exemption and how to approach Centrelink.

Critically, this needs to include direct and repeated targeting of remote school staff, including cultural liaison and home liaison officers, many whom are still unaware of the exemption opportunities both for parents whose children have good school attendance and adults who undertake full time study.

Action: Training of Centrelink workers

Centrelink to provide regular and on-going training to all Centrelink workers to ensure they are aware of the criteria for obtaining an exemption.

Action: Incorporate exemption messaging into Centrelink scripts

Centrelink to include exemption messaging into Centrelink scripts and provide a positive obligation onto Centrelink workers to discuss exemptions.

2.1.2 Issue: Lack of information in exemption rejection letters

Centrelink advises people that their request for an exemption has been rejected via letter. The letter states "Your exemption request has been rejected".

The letter does not detail the reason why the person has been rejected or the steps that can be taken to successfully apply for an exemption in the future. As a result, the person will need to approach Centrelink or a WROP lawyer for an explanation as to why their exemption request was rejected.

This clearly impacts on recipients' understanding of the reasons they have been rejected and their ability to satisfy exemption criteria in future. We consider that this impacts on the number of people who successfully obtain exemptions.

Action: Improving rejection letters

The transparency and clarity of the process would be greatly improved if rejection letters included each of the below:

i. Clear information as to the reason(s) why the request has been rejected.
ii. Clear information on any outstanding evidence to support the exemption request.

For example:

" To get an exemption from income management, you need to show that your child had no more than 5 unexplained absences from school in the last two school two terms.

Your request for an exemption was rejected because your child Sean had more than 5 unexplained absences from school in the last school term."

or

"To get an exemption from income management you must have worked 15 hours a week over the past 6 months for more than the minimum wage.

Your request for an exemption was rejected because you did not work over 15 hours per week over the past 6 months."

a) Information regarding what the person needs to do to be successfully exempted from IM.

For example:

"You can reapply for an exemption in 6 months. You will need to show you have worked 15 hours per week during that time".

b) The person's rights of review and how to exercise those rights.

For example:

"If you think that Centrelink has made a mistake, you can seek a review of the decision by contacting Centrelink on (number). If you need help to seek a review, you can contact any of the legal services detailed on the back of this notice".

2.1.3 Issue: No follow up by Centrelink regarding exemptions

Centrelink is neither engaging with nor following up people whose exemption requests are rejected, including those people who simply fail to provide the required evidence within 28 days.

CAALAS has provided advice and assistance to a number of people who had failed to provide the required evidence to progress their request for an exemption within 28 days. Often the person did not provide the evidence because they did not understand what information Centrelink needed and were unaware of the time frame within which they were required to provide the evidence.

In most cases, CAALAS was able to assist these people to quickly obtain an exemption once the person understood what was required of them.

If the aim of the exemption regime is to either reward people for engaging in work or study or provide an incentive, by way of coming off income management, for people to engage in work and study, Centrelink should be (in conjunction with DET and JSA) providing support and engaging with people seeking to be exempted from income

management.

Action: Improving Centrelink follow up of exemption requests

Centrelink social workers to contact customers whose requests for exemptions have been rejected to explain the reason why the request was rejected, including those people who have failed to provide the required evidence, and offer supports/referrals to enable the customer to fulfil the requirements of the legislation.

It would assist if this was internally diarised, so six months after a request is rejected, a Centrelink social worker would contact the customer to follow up on their progress in satisfying the exemption criteria.

2.1.4 Issue: Lack of engagement with Department of Education and Training and Job Services Australia

We are deeply concerned with the ongoing lack of engagement between FaHCSIA, Centrelink and DET and JSA regarding the income management regime generally and, more specifically, the requirements for obtaining an exemption from income management.

Our on the ground experience is that JSA workers in remote communities have neither been trained in the basics of the income management regime nor in the criteria for obtaining an exemption on the basis of full time study or employment. Further, JSA workers have not been trained or guided to assist people to identify study and work opportunities that would qualify them for an exemption.

JSAs are the agencies that have the most contact with people who are seeking work or study opportunities. JSA workers should be supporting the income management regime by directing people into study and employment opportunities that would allow them to become exempted from income management over time.

At present, the ability of the income management regime to achieve its stated purpose to "encourage people to enter into work and study" is greatly compromised by this lack of coordination.

Action: Centrelink engagement with DET and JSA

Centrelink to develop an engagement strategy with DET and JSA to train workers in the criteria required for an exemption from income management and put it into the worker's work flow when the person is on income management.

2.2 State or Territory authority referrals for income management

We detail our concerns about government agencies external to Centrelink imposing income management in the APO NT Submission to the *Stronger Futures* Senate Community Affairs Committee ('the APO NT Submission').[2]

[2] Submission 330, available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/strong_future_nt_11/submissions.htm

2.2.1 Issue: Capacity and suitability of state and territory authorities to make referrals for income management

In brief, our concerns are as follows:

- The Secretary (Centrelink) has no discretion to review or consider a state or territory authority's referral of a person for income management. The Secretary is unable to evaluate whether the referral has been made in accordance with the authority's internal policies and procedures or if the referral meets the aims of the particular income management measure.

- As the substantive decision to impose income management is not made by the Secretary, Centrelink's appeal process is not available to a person adversely affect by the decision.

- The Centrelink appeal mechanism can only be accessed in relation to peripheral decisions made by Centrelink such as whether a notice was received from a state or territory authority or whether the customer was in receipt of an eligible income support payment. To appeal the substantive decision placing the person on income management, the person must access the appeal or review mechanism particular to the referring state or territory authority.

- The appeal mechanisms within each referring state and territory authority will differ widely. There is no tribunal which reviews administrative decisions in the Northern Territory and has binding decision-making powers. A person wishing to appeal an administrative decision, having exhausted review processes internal to the relevant state or territory authority, must go through the Court system. For instance, a person referred to income management by the Northern Territory Alcohol and Other Drugs Tribunal ('AOD Tribunal') would have to appeal the decision to the Local Court.

- To review a decision made by any territory authority (other than the AOD Tribunal) to income manage someone would require the person affected to lodge an originating motion in the Federal Court. To do so costs money, would likely require the assistance of a lawyer and has attendant costs implications. This differs significantly from an appeal through Centrelink appeals mechanisms which are free, designed to operate without the need for legal representation, and in which orders for costs are not awarded.

