



NATIONAL
WELFARE RIGHTS
NETWORK

10 June 2015

Senator Zed Seselja
Chair
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

By email: community.affairs.sen@aph.gov.au

Re: Submission on the *Social Services Legislation Amendment (Youth Employment and Other Measures) Bill 2015*

Dear Senator Seselja,

Please find attached the submission from the National Welfare Rights Network (NWRN) regarding the above bill.

The NWRN is the peak body for community legal services which provide legal advice and representation to people about social security and family assistance law. For over 30 years our members have assisted people experiencing social security problems and we have amassed a detailed knowledge of social security law and policy as well as its administration through the Department of Human Services. Our members also have direct, “on the ground” experience of the lives of people on low incomes who will be adversely affected by many of these 2015 Budget measures.

The NWRN would welcome the opportunity to provide further feedback to the Committee on our submission. Should the Committee require additional input on the issues being considered, we can be contacted on 02 8217 5389 or at national@welfarerights.org.au.

Yours sincerely,

Kate Beaumont
President
National Welfare Rights Network

Att: 1



SUBMISSION

to the

SENATE STANDING COMMITTEE ON COMMUNITY AFFAIRS

Social Services and Other Legislation Amendment (Youth
Unemployment and other measures) Bill 2015

June 2015

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1 Introduction

The NWRN is the peak body for community legal services which provide legal advice and representation to people about social security law including family assistance and employment assistance rules.

For over 30 years our members have assisted people experiencing social security problems and we have amassed a detailed knowledge of social security law and policy as well as its administration through the Department of Human Services. Our members also have direct, “on the ground” experience of the lives of people on low incomes who will be adversely affected by many of the measures in this bill.

The Social Services and Legislation Amendment (Youth Unemployment and other measures) Bill 2015 contains a number of new measures, as well as repackaged measures from last year’s Budget.

We will address the following measures in this submission:

- A new 4 week waiting period (to be known as an “income support waiting period” (ISWP));
- Changes to the one week Ordinary Waiting Period;
- The eligibility age for Newstart Allowance and Sickness Allowance will be increased from 22 to 25; and
- Freezes to certain income free areas.

2 Overarching problems with the Bill

The fundamental problem with this Bill is that the measures it contains will impact hardest on low income families and individuals, particularly unemployed young people. The likely outcome, despite the Government’s stated intentions, will be to exacerbate poverty and disadvantage.

Drawing on 30 years of casework assistance to unemployed people accessing income support, this submission analyses each of the measures and explains the real impact of each measure on the people affected.

A new 4 week waiting period is proposed which presumes (incorrectly) that people choose to be unemployed and that poverty will force them into work, despite evidence that there are a significant number of people on unemployment benefits who are not obtaining work due to labour market factors beyond their control.

This proposal to restrict access to income support payments for young people under age 25 must be considered against the cuts to family assistance that are currently before the senate. This measure will have the greatest financial effect on young people who live in households with a low income. Family members who are also on pensions or allowances will be further disadvantaged if their children under 25 are denied income support for a four week period. For a detailed analysis on how family assistance changes will impact, see the NWRN submission on the Social Services and Other

Legislation Amendment (2014 Budget Measures No. 1) Bill 2014 and the Social Services and Other Legislation Amendment (2014 Budget Measures No. 2) Bill 2014 [here](#).

This Bill highlights contradictions in Government policy. Government has stated that it wants to address high rates of youth unemployment. However, many of the measures effectively decrease support to young people, students, and their families. These include:

- up to two 4 week waiting periods per year for young people under 25 (which will increase hardship for families and increase reliance on charities and the not for profit sector);
- introduction of additional barriers to exemptions from the one week Ordinary Waiting Period which will effectively remove access to the exemption for some people already in severe financial hardship; and
- increasing the time a person spends on the grossly inadequate Youth Allowance rate and freezing the income free areas for students (undoing the limited reforms that came out of the Bradley Review's findings about student poverty and the inadequacy of Youth Allowance).

The low rate of student payments mean that young people from low income households will face greater financial obstacles to pursuing study.

The stated rationale for the increase to Newstart Allowance age is that the lower payment rates for student payments and higher unemployment payments creates an incentive for a young person to be unemployed. It is claimed that the higher Newstart Allowance is a disincentive for young people to engage in study. The Government alleges that this is because young people who study full-time receive the lower Youth Allowance until they turn 25.