- The Northern Territory Department of Children and Families (DCF), the only authority currently able to refer a person to income management in the Northern Territory, does not publically publish its guidelines or criteria for assessing whether child protection income management is suitable for a person where child protection issues have been raised.

- State and territory authorities lack the expertise to make a decision that is better vested in Centrelink social workers, who are already trained in the income management regime and its purposes.

- The decision to income manage someone should not rest with an authority whose core role is divorced from the operation of the social security system.

- For example, there is a current proposal to expand the authorities empowered to make income management referrals to include Territory Housing. Territory Housing may refer a person to compulsory income management if their rent is in arrears.

- Territory Housing manages public housing tenancies in urban and remote areas in the Northern Territory. It does not have social workers or financial counsellors who have the capacity to assess whether income management will assist a person to pay their rent arrears.

- Territory Housing currently lacks the capacity to account for the rent payments of a large number of its remote tenants. For the majority of its remote tenants, Territory Housing does not keep individualised records of rent payments which are referenced to the property in which the person lives. This means that Territory Housing is often unable to determine when a person is in rent arrears or has overpaid their rent.

- Given this existing limitation, we submit that Territory Housing does not have the capacity to correctly assess tenants and issue referrals for income management.

2.2.2 **Issue:** Referral processes between NT Department of Children and Families and Centrelink

We are concerned that the referral processes between DCF and Centrelink are inadequate. CAALAS has provided the following case study which also appears in the APO NT Submission.

> Sophie is a 24 year old Aboriginal woman with a 6 year old daughter in her care. Sophie was forced to move to Alice Springs from a remote community in order to escape domestic violence. Sophie had 50% of her Centrelink benefits compulsorily income managed. Sophie approached CAALAS, worried she was not receiving enough money in her bank account. When CAALAS contacted Centrelink to ask about the lack of funds, Centrelink advised that Sophie had been placed on CPIM. Sophie had not been notified that she had been placed on CPIM.
>
> CAALAS assisted Sophie in requesting a copy of the documentation regarding DCF's decision to refer her for CPIM.
>
> Upon obtaining this documentation, it was apparent that the referral had not been made correctly in accordance with DCF policies or decision-making principles. The referring document lacked relevant information, and no evidence was provided as to why CPIM would help Sophie or her child. No assessment had been made as to whether quarantining an extra 20% of Sophie's benefits would be in the best interests of Sophie or her child. Importantly, mandatory sections of the referral form had been left blank.
>
> Centrelink received only basic notification from DCF that Sophie was to be placed on CPIM. Centrelink's lack of discretion as to whether to implement a notice from DCF contributed to Sophie being placed on CPIM unnecessarily and contrary to DCF policy and the objectives of CPIM. In this instance, Centrelink were forced to implement a notice that was defective.

CAALAS spoke to DCF about the referral. After protracted communications, DCF agreed that the referral had not been made correctly and agreed to revoke the notification to Centrelink. Because of 'system issues' with the electronic notification between Centrelink and DCF, it took four business days for this revocation to occur. During this time, Sophie and her child were left without funds over a long weekend.

CAALAS referred this matter to the Commonwealth Ombudsman for investigation, particularly in relation to Centrelink's failure to notify 'Sophie' that she was being income managed under the child protection measure.

Centrelink advised the Commonwealth Ombudsman that notification letters should normally be sent to customers in regards to changes in their payments. Centrelink could not determine why a letter was not sent to 'Sophie'. An apology was issued.

Action: Review of referral processes

We are concerned that Centrelink was unable to determine why a letter was not sent in this instance. Accordingly, we consider that a comprehensive review of the referral processes between Centrelink and DCF be undertaken.

Action: Publication of referral decision processes

We consider the policies, procedures and practices establishing the DCF guidelines and criteria for assessing a person for referral to child protection income management and the process by which the referral is conveyed to Centrelink should be made available for comment by the National Welfare Rights Network and the WROP lawyers.

2.3 Practical issues with income management

2.3.1 **Issue**: BasicsCard balances

Income managed customers issued with a BasicsCard continue to lack sufficient means to check the balance of that card, without having to go to significant effort to do so. Unlike a key card, the balance of the BasicsCard cannot be obtained via the ATM system – where the account balance is printed on a receipt at withdrawal or displayed on screen or a user can insert their card in an ATM and check the account balance for a fee.

Whilst the range of mechanisms for obtaining BasicsCard balances has expanded, there remain limitations to their universality and accessibility.

A person can obtain the balance of their BasicsCard via the following mechanisms:

- by attending a Centrelink office or remote service delivery site;
- via the internet;
- via a very small number of swipe card balance readers located in certain locations in the Northern Territory, generally in town centres;

- by contacting the Centrelink Indigenous Call Centre (ICC) by telephone; or

- by contacting the Centrelink 1800 BasicsCard number by telephone.

In order to be confident that their BasicsCard has sufficient funds (and avoid the attendant shame of being advised at a checkout that they do not have sufficient funds to purchase their items), a person would need to use one of the above methods **prior** to shopping.

There are a number of factors that limit the effectiveness of the above mechanisms:

- Permanent Centrelink offices are not widely distributed across the Northern Territory.

- Centrelink Remote Service Delivery teams generally visit communities on a six weekly basis.

- The majority of remote communities access Centrelink services via a Centrelink agent, which has limited functionality and is primarily designed to assist with completing claim forms and lodging application for payment forms.

- Internet access is not widespread due to limited internet connections and computers; language and literacy barriers; and other issues.

- Balance readers are not widely distributed, and in CAALAS' experience are often offline. Being located within stores, they are not available outside store opening hours, which can be erratic in some communities.

- Centrelink offices and the ICC are closed on weekends and outside standard business hours.

- Home phones are relatively uncommon; mobile phone reception is only available in some communities (large portions of Central Australia, the Katherine region and communities in more remote locations do not have mobile phone coverage). There is a heavy reliance on public phones, which are usually present in low numbers in remote communities and may be absent at outstations.

- The 1800 number incurs a charge from mobile phones and thus imposes a cost on income-managed customers for accessing their balance.

We have been advised that Centrelink has entered into an agreement with Woolworths, Coles and a number of other retailers to allow the balance of the BasicsCard to be printed on the bottom of a customer's receipt.

This will assist in certain circumstances, but we note that Woolworths and Coles stores are only located in the major centres of Alice Springs, Darwin and Katherine. The majority of remote customers would do their regular shopping at remote community stores, which are operated by a range of organisations, including the Arnhem Land Progress Association and Outback Stores. We are concerned that agreements have not been entered into with these retailers.