Low rates of payments for students are themselves a barrier to study, and the 2008 Bradley Report into Higher Education heard that many young people were working excessive hours, and these hindered their ability to pay the necessary attention to their studies.

As was the case with last year's Budget measures bills, there are no incentives in this bill. Once again, no steps have been taken to lower effective marginal tax rates (EMTR). Instead, the Bill contains a number of measures that will increase EMTR (e.g. by freezing income free areas and changes to the student income bank).

3 Four week waiting period

3.1 Fundamental problems with this proposal

The bill introduces a new 4 week waiting period (to be known as an "income support waiting period ISWP"). It will apply to young people aged under 25 on unemployment payments who are "job ready", unless an exemption applies.

A person will be exempt if they have already served an ISWP in the previous 6 months. Other exemptions apply for certain parents, people in State care in the previous 12 months, certain people exempted from the activity test for 15 days or more and people in a class to be determined by the Minister. For Special Benefit recipients, there is also a general special circumstances exemption and carer exemption.

The NWRN opposes this measure in its entirety. While it is an improvement on the 6 month waiting period proposed in Schedule 7 of last year's budget bill (No 4), it is itself a fundamental attack on the basic right to social security and the principle of adequate income support based on need.

That measure, and presumably also this one, was said to be based on the New Zealand waiting period which resulted from New Zealand government commissioned actuarial research into investment approaches to welfare.

Australia's social security system and labour market are not identical to New Zealand's. This year's 2015 Federal Budget included an allocation of \$20.7 million for similar research to be conducted in Australia. However the Government seeks, once again, to introduce a waiting period devised without first obtaining hard evidence of its likely effectiveness or impacts, positive or negative, on low income Australians. The government has not even waited to see the outcome of its own actuarial research.

While we support measures to address youth unemployment, we do not support measures that are not evidence based. There is no recent Australian evidence that we are aware of that shows that long periods of non-payment will address levels of youth unemployment in any significant way. This is a policy based on the crude and incorrect assumption that youth unemployment is a choice made by young people and that cutting off or delaying a person's income support will therefore increase their job prospects. It is based on the assumption that a big stick is needed to get young people into work.

These assumptions are misguided.

The first thing to note is that there are already "big sticks" in the system. There is a comprehensive compliance system in place and rates of payment are now so low that the incentive to look for and enter even minimum wage work is very high because of the improvement in the person's standard of living if they obtain paid work.

The second thing to note is that, rather than being an incentive, impoverishment is in fact a barrier to finding work. This is exactly why bodies such as the Business Council of Australia have indicated that single rates of payment need to be raised.

We are not aware of any modelling or evidence that there will be a measurable increase in take up of work by young people or a reduction in time spent on benefits if this measure is introduced. To the contrary, \$230 million was redirected last year into the "emergency relief" budget for those likely to be destitute. We note that in relation to this proposed measure the Government has provided for a meagre \$8.4 million in additional funding for "emergency relief" to assist those impacted by this new waiting period.

3.2 What harm can be caused by a four week waiting period?

Unlike other existing waiting periods, this waiting period does not pre-suppose that a person has savings or other income to live off during the precluded period.

The Liquid Assets Test Waiting Period (up to 13 weeks) and Income Maintenance Period (often months, sometimes more than a year), which are designed to make people live off their savings

while looking for employment before they can access income support are applied to people who have savings or termination payments that can sustain them. Even for people serving the newly arrived residents waiting period there will often be an assurance of support in place to assure support during the waiting period.

While all waiting periods can result in severe financial hardship, this occurs in a minority of cases where circumstances mean the person has expended or lost their savings or means of support. Most people serving one of these waiting periods actually have money to live off while they wait for their social security payment to commence.

This waiting period, by contrast, will be applied to people irrespective of whether they have any savings to live off. This is why the waiting period will impact harshest on those from disadvantaged backgrounds.

It applies irrespective of whether the person has any savings or family support to sustain them. For anyone, but particularly people with no savings, the consequences of no income for 4 weeks can be dire. For example, in NSW a landlord may commence eviction proceedings against a person who falls just two weeks behind in rent. At Section 3.2 *Interaction with other measures before parliament* below we have given an example of how dire the consequences may be.

NWRN predicts the following impacts for disadvantaged people: increase in family tensions, family breakdown, increased isolation, deterioration in physical and mental wellbeing, homelessness and/or housing insecurity, increased barriers to looking for work and social and economic participation.