Action: Improving access to BasicsCard balances

Centrelink to prioritise entering into agreements to provide BasicsCard balances with retailers that operate in remote communities.

2.3.2 Issue: Mobility

The introduction of the BasicsCard and the increased number of BasicsCard merchants in the Northern Territory and across Australia has, to some extent, ameliorated the restriction on mobility that income management imposed. However, restrictions remain.

A person travelling out of the Northern Territory, for example to South Australia or Queensland for any reason, including medical treatment, to visit family or to attend to cultural business, will be limited in the range of merchants from whom they can purchase goods using their income managed funds.

By and large, interstate BasicsCard merchants are comprised of major retailers and generally do not include second hand stores, smaller retailers, independent grocers, hotels or accommodation, for example.

A person travelling interstate would need to contact Centrelink in advance to arrange for the direct payment of such expenses, which can be cumbersome, particularly when the travel is unexpected.

If a person were not able to contact Centrelink to arrange direct payments, they would have to subsist on the 50% of their social security payment that is directed into their bank account, or rely on friends or family.

Action: Expand BasicsCard merchants

Centrelink to continue to expand the range of BasicsCard merchants, with a focus on smaller and second hand retailers.

3. School Enrolment and Attendance Measure

NAAJA and CAALAS have commented on the expansion of the School Enrolment and Attendance Measure (SEAM) in the APO NT Submission. We are supportive of direct, one on one contact with parents by Centrelink staff, Indigenous Service Officers and social workers with the assistance of AIS interpreters and consider this approach to be key to the measure achieving the best outcomes possible.

3.1 Rollout of SEAM

We understand that the expansion of SEAM will take place gradually over the following two years.

3.1.1 Issue: Understanding of SEAM in current trial locations

There was no qualitative research undertaken by the Commonwealth Department of Education Employment and Workplace Relations about the dissemination of information about and understanding of SEAM in the Northern Territory as part of the

2010 evaluation of SEAM. Consequently, the level of understanding about SEAM amongst customers in the trial locations is unclear.

The 2010 evaluation of SEAM showed that there was a relatively low awareness of SEAM amongst parents in Queensland who were surveyed. There were also inconsistencies identified in the way information was disseminated about SEAM in Queensland.

We have concerns regarding how widespread knowledge and understanding of SEAM is within the existing SEAM trial locations. We note that residents of Ntaria (also known as Hermannsburg) have suggested that SEAM be trialled in their community, unaware that it is already in operation.

Action: Evaluation of customers' understanding and knowledge of SEAM

The Commonwealth Government to undertake a qualitative evaluation of "in scope" customers' understanding and knowledge of SEAM in the NT.

3.1.2 Issue: Communication of expansion of SEAM

We are concerned that the communities affected by the expansion of SEAM will not be adequately prepared for or briefed on the measure. We have been advised that information on SEAM will be primarily presented to affected communities via *Stronger Futures* information sessions, which will detail all of the *Stronger Futures* legislative changes (should they be assented to).

We refer to a letter to Minister Macklin dated 4 August 2011 from several NT legal services outlining our concerns with the adequacy of the *Stronger Futures* consultation process.

NAAJA and CAALAS attended a number of the *Stronger Futures* consultations held in 2011. The duration of the consultation was generally one to two hours. During this time, the facilitators sought input from the community on the following areas:

a) School attendance and educational achievement
b) Economic development and employment
c) Tackling alcohol abuse
d) Community safety and the protection of children
e) Health
f) Food security
g) Housing
h) Governance

The allocated one or two hours was clearly inadequate for proper and meaningful consultations with communities.

We refer to the report of the Senate Community Affairs Committee into *Stronger Futures* legislation and particularly Chapter 4, which deals with the consultation process, an extract of which appears below.

> 4.1 During the inquiry the committee considered significant evidence to indicate that there was a high degree of confusion amongst people in the communities who will be most affected by the measures in the Stronger Futures bills. There continues to be great confusion between the previous Emergency Response and the new process, and this too was reflected in the evidence given by submitters and the questions that witnesses asked of the committee during hearings.

> 4.2 In Ntaria the committee heard that people did not understand the difference between the Intervention and the Stronger Futures package.
>
> > "All [the people] want to know is what is the difference between Stronger Futures and the intervention. That is what they want to know. What are the changes"
>
> 4.3 Many submitters and witnesses also expressed their frustration with the consultation that took place around the Stronger Futures measures. There was a lot of concern about the perceived lack of consultation, but also about the way in which the consultation occurred, with evidence to suggest that officers and consultants running the consultations need to be better prepared for the task, and that more time needed to be taken building relationships with people to support effective communication.2

We are concerned the current information dissemination model proposed by FaHCSIA will not adequately inform communities and individuals about the legislative changes. This will inevitably impact upon the awareness and understanding of SEAM in affected communities. We urge Centrelink to heed recommendations 7, 8, 9 and 10 of the Senate Community Affairs report.

We also understand that letters will be sent to parents "in scope". We support Centrelink continuing to personally deliver and explain these letters to parents in affected communities.

Action: Appropriate communication and information dissemination in line with recommendation 7, 8, 9 and 10 of the Senate Community Affairs Committee report into *Stronger Futures*

It is imperative that SEAM be comprehensively communicated to those communities and individuals affected by it, including those communities where trials are currently operating.

The Commonwealth Government should convene public meetings specifically on SEAM in each affected community.

In addition, information on SEAM should be presented and available in a variety of culturally appropriate and accessible formats (such as via public meetings, radio advertisements in language, printed publications in accessible language, personally delivered letters to participants "in scope".)

This information should communicate:

- the intention of SEAM;
- the process followed by Centrelink when a person has been identified as being "in scope";
- the consequences of failing to comply with conference notices and school attendance plans;
- how to comply with various notices and the timeframes within which to comply; and
- review and appeal rights and mechanisms.

This information was not provided to persons "in scope" in the trial locations except in an ad hoc fashion.

4. Overcoming Aboriginal language barriers

4.1 Interpreter usage

4.1.1 Issue: Usage of Aboriginal Interpreter Service by Centrelink

We have received complaints that Centrelink do not use interpreters in all cases where there is a clear need to do so.

Action: Appropriate and optimal use of interpreters

Centrelink to provide regular training to its RST and all Centrelink staff regarding the importance of the use of interpreters, how to assess the need for an interpreter and the process by which to engage and properly utilise interpreters.

5. Review and Appeals

5.1 Delays in ARO decision making

5.1.1 Issue: ARO delays

Both NAAJA and CAALAS have experienced extended delays in the processing of ARO decisions. Both NAAJA and CAALAS have matters where the ARO decision was lodged in excess of 120 days ago, and a decision is yet to be made.

We understand that there is a large backlog of ARO decisions and this is not confined to the Northern Territory ARO Hub.

Action: Allocate more resources to the ARO Hubs to enable timely decision making in accordance with time limits prescribed in the social security law.

5.2 Low rate of Indigenous appeals

5.2.1 Issue: Low rate of Indigenous appeals

Centrelink acknowledged the low rate of Indigenous appeals in its Reconciliation Action Plan. It does not appear that this is replicated in the Department of Human Services Reconciliation Action Plan.

NAAJAA and CAALAS work to increase the awareness of and access to the review process within its client base and also amongst organisations which service our clients. We do not have the reach or resources of Centrelink.

We consider that this is still an issue and so request information on what the Department of Human Services is doing to address it.

5.3 Access to Social Security Appeals Tribunal

5.3.1 Issue: Access to Social Security Appeals Tribunal

We understand that the Social Security Appeals Tribunal (SSAT) does not permanently sit in Darwin. We understand that the SSAT undertakes a circuit from the Brisbane registry, every three or so months depending on the amount of appeals. The SSAT does not sit anywhere else in the Northern Territory but Darwin.

As there are historically low levels of Centrelink appeals generally, this has impacted on the regularity of SSAT sittings in the NT.

The facilities that the SSAT uses in Darwin for hearings do not have video link facilities, which has clear impacts on the accessibility of the SSAT for appeals heard outside of Darwin. If an applicant wants to use video conferencing facilities there is generally a delay in the scheduling of the hearing.

CAALAS assisted a person in Alice Springs who was appealing a decision to impose vulnerable welfare payment recipient income management. The SSAT advised that the appeal would have to be delayed a further one and a half months if their videoconference facilities were required. The applicant proceeded via teleconference, because he did not want to extend the time period that he was income managed.

CAALAS advised that it would have assisted the SSAT to see and observe their client and his presentation – particularly as it was making a decision as to whether he was "vulnerable". CAALAS also advised that the client would have had a better experience and understanding of the SSAT process if videoconference facilities had been available.

CAALAS has experience of representing a person in the SSAT via teleconference. CAALAS traveled to the remote community where the person lived and the SSAT sat in Darwin. The applicant required the assistance of an interpreter. CAALAS has advised that it was a difficult experience to run a hearing over the telephone with three participants on one end of the line and the SSAT on the other.

All parties found it difficult to know when to speak, when another person had paused to contemplate but had not finished speaking and to get a sense of the people involved. CAALAS continually needed to advise the SSAT who was speaking – the client or the interpreter as the women were of similar age and both spoke a mixture of Arrente and English during the hearing.

CAALAS advised that teleconferencing of hearings exacerbated the language divide.

There is also a low level of awareness of the SSAT generally and we consider that the SSAT should take action to address this.

Action: SSAT to undertake sittings outside of Darwin in the Northern Territory, more regular hearings in Darwin and ensure the availability of videoconference facilities for all hearings.

Action: SSAT to conduct awareness raising activities.

SPECIAL BENEFIT

Social exclusion and poverty traps

A call for reform from the National Welfare Rights Network

December 2011

1. INTRODUCTION

1.1 About the NWRN

The National Welfare Rights Network (NWRN) is a network comprised of 16 community legal services throughout Australia which specialise in social security and family assistance law and its administration by Centrelink. Based on the experience of clients of NWRN members, the Network develops policy and advocates for law reform for improvements in how services are delivered and how information is communicated about individual's obligations and rights.

NWRN member organisations provide casework assistance to their clients and conduct training and education for community workers and produce publications to help social security recipients and community organisations understand the system.

1.2 Background to this paper

As a result of many years of advising and advocating in Special Benefit matters, the NWRN has become increasingly concerned by a number of serious problems relating to the qualification for, and payment of, Special Benefit.

Special Benefit can be paid to certain people whose circumstances are so desperate that they have "no sufficient livelihood" and they are not residentially or otherwise qualified for another income support payment. The existence of Special Benefit as a last resort safety net payment recognises that from time to time there are special circumstances under which a person should be paid income support despite not meeting the usual residential or certain other requirements.

The vast majority of Special Benefit recipients are migrants, often newly or recently arrived, who are unable to meet the residential requirements for other social security payments, and whose circumstances are so dire that they may qualify for Special Benefit.

The primary qualification criteria for Special Benefit are found in the *Social Security Act 1991*, however unlike other income support payments, most of the qualification provisions, and all of the payability provisions, are contained in policy rather than in legislation. This means that, for the most part, Special Benefit is in practice more a discretionary payment than a statutory entitlement.

It is in the community's best interests to have such a payment but Special Benefit is now arguably the most legally complex, confusing and difficult payment type.

At as June 1990 there were 27,913 people receiving Special Benefit. This number has steadily decreased over the years to the point where, as at June 2010, there were only 6,307 people receiving Special Benefit.[1] This means that over the past decade the number of people receiving Special Benefit has decreased by 443 per cent.

Of these 6,307 more than 50 per cent were people who were not residentially qualified for Age Pension (which generally requires at least 10 years of residence from the grant of a permanent resident's visa). Presumably many of these people would have sufficient periods of residence to qualify for another payment (eg Newstart Allowance) but are unable to claim and/or qualify for those payments because they have reached Age Pension age. Certainly, Welfare Rights workers have helped many people in exactly this situation.

The other large group in the June 2010 figure of 6,307 are people on Spouse Provisional visas, who comprise just under 30 per cent of the total figure. This number will presumably drop considerably from 2012 as people on Spouse Provisional visas 309 and 820 will no longer have an automatic family member exemption from the waiting period for Special Benefit on the basis of their relationship with their spouse.

Qualification for Special Benefit and its rate of payment are so severely restricted by both legislation and policy that many children and their families, who are in dire need, are left at great risk with no income and no sufficient livelihood.

Where a person does qualify for Special Benefit, the harsh income test creates poverty traps which operate to worsen poverty and create disincentives to work.

The following table provides a snap shot profile of Special Benefit recipients.