NWRN can predict this with confidence as our frontline caseworkers assist people who have had claims rejected or their payments reduced, suspended or cancelled. In 2014 we commissioned an independent report which examined, among other things, the impact of not being able to secure adequate income support from Centrelink. A copy of that report can be found [here](http://www.welfarerights.org.au/independent-report-into-welfare-rights-services)¹. While the participants in the report were from a range of age groups, we are confident that the experiences of those people are indicative of the likely experience of young people during lengthy waiting periods. This is because we have also observed, over many years, the similar impact that delays in granting and processing claims for Youth Allowance have on young people and their families.

3.2 Interaction with other social security measures before the Parliament

This bill also amends the Newstart Allowance age of eligibility to 25. The rate of Newstart Allowance is \$519.20 per fortnight. The rate of Youth Allowance is only \$426.80 per fortnight (or only \$281 for those living at home), which is \$92.40 less. This means that 22-24 year olds will now not only face up to 8 weeks of additional income support waiting periods per year, they will also receive a vastly lower rate of payment once their payments commence. This measure is discussed in detail at Section 5 below.

This bill also makes it extremely difficult to have the Ordinary Waiting Period (OWP) waived. The person will need to satisfy both severe financial hardship and be experiencing a personal financial

¹ <http://www.welfarerights.org.au/independent-report-into-welfare-rights-services>

crisis and they will need to be able to provide evidence of these. A person who has served an OWP in the last thirteen weeks will be exempt from the OWP. This measure is discussed in detail at Section 4 below.

In combination, a young person may spend up to 10 weeks of the year serving these two consecutive waiting periods. An example of this would be:

John claims Youth Allowance on 1 January. He has a one week waiting period, and a 4 week income support waiting period. He cannot receive Youth Allowance until 5 February.

On 15 March, he gets a casual labouring job at award wages which lasts for 7 months to 5 September, when the job finishes and the employer has no more work for him.

- As it has been more than 13 weeks since he last served an OWP, he will have to serve another OWP.
- As it has been more than 6 months since his last 4 week income support waiting period, he must serve another 4 week waiting period.
- This year, he has served 10 weeks of waiting periods.

A very possible sequel to John's story might be the following:

During the 4 week waiting period, John was unable to afford his rent for a fortnight. Coming from a disadvantaged background he was unable to borrow money from family to make his rent payment.

His small amount of savings was used in the first fortnight of his waiting period on food and transport. He had to pay his phone bill to avoid it being cut off, so that he could be contacted by potential employers.

John's landlord issued an eviction notice because missing one rent payment meant he was 14 days in arrears. Unfortunately, after 5 weeks of non-payment, John also had outstanding utilities bills and was 4 weeks in rent arrears.

When his Centrelink payment was granted, it was at the Youth Allowance (YA) rate of only \$426.80 per fortnight. John was in debt to utilities companies and eviction proceedings were on foot. Because of his accrued debts and the very low YA payments he receives, he cannot afford to repay his rent arrears by instalments on top of his usual rent, as well as make sufficient repayments on utilities bills. John was evicted and was now homeless and in personal crisis. He was now also struggling with depression and anxiety. Unlike when he first claimed YA, he is no longer job ready and requires intervention from youth workers, housing authorities, financial counsellors, his GP, and intensive employment services.

3.4 Problems with the exclusions and exemptions to the 4 week waiting period

Exclusions and exemptions are a critical aspect of any measure which denies income support for a period. They are part of the fundamental architecture of waiting periods.

3.4.1 Absence of a free standing discretion and use of legislative instruments

Over recent years, there has been an increased use of delegated legislation via legislative instrument in the *Social Security Act*. Once again, parliament is being asked to vote on measures not knowing the scope of critical exemptions and safeguards.

Ministerial instruments are only one way to ensure flexibility to respond to rapidly changing or unforeseen circumstances. In our experience, the best way to meet the objective cited in the Statement of Compatibility with Human Rights to “ensure that the rules operate efficiently and fairly without unintended consequences” is to ensure that there is a free standing discretion available to decision makers.

There are examples in the current Act of a decision maker having a free standing discretion which are sometimes followed by a provision that allows the minister to issue guidelines for exercise of the discretion. In our submission this is a better approach as parliament can be certain of the existence of a general discretion when voting on the measures.

Parliament should demand that measures in bills such as this, which remove fundamental social security entitlements from disadvantaged people, include a clear discretion for Centrelink to exempt a person where there are special circumstances which would warrant such an exemption.