Table 1.	Profile of Special Benefit recipients
Age	Just over half (51.6%) of all Special Benefit recipients are aged over 65, reflecting the high numbers of older people unable to meet residency requirements (N= 3,257). These people of Age Pension age live on $131 less than other older people of similar age. People under 24 account for 18.4 % of those on Special Benefit and 8.9% (563) are aged under 16.
Country of birth	Almost 48 % live in NSW (3,026), 28% in Victoria (1,787) and 595 in Queensland (9.4%). Looking at country of birth, 23.8% were born in China, followed by 8.5% who were born in Australia, with 6.2% born in the Philippines.
Duration of receipt	Fifty-five % have been on Special Benefit for more than 12 months; One-in five (19.9%) have been in receipt of Special Benefit for four or more years; The mean time on benefits is 115 weeks (2 years, 1 month)
Source: Department of Families, Housing, Community Services and Indigenous Affairs, *Statistical Paper No. 9, Income support customers: a statistical overview 2010.*	

[1] Department of Families, Housing. Community Services and Indigenous Affairs, *Statistical Paper No. 9 - Income Support Customers: A Statistical Overview*, 2010, p. 69.

1.3 Scope of this paper

This paper details the problems with legislation and policy on Special Benefit and proposes simple and effective solutions for addressing these problems.

Special Benefit policy is particularly flawed and the resulting impact on extremely vulnerable groups, particularly migrants and very young people, are immense. Most of the problems with Special Benefit can be remedied by changes to policy and would not require legislative change.

As well as changes to existing policy this paper proposes changes to extend qualification for Special Benefit to some particularly vulnerable people. There is scope for a limited expansion of Special Benefit qualification when considered in the context of:

- the desperate need of certain vulnerable groups who currently cannot receive Special Benefit and whose social exclusion is entrenched by lack of access to income support; and
- the massive reduction in the number of people currently receiving Special Benefit.

2. PROBLEMS WITH THE RATE AND QUALIFICATION

2.1 Requirement to obtain support from all possible alternative sources

A person's claim for Special Benefit may be rejected if the person has not attempted to obtain support from all possible sources. This means that Special Benefit might be rejected because a person has not sought support from friends, family members or charities.

The Administrative Appeals Tribunal (AAT) observed in Hussaini that the requirement to obtain support from all possible alternative sources in government policy is unreasonable and lacks legislative basis.[2] The AAT stated at paragraph 31:

> "*I observe that s 3.7.2.20 of the Guide requires that n*ewly arrived residents are required to have attempted to obtain support from all possible alternative sources before being granted Special Benefit. Whilst I am not bound to apply policy guidelines of the kind referred to in the Guide (see Drake v Minister for Immigration and Ethnic Affairs (1979) 2 ALD 60), I may do so and, indeed, the Tribunal will usually apply the guidelines unless there are cogent reasons in a particular case for not doing so: see Re Drake and Minister for Immigration and Ethnic Affairs (No 2) (1979) 2 ALD 634 at pp 639 to 645; Re Dainty and Minister for Immigration and Ethic Affairs (1987) 6 AAR 259 at p 267; and Minister for Immigration, Local Government and Ethnic Affairs v Roberts (1993) 41 FCR 82 at p 86. **I doubt that there is any legislative basis for this requirement, and, it seems to me, unreasonable that Australian charities should be asked to support incoming migrants whose circumstances have changed, such that they are unable to support**

[2] HUSSAINI and SECRETARY TO THE DFHCSIA (No 2011/94) Decided: 14 February 2011 by N. Isenberg

> **themselves, before Centrelink might consider entitlement to special benefit.** Nonetheless, in this matter there was evidence that the Applicants had been living off the generosity of Ebrar's friends and that they had sought charity assistance, without success." (Emphasis added).

Special benefit was specifically introduced to remedy situations where, in spite of not qualifying for other income support payments, it is nevertheless appropriate for a person to receive an income support payment from the Government. Special benefit has been designed to plug certain gaps that may arise from time to time in the Government's social security system.

The current policy at 3.7.2.20 unnecessarily fetters this original purpose of Special Benefit. Moreover, it tries to shift responsibility for plugging the gaps in the social security from the Government back onto the major charities and the generosity of private individuals, thereby placing an undue and unreasonable burden on them.

It should not be necessary for a person who falls through the gaps of our social security system to test whether they can receive support from charities or from the generosity of friends before the Government will step in to plug that gap, when they meet the legislative criteria for Special Benefit.

The major charities in Australia should not be put in the position of being considered to be an alternate social security system.

The current policy at 3.7.2.20 is without legislative basis and should be removed.

Recommendation No. 1.
The requirement to have attempted to obtain support from all possible alternative sources before being granted Special Benefit should be removed from the Guide to Social Security Law.

2.2 Special Benefit homelessness requirement for school children

Under the *Social Security Act 1991*, a child must be "homeless" in order to receive Special Benefit, if they are also a full-time student.[3]

The Administrative Appeals Tribunal has read the definition of "full-time student" broadly to include even primary and secondary school education (*Mokofisi and SDFACS 55 ALD 605*). This means that in most cases where a parent is not residentially qualified for a payment, but they have an Australian citizen child aged between six and 16 in their care, the child will not receive Special Benefit unless they meet the "homelessness" criterion.

[3] Social Security Act 1991, *Section 739.*

The Act requires that a person meet the Youth Allowance definition of "unable to live at home" (UTLAH) in order to be treated as "homeless" for Special Benefit purposes.[4] The application of the UTLAH provisions to cases involving the children of non-resident parents is clumsy. This is because those UTLAH provisions are clearly intended to apply to young people applying for Youth Allowance, who will be over 16 years old.[5] UTLAH provisions are also primarily concerned with the reasons a young person cannot reside at the home of a "parent" and whether or not they are receiving any support from their parents. Linking the definition of "homelessness" to the UTLAH provision just does not fit. It simply cannot readily apply to situations involving child applicants for Special Benefit who are, as a matter of course, reliant on their parents and whatever little support the parents can garner for them through community organisations, family or friends.

Recommendation No. 2.
The "homelessness" requirement for school students should be removed.

2.3 Parent cannot receive FTB if child receives Special Benefit

In situations where a child is residentially qualified for Special Benefit, but the parent is not, it should not be necessary for the parent to forego payment of Family Tax Benefit in order for the child to receive Special Benefit.

This means that despite being in serious financial hardship, a family relying on Special Benefit in this way generally receives several hundred dollars per fortnight less than a family relying on Newstart Allowance as the primary income support payment. Such a family would also miss out on the annual Family Tax Benefit supplements.

This is an anomaly caused by section 22A(1) of the *Family Assistance Act***,** which states that a person cannot receive Family Tax Benefit in respect of a child who receives an income support payment in their own name.[6/7] We understand that the intention of this section is to prevent a parent receiving Family Tax Benefit at the same time as their child receives Youth Allowance. In such cases, and unlike child Special Benefit cases, the parents would generally be receiving their own income support payment (eg Newstart Allowance or a pension), or have income of their own. In Special Benefit cases where a child is paid Special Benefit, the parent(s) have no income support payment of their own.

Examples to illustrate the impact of these provisions are as follows:

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[4] Social Security Act 1991*, Section 1067A (9).*
[5] A young person whose circumstances are assessed as "unreasonable to live at home" is considered "independent" for youth allowance purposes and therefore receives a higher independent rate of youth allowance, is exempt from parental means tests, and may be eligible for rent assistance.
[6] A New Tax System (Family Assistance) Act 1999.
[7] Section 22A(1) provides that a child is not an "FTB Child" of a person if the child, or someone on behalf of the child, is receiving a social security pension, benefit or allowance or labour market program payment.

Table 2. Anomalies in existing legislation causing hardship	
Example of the intended operation of the s 22A(1)[8] rule	Example of the unintended operation of the s 22A(1)[9] rule:
A single parent receives Newstart Allowance and Family Tax Benefit until her child turns 16. At that point, she forgoes Family Tax Benefit and instead her child claims Youth Allowance which is paid to the child (although in practise the Youth Allowance is generally deposited to the mother's account). Thus the family income is $486.80 (the parent's Newstart Allowance) plus $212.70 (the child's Youth Allowance) - total $699.50 per fortnight.[10]	A single parent is not herself qualified for a social security payment, but she is qualified for Family Tax Benefit. Her child was born in Australia to a permanent resident father and so can qualify for Special Benefit. However, she must forgo her Family Tax Benefit of $241.08 to receive Special Benefit of $486.80 which is paid to the child (but in practise would be deposited to the mother's bank account). Thus the family income is total $486.80 per fortnight (the child's Special Benefit only).[11]

It is unlikely that the *Family Assistance Act* was intended to operate in this way in relation to Special Benefit where the child, not the parent, is in receipt of the family's only income support payment.

The Family Tax Benefit is designed to *supplement* a person's primary income source. It is meant to assist with the *additional costs* of raising children. It is not meant to be a primary income support payment and is not, of itself, a "sufficient livelihood" for a child and their parent(s).

Recommendation No. 3.
The requirement for a parent to forego Family Tax Benefit in the case of a child receiving Special Benefit should be removed where the child's parent is without a sufficient livelihood and is not receiving a social security payment.

2.4 Newly arrived residents waiting period (NARWP)

Given the already stringent qualification criteria for Special Benefit, it is unnecessary for there to also be a two year newly arrived residents waiting period. Where a young person or

[8] A New Tax System (Family Assistance) Act 1999.
[9] A New Tax System (Family Assistance) Act 1999.
[10] Centrelink, *A Guide to Australian Government Payments*, 20 September to 31, December 2011 published at http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm
[11] Centrelink, *A Guide to Australian Government Payments*, 20 September to 31, December 2011 published at http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm

their parent/guardian has no sufficient livelihood and does not qualify for any other payment they should not be required to endure a further two years of extreme hardship and poverty before receiving Special Benefit.

Arguably, leaving vulnerable people without payment for the duration of the Newly Arrived Residents Waiting Period (NARWP) period contravenes one or more of the international conventions to which Australia is signatory (see for example *Article 27 of the Convention on the Rights of the Child*, the scope of which is not limited to citizens and permanent residents).

Recommendation No. 4.
The Newly Arrived Residents Waiting Period (NARWP) requirement should be removed from Special Benefit or (at the very least) a new category of exemption from the NARWP should be introduced based on the rights of the child found in Article 27 of the Convention on the Rights of the Child. For example, an exemption should apply in situations where child or their parent/guardian is without a sufficient livelihood.

2.5 The diabolical Special Benefit means tests

Unlike other income support payments, which have income and assets tests prescribed by the Social Security Act, the means tests for Special Benefit are set out in policy. They are considerably harsher than any other means test.

For example, a person receiving Newstart Allowance, who loses qualification for Newstart Allowance on turning Age Pension age, would generally be paid Special Benefit. However, the means tests for Special Benefit are so much harsher than Newstart means tests that a person may have their Special Benefit drastically reduced, in some cases to nil, and it may be due to "support" that is not really even "income".

Issue 1: dollar for dollar reduction

Where a person's circumstances are such that they do qualify for a Special Benefit, their rate of Special Benefit is reduced by one dollar for every dollar of income they receive from another source, including employment and any "in kind" support. Unlike other payments, there is no income free area and no taper rate to both encourage and reward employment and participation. The "dollar for dollar" deduction treatment of "in kind" support such as free board and lodging is especially unfair where any other income support payment rate would not be affected. Even limited charitable and non-monetary assistance may drastically reduce the rate of Special Benefit. In effect, a person's Special Benefit is penalised in equal measure to the charitable assistance they receive from others.

A compelling example of the unfairness of the dollar for dollar income test is as follows: A homeless 14 year old receiving Special Benefit and no other means of support would like to work for Macdonalds to earn some money to help them meet their costs of living. Unfortunately, every dollar of income from Macdonalds will reduce Special Benefit by a dollar, thus there is no incentive to take the job. In fact, the Special Benefit is reduced by the "gross" amount of income, thus once tax is taken out, the young person would have less in their pocket each fortnight than if they didn't have the job. Whereas if the person were on any other income support payment (eg Youth Allowance) they would have a free area (ie an allowable amount of income that has no effect on their rate) and a tapered rate of reduction for income over the free area.

The following table illustrates just how disadvantaged Special Benefit recipients are under the income test compared with other allowances and pensions.