Note: while the Explanatory Memorandum at page 21 gives the impression that there is a separate “special circumstances exemption” for special benefit it should be noted that on inspection of proposed section 739AB this is only a special circumstances exemption to the extent that it applies under the activity test (which has a minimum requirement of 15 days).

3.4.2 Reliance on the Job Seeker Classification Index

The explanatory memorandum (but significantly, not the bill itself) states the intention that the 4 week waiting period will apply to people who are assessed as “job ready” by the Job Seeker Classification Index and referred to Stream A employment services.

If referral to streams B and C is the basis for an exemption, then the role of the Job Seeker Classification Instrument (JSCI), Employment Services Assessment (ESA) and Job Capacity Assessment (JCAs) becomes even more critical as they will now effectively determine when the young person has access to income support. There are long standing concerns about the consistency and quality of the streaming process (particularly the JSCI). The McClure Interim Report recommended that the job seeker assessment process be improved.² According to Senate Estimates, one-in-eight job seekers are incorrectly assessed. The evidence is that these jobseekers should have been categorised as Stream 3 or Stream 4 (under the previous jobseeker classification system) but were not because of the difficulty and complexity in correctly making such classifications.³

² McClure Report at pp 104 to 105, op cit, “An effective approach to assessing job seekers needs and abilities, to ensure they get the appropriate services at the right time, is fundamental to preparing job seekers for employment opportunities. The need for improved upfront assessments was raised by stakeholders in consultations with the Reference Group.....Improving assessment of job seekers is important for both the prospective employee and employer. Better assessment would ensure better job matching and a positive employment outcome.”

³ Senate Standing Committee on Education, Employment, Questions on Notice, *Supplementary Budget Estimates 2013-14*, Question No. EM0092_14.: 17.4 on Stream 1 up streamed to a higher Stream, and 13% that entered at Stream 2 up streamed, from 1 July 2009 to 30 September 2013.

There are also problems with the JSCI instrument itself. This is especially for people with undisclosed barriers, such as Aboriginal people, people with disability and other vulnerable groups. Unlike other decisions affecting a person's payability under the Social Security Act, decisions around JSCI, ESA and JCA assessments are not generally reviewable using Centrelink's internal review mechanisms or the Social Security Appeals Tribunal.

In other words, potentially being subject to a four week non-payment period is now to be left to a problematic system, which may result in arbitrary and discriminatory impacts on under 25s and is likely to impact hardest on vulnerable groups, particularly Indigenous people and other people living in regional and remote areas. This is especially so as increasingly jobseekers are encouraged to use on line and phone channels to do their business with Centrelink. Moves away from personal contact during the claim process can reduce the opportunity for barriers to be picked up.

It is unacceptable that a decision with such a serious impact on a young person's life be effectively removed from the appeals system for social security decisions. The government has legislated other criteria for exemption which are not the same as a JSCI assessment. Government assurances that the waiting period will only apply to those who are "job ready" are not reliable if the JSCI decisions are not reviewable on appeal.

Whether intended or not, this process will inevitably have the harshest impact on the most vulnerable young job seekers, such as Indigenous people who are more likely to have difficulty dealing with government and are therefore more likely to be streamed incorrectly.

3.4.3 Problems with specific exclusions

Proposed section 549CAA excludes the following people from the waiting period:

- People who are full time students or apprentices;
- People transferring from another social security income support payment;
- People who have an exemption under s 549CAB; and
- People who have served a four week waiting period in the last 6 months.

We take issue with the last two listed exclusions.

People who have an exemption under 549CAB

We do not object to the inclusion of principal carer parents and young people who have been in state care.

We do take issue with the exclusion of the remote area exemption in s 542(c) from the list of exemptions which, if granted for at least 15 days, will be grounds for an exemption under proposed section 549CAB. Given the scarcity of jobs in remote areas, this new waiting period is likely to impact harder on young people in remote communities, who will be less likely to be able to secure new employment during the waiting period. There is no mention of this exclusion in the explanatory memorandum, and no justification is given for it.

What is glaringly absent from the list of exemptions is a general discretion for Centrelink decision makers not to apply the waiting period in special circumstances, as discussed above. There is not

even a provision for shortening or waiving the waiting period for people who incur reasonable and unavoidable expenses.