Table 3. Special Benefit and other social security payments, December 2011

Payment Type	**Single rate (per week)**	**Income Free Area (per week)**	**No payment when income reaches (per week)**	**No payment when assets reach (for homeowners)**
Special Benefit	$243	Nil	$243	$5,000
Newstart Allowance	$243	$31	$452	$186,750
Age Pension	$374	$75	$823	$686,000

Unsurprisingly, given the extremely harsh dollar for dollar reduction and the low rates of payment, there were just 1.6 per cent, or just 101 people reporting any earnings (out of 6,203). This compares very unfavourably with Parenting Payment (Single) recipients on pension taper rates, where 32 per cent have employment income; and Newstart Allowance, where a lower 17 per cent of active job seekers report earnings.[12]

This requirement may directly or indirectly cause problems such as increased family conflict, homelessness or exacerbation of health problems. It may lead to a breakdown in the very relationships that make up the limited external support available to them.

Issue 2: long and short term available funds tests

[12] Department of Families, Housing, Community Services and Indigenous Affairs, *Statistical Paper No. 9, Income support customers: a statistical overview, 2010.*

The "short term available funds test" applies where a person is likely to need income support for less than 13 weeks. This test requires that a person's **savings be less than the equivalent of two weeks** of the maximum rates of Special Benefit and Family Tax Benefit in order for Special Benefit to be payable. This could be as low as $486.80 for a single adult for example.[13] These figures and this test expose vulnerable people to too much risk. Where the person has more than this amount, a preclusion period is calculated. If the preclusion period is to be greater than four weeks, the person's claim is rejected.

The "long term available funds test", generally applies where a person is likely to need income support for more than 13 weeks, requires that a person has less than $5,000 in available funds, irrespective of marital status or number of dependents. Unbelievably, this threshold figure has not been increased or indexed and has remained at $5,000 for ***at least*** the past 14 years.[14]

The means tests for Special Benefit are therefore far harsher than those of any other allowance or pension, despite the fact that, in the experience of the NWRN, Special Benefit recipients are generally more vulnerable as a group than other income support recipients.

These separate tests for the one payment are unnecessarily complicated and unfair. A person must effectively fall well below the Poverty Line before they can even have a claim processed.[15] Assistance to a person already assessed as being without a sufficient livelihood should not be denied financial assistance on the grounds that they have not yet spent the last of their usually meagre savings especially when those savings may be the difference between being able to afford essential costs such as housing, utilities and food.

Issue 3: treatment of "in kind" support

Where a person's circumstances are such that they do qualify for a Special Benefit, their rate of Special Benefit is reduced by one third if they receive free lodging and by two thirds if they are receiving free board and lodging. Often the reason the person is not paying board/lodging is because they do not have the funds to do so. Often the accommodation is temporary or unsustainable (indeed, the person may be experiencing secondary homelessness in such accommodation).

Such an approach is not just illogical, but can have devastating consequences on vulnerable individuals and families. These rules essentially punish and undermine the limited support

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[13] Centrelink, *A Guide to Australian Government Payments*, 20 September to 31, December 2011 published at http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm

[14] DSS Guide to the Administration of the Social Security Act, Volume 1 at 15.900; Guide Issue No.988G. We understand that the threshold has not changed since 1990, ie for 21 years, but have not been able to independently verify this.

[15] *Poverty Lines: Australia*, Melbourne Institute of Applied Economic and Social Research, June Quarter 2011 ISSN 1448-0530 Table 4. Published 23 September 2011. According to this table, poverty line income for a single adult allowee is $446.47 per week whereas the maximum income support payment allowance rate is $295.65 per week.

that may in some cases be available from charities, family or friends. Special Benefit recipients live in poverty and it is our experience that such assistance is commonly needed in addition to income support to meet essential costs of living.

Issue 4: treatment of Family Tax Benefit

In situations where a parent qualifies for both Family Tax Benefit and Special Benefit, we have occasionally come across cases where Centrelink has treated the Family Tax Benefit received as "a sufficient livelihood" (thereby precluding payment of Special Benefit), or in some cases the dollar for dollar income test is applied to reduce the Special Benefit by the value of the Family Tax Benefit being received. Family Tax Benefit is not an income support payment and is not intended to be a "livelihood". Rather it is intended to assist in the extra costs of raising children.

Centrelink guidelines and government policy should be amended to make it very clear that Family Tax Benefit should not preclude or reduce the payment of Special Benefit. Special Benefit recipients are no different from other income support recipients in terms of the costs of rearing children, except perhaps that in many cases they may be even more vulnerable and have even greater need for these family payments intended to support children.

Recommendation No. 5.
The special means tests for Special Benefit should be abolished. Instead, the income and assets tests to be applied should be that of the pension or allowance that the person would be paid, if the person were residentially qualified for a social security payment. (eg Newstart Allowance for unemployed people of working age, Age Pension for those of Age Pension age). The definition of income should be the same as the definition that applies to Newstart Allowance or Age Pension (as appropriate). Legislation and policy should make it very clear that family assistance payments should not reduce the rate of Special Benefit in any way.

2.6 New Zealanders and denial of access to Social Security

New Zealanders who arrived in Australia on a Special Category Visa after 26 February 2001 generally cannot qualify for any social security payment. However unlike other migrants, they have the right to live in Australia indefinitely and unlimited work rights. As a result, there are many New Zealanders living in Australia who find themselves in dire need of Special Benefit, or another social security payment (except some very limited payments under the International Agreement with New Zealand).

The lack of access to income support is particularly unfair for children on Special Category Visas who often had little choice in the decision to relocate to Australia and have no entitlement to income support (other than a one off period of up to six months of Youth, Newstart or Sickness Allowance once they have resided here for at least 10 years).

Moreover, they do not have access to the full range of programs available to young jobseekers who are Australian residents.

It should be possible for New Zealand citizens in dire need to access Special Benefit where they have suffered a substantial change in circumstances since migrating to Australia and it would be unreasonable in the circumstances of the case to expect the person to relocate to New Zealand to access social security payments there.

The reasons for this are best illustrated by example:

1. **Toby** arrived in Australia in 2008 with his family. At the time he was 14 years old. Two years later he left his family due to family violence and moved into a refuge. As he is here on a New Zealand passport he is not residentially qualified for Youth Allowance or Special Benefit. If he were living with an adult, that adult could claim Family Tax Benefit on his behalf, but it cannot be paid to him directly and in the absence of such an adult in his life, it cannot be paid at all. He is surviving only with the assistance of Mission Australia and is falling behind at school. It is not reasonable to expect him to return to New Zealand as he is still only 16 years old and is not mature enough to effect the move and resettle alone.

2. **Sayeda** originally arrived in New Zealand from Uganda as a refugee. In 2005 she resettled in Australia after fleeing New Zealand having been subjected to domestic and family violence from her husband and his family in New Zealand. In Australia she found herself homeless and living in a refuge. With assistance from the refuge and community and health workers, her four children settled into schools and the youngest, who had a disability established good connections with the local health services, specialists and hospitals. Eventually, the refuge in which she was staying told her she had to leave (being a service with a three month maximum stay, although they had let her stay for more than a year). Sayeda was receiving Family Tax Benefit for all four children, but neither she, nor the children, could receive any social security payment, due to their status as SCV holders. As such she could not afford rent and, before long, she and the children were homeless again. Fears of violence from her ex-husband's family made it unreasonable for her to return to New Zealand. Her ex-husband did visit the family briefly in Australia but provided no support to her and her children.

3. **Ron** arrived in Australia in 2007 to be near his child, whose mother had resettled in Australia. He commenced work as a builder's labourer. Several years later, he suffered an accident in which he lost his arm and became incapacitated for work. Unfortunately, he cannot qualify for any social security payment while in rehabilitation or retraining. Given that his child is in Australia, it is not reasonable for

him to return to New Zealand.

4. **Emma** arrived in Australia from New Zealand in July 2003 aged 11. She is currently 19 years of age. She is a Special Category Visa holder. As a New Zealand citizen who arrived in Australia after 26 February 2001, she is prevented from claiming a Social Security payment due to the operation of s 29(1) of the *Social Security Administration Act 1999* which requires a person to be an Australian resident. While in Australia Emma's mental health deteriorated and she was diagnosed with Bi-Polar Disorder. She developed a good relationship with a psychiatrist in Australia. The mental illness has caused problems for her family relationships and she now remains estranged from most family members. Emma's disability is not severe enough to qualify for payments under the international agreement with New Zealand. She is, however, unable to sustain employment because of her disability. She remains without any source of income. Returning home to New Zealand is not appropriate because she has no contacts or support networks there.

We note again that children of New Zealanders often have little or no say over the decisions made by their parents and guardians to move to Australia, and little or no control over the events that unfold while they are here. Welfare Rights centres see many young people who were minors when the decision was made to come from New Zealand to Australia. It is unfair to leave them without adequate income support when at the time the decision was made for them to come to Australia, they had no input or control over that decision.

Recommendation No. 6.
(i) Amend the definition of Australian Resident to include Special Category Visa holders who arrived as minors.
(ii) Allow young people in this situation to access Special Benefit.
(iii) A special circumstances provision should be introduced to qualify New Zealanders for social security income support (eg Special Benefit) in special circumstances and where it would be unreasonable to expect the person to return to New Zealand to access social security there.

2.7 Other non-resident children

New Zealand children, and most children on temporary visas, cannot generally qualify for any Australian social security payments. No children who are here unlawfully can qualify for a social security payment.[16] Nor, for that matter, can they access the range of essential services necessary to ensure their rights as enshrined in the *Convention on the Rights of the Child.*

[16] A limited number of temporary residence visa holders may qualify for Special Benefit, namely 070, 310, 447, 451, 695, 785, 786, 787, 826, 951 and until 2012 only 309 and 820.

Under the Convention, Australia must protect the rights of children *within its jurisdiction* irrespective of citizenship status or nationality. *Article 2(1)*: reads:

"States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."

Further, *General Comment No 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin* states:

"[T]he enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness".

The lack of income support and access to the full range of essential services to children is a clear indication that Australia is failing New Zealanders and children who are not permanent residents within its jurisdiction.

Recommendation No. 7.
A special circumstances provision should be introduced to qualify any child within the Australian jurisdiction for a social security income support payment (eg Special Benefit) in special circumstances.

2.8 Other issues for school age Special Benefit recipients under 16 years

Observations have already been made about the impacts of Special Benefit policy on young people under 16 years, including the adverse impacts of the income test and the homelessness requirement.

We note also that these young people, usually 14 and 15 years old, are generally referred to Centrelink by State/Territory child protection authorities, refuges, youth workers and so on. They are homeless and extremely vulnerable. Unfortunately, because they are on a FaHCSIA payment, they also miss out on a number of beneficial DEEWR programs designed for young people on Youth Allowance relating to participation in education and employment.

Recommendation No. 8.
Consideration should be given to options for ensuring that young people on Special Benefit have access to the full range of beneficial programs offered to young people on Youth Allowance related to participation in education and employment.

SUMMARY OF RECOMMENDATIONS

A summary of the recommendations arising from this examination of Special Benefit are listed below.

1. The requirement to have attempted to obtain support from all possible alternative sources before being granted Special Benefit should be removed from the Guide to Social Security Law.

2. The "homelessness" requirement for school students to qualify for Special Benefit should be removed.

3. The requirement for a parent to forego Family Tax Benefit in the case of a child receiving Special Benefit should be removed where the child's parent is without a sufficient livelihood and is not receiving a Social Security payment.

4. The Newly Arrived Residents Waiting Period (NARWP) requirement should be removed from Special Benefit or (at the very least) a new category of exemption from the NARWP should be introduced based on the rights of the child found in *Article 27 of the Convention on the Rights of the Child*. For example, an exemption should apply in situations where child or their parent/guardian is without a sufficient livelihood.

5. The special means tests for Special Benefit should be abolished. Instead, the income and assets tests to be applied should be that of the pension or allowance that the person would be paid, if the person were residentially qualified for a social security payment. (eg Newstart Allowance for unemployed people of working age, Age Pension for those of Age Pension age). The definition of income should be the same as the definition that applies to Newstart Allowance or Age Pension (as appropriate). Legislation and policy should make it very clear that family assistance payments should not reduce the rate of Special Benefit in any way.

6. (i)The definition of Australian Resident should be amended to include Special Category Visa (SCV) holders who arrived as minors. (ii) Young SCV holders should be able to qualify for Special Benefit. (iii) A special circumstances provision should be introduced to qualify New Zealanders on SCVs for social security income support (eg Special Benefit) in special circumstances and where it would be unreasonable to expect the person to return to New Zealand to access social security there.

7. A special circumstances provision should be introduced to qualify any child within the Australian jurisdiction for a social security income support payment (eg Special Benefit) in special circumstances.

8. Measures should be taken to ensure that young people on Special Benefit have access to the full range of beneficial programs offered to young people on Youth Allowance related to participation in education and employment.