NWRN has previously recommended that any person exempted from the activity test should be exempt from this kind of waiting period. As such we are pleased at the inclusion of some activity test exemptions, particularly the temporary incapacity and special circumstances exemptions.

The government has stated that only people who are “job ready” and classified as Stream A jobseekers will be subject to the waiting period, but once again, rather than including this in the primary legislation (or even in the explanatory memoranda) it is left to disallowable instrument. In our submission, this is too important not to be part of the Bill. While we accept that it is useful for the Minister to be able to add exemptions (to accommodate groups who should be exempted but were not foreseen by the drafters), it is desirable that all the exemptions announced by the Government be included in the Bill itself. This provides more certainty and clarity to the public and to Senators voting on the Bill.

People who have served a four week waiting period in the last 6 months.

As the example of John at 3.2 above shows, a four week waiting period can have huge consequences for ongoing financial stability and physical and emotional wellbeing.

There is also a problem with the drafting of this exemption. Proposed section 549CAA(2)(c) operates so that an income support waiting period will not apply if “in the 6 months immediately before that start day, the person had served a 4-week income support waiting period....”.

This raises the following problem. What if a person serves a three week waiting period, before obtaining employment for say 14 weeks and abandoning their claim. Will that person then have to serve a further 4 weeks when they reclaim? The inclusion of the word “4-week” implies that this may be the case. If so, the person moving in and out of short term employment may actually be required to serve 7 weeks of income support waiting periods (or more) within a 6 month period. This would be a significant disincentive to take up short term and insecure employment

We oppose the four week waiting period in its entirety for the reasons explained above.

Making people serve multiple waiting periods could have exponentially dire consequences. The simple fact is that people who are already living under or near the poverty line are impacted hardest by loss of income support and take the longest to recover. As providers of legal assistance to people who lose or are unable to access income support we have observed how hard it is to recover from a period of non-payment.

There are many questions parliament should be demanding answers to including:

- what evidence is there that second and subsequent waiting periods will have any measurable success getting young people into paid work?
- what assessment has been made of how recurring waiting periods are going to impact on a person’s ability to look for work and maintain stable housing?
- on what basis was the decision made that a waiting period should be served again as early as within the next six months? Note that the Liquid Assets Waiting Period can only be served once in any 12 month period.

Parliament should scrutinise the evidentiary basis for these measures.

Our Member Centres have provided casework services to vulnerable people experiencing problems accessing social security entitlement for 30 years. We have observed the effects of lengthy preclusion periods being served by people with no income or means of support (particularly Income Maintenance Periods (IMP) and Compensation Preclusion Periods (CPP) where funds have been expended prior to the end of the preclusion period). We predict that:

- people without support from family or friends may become homeless and will experience a significant increase in their barriers to work;
- for low income families, the burden of providing support to young family members serving the period will in turn increase the disadvantage of their families. This will be even more extreme if there is more than one young person being supported. We are particularly concerned about the ramifications of this where kinship arrangements can mean Aboriginal families are supporting more than one young person;
- in some cases, this level of dependence on family and friends will cause friction and may result in the person's support networks being undermined by family conflict or breakdown. This is likely to have serious flow on effects for the person at a time when they are without support and into the future;
- some people will have trouble accessing support from friends and family for subsequent exclusion periods where the burden on friends and family was too high the first time; and
- this may entrench disadvantage and poverty for vulnerable young people affected by it, and may lead to the development or exacerbation of conditions such as depression and anxiety (as we often see in Income Maintenance Period and Compensation Preclusion Period cases now).

3.5 Disadvantage to those who delay claiming social security

There is a standard approach to most waiting periods in the Social Security Act in which the waiting period starts from the date of the event which gives rise to the need for social security. For example:

- Liquid assets waiting period: generally from the date of unemployment or ceasing study;
- Income maintenance waiting period: generally from the date of termination of employment;
- Compensation preclusion period: generally from the date compensation is paid; and
- Newly arrived residents waiting period: generally from the date of grant of a permanent visa or arrival in Australia.

What this means is that people who try to obtain employment and self-support before they claim Centrelink payments are not disadvantaged by their attempt to do so, because they can self-serve the waiting period. This is best illustrated by example:

Jenny, Anne and Kristy were high school friends all working as casual employees in a department store over the busy Christmas period. The work ran out by 1 March.

Anne was fortunate and soon got a new job as a nanny via her family connections.

Kristy claimed Youth Allowance on 2 March and her payments commenced 5 weeks later on **6 April**.

Jenny looked hard and was unable to find work. She didn't claim straight away because she really didn't want to be reliant on social security and was really hoping to find work. Her savings eventually ran out and she claimed Youth Allowance on 1 May. However, when she lodged her claim, she discovered that she had already self-served her Liquid Assets Waiting Period, but now had to commence a 4 week ISWP and a one week OWP. Jenny could not receive Centrelink income support until Friday **5 June**.

As this example shows, by aligning the start date of the waiting periods with the date of claim, rather than the date of the event giving rise to the need to social security, the waiting period may operate in a way that is directly at odds with the Government's intention and it may in fact further penalise those who try to delay claiming social security instead focussing on job search. Moreover, the longer the person delays claiming to focus on looking for work, the greater the disadvantage as the case example of Jenny shows.

Recommendation: that Schedule 3 be rejected in its entirety.

4 Problems with the Ordinary Waiting Period

Effectively, Schedule 1 of this bill reintroduces Schedule 3 of the No 4 Bill, but excludes Widow Allowance. The measures in Schedule 1 will:

- extend the Ordinary Waiting Period (OWP) to Youth Allowance and Parenting Payment;
- introduce new requirements that further limit exemptions (requiring not only severe financial hardship but also a personal financial crisis and capping the amount of unavoidable or reasonable expenditure which may be taken into account);
- ensure that the OWP is served after other waiting periods; and
- increases the evidentiary requirements for exemptions.

We oppose this measure in its entirety. Taking each of the changes in turn, we provide the following observations.

4.1 Extension to Youth Allowance and Parenting Payment

The Statement of Compatibility cites the need to ensure consistent and effective application of the waiting period across similar working age payments.

However, the exclusion of Widow Allowance undermines this claim, as it is a similar working age payment. The only real difference being that there are no activity requirements for that group. As

one social security commentator has pointed out, by that rationale, Parenting Payment for people with children under 6 should also be excluded.⁴

If consistency in waiting periods is a key objective then there is a contradiction in government policy given the decision to extend the ordinary waiting period to Youth Allowance at the same time as introducing a 4 week waiting period for Youth Allowance. The effect of this is an additional 5 weeks of waiting periods that apply to Youth Allowees but not to other payments. This is an inconsistency across payments which unfairly targets young people.

4.2 New requirements to further limit exemptions

The *Statement of Compatibility with Human Rights* cites a “general principal that people should support themselves before seeking government assistance [that] has existed since the first iteration of these payments commenced in 1945”.

We would argue that, implicit in the principal that people should support themselves is an assumption that they have the means to do so.

Make no mistake, the additional limitations being placed on exemptions to the OWP will operate so that some people, with no means to support themselves or others to rely on for support, will be required to serve the OWP. We do not agree with the statement that “Claimants without the means to support themselves will have access to exemptions and waivers”.

Currently, a person can have the Ordinary Waiting Period waived if they are in “severe financial hardship” that is, if the person has less than the equivalent of one fortnight of payment in savings. From an administrative perspective this is simple to establish. Does the person have less than about \$650 in savings? If so, the OWP may be waived.

What is proposed is that severe financial hardship will not be enough. The person will now also need to show that they are “experiencing a personal financial crisis” because, in the past four weeks:

- they were subject to domestic violence;
- they incurred reasonable or unavoidable expenditure; and
- they satisfy circumstances to be prescribed by the Minister by legislative instrument.

4.2.1 Domestic Violence

We obviously support the proposal to provide exemptions from the OWP to victims of domestic violence. However, we fail to see why exemptions are so limited. There are many people experiencing personal financial crises for a myriad of other reasons. Some examples might include young people kicked out of home, people experiencing mental illness, casual employees whose employers stopped giving them shifts and so on.

⁴ Butt Matthew, Budget 2015 Extension of the Ordinary Waiting Period 1 June 2015
<https://socialsecuritylawandpolicy.wordpress.com/>

Additionally, we don't see the rationale for limiting the DV period to the preceding four weeks. It is entirely possible for a person to be experiencing ongoing personal financial crisis following domestic violence which ended more than 4 weeks ago (many women spend many months in refuges before they are rehoused and back on their feet). The longer term impact of domestic violence is recognised elsewhere in the Social Security Act which provides activity test exemptions for principal carer parents where the person has experienced domestic violence in the last 26 weeks.

As a former Welfare Rights solicitor recently stated about the singling out of DV victims:

*"This arbitrariness about which payments are included and who may have the Ordinary Waiting Period waived undermines the moral character and fairness of the social security system. It is unacceptable in a system based fundamentally on need for income support that two people in the same situation of severe financial hardship may find themselves treated differently without any rational basis for this distinction."*⁵

4.2.2 Reasonable or unavoidable expenditure

The concept of "reasonable or unavoidable expenditure" has been used for waiver of other waiting periods for many years and our caseworkers have spent decades running cases about reasonable or unavoidable expenditure.

In practice it is not the adequate safeguard you might expect.

In practice, a person must show that the financial hardship (having less than one fortnight's payment) was caused by the reasonable or unavoidable expenditure. However,

- (1) Subsections 19C(5) and (6) requires the decision maker to disregard actual living expenses (e.g. rent, food, utilities) and instead caps the amount for living expenses. This is a problem for people coming out of employment, because they usually have living expenses that exceed this amount.
- (2) Expenses accrued in the period before the waiting period are not generally taken into account. This is a problem for people who have accrued debts for reasonable and unavoidable expenditure over a long period as they try to keep their head above water. Repayment of those debts is rarely considered reasonable and unavoidable expenditure.
- (3) Decision makers generally require that a person show that every dollar (down to the severe financial hardship threshold) is spent on reasonable or unavoidable expenditure (this is despite Federal Court ⁶ authority to the contrary).

The bill proposes that a person's reasonable and unavoidable expenditure in the four weeks prior to claim may be considered. We acknowledge that this would be an improvement, for OWP purposes only, on current assessment which doesn't generally take into account expenditure incurred prior to commencement of waiting periods.

⁵ <https://socialsecuritylawandpolicy.wordpress.com/>

⁶ Secretary, Department of Education, Employment and Workplace Relations v Ergin [2010] FCA 1438 (22 December 2010)

However our experience is that many people coming from employment to social security do so in the context of a gradual deterioration in their financial circumstances over a period of, say, 6-12 months rather than 4 weeks. A common example is a person who becomes ill or injured, uses up all their paid leave entitlements and then during a period of leave without pay draws down their savings before contacting Centrelink about a claim for payment.

Our experience is that unless actual living expenses are taken into account and unless reasonable and unavoidable expenditure over a longer period is considered, this measure is a totally inadequate safeguard.

4.2.3 Circumstances prescribed by the Minister

In Section 3.4.1 above we have explained our concerns with the increased use of delegated legislation via legislative instrument in the *Social Security Act*. These concerns are also relevant in relation to the proposed changes to the Ordinary Waiting Period. What is needed is a general freestanding discretion to waive the waiting period. If needs be, the freestanding discretion could be accompanied by a provision that allows the minister to issue guidelines for exercise of the discretion. This is a better approach as parliament can be certain of the existence of a general discretion when voting on the measures. The Bill in its current form give the minister power to proscribe circumstances for exemptions, but does not guarantee discretion to Centrelink to waive where application of the waiting period would cause undue hardship or unfairness.

Parliament should demand that measures which remove fundamental social security entitlements include a clear discretion for Centrelink to exempt a person where there are special circumstances which would warrant such an exemption.

4.3 Consecutive serving of waiting periods

The *Statement of Compatibility with Human Rights* asserts that “the Ordinary Waiting Period reflects the general principle that people should support themselves before seeking Government assistance”.

However we question the need for the Ordinary Waiting Period at all when two other waiting periods, the Liquid Assets Waiting Period and the income maintenance period ensure that anyone with the means to self-support via savings or termination or redundancy income must do so for a legislated period.

The stated concern that some claimants may be treated more beneficially than others arises from the fact that the income maintenance period may or may not be served consecutively, whereas the OWP and the Liquid Assets Waiting Period are always served consecutively.

If consistency is the objective, we recommend changes to ensure that all three waiting periods are served concurrently.

4.4 Evidentiary requirements

In our experience, vulnerable people struggle with evidentiary requirements generally. Many of the cases we run are for people who are qualified for a payment or some kind of exemption, but who have been unable to collect the documentary evidence, or articulate the verbal evidence required. For many, social isolation, remoteness, poverty, disability and a large range of other barriers to accessing services also impacts on their ability to obtain evidence in the form of third party statements from treating health professionals and other people. Once again, increasing evidentiary requirements will likely impact hardest on those who are most vulnerable.

4.5 Disadvantage to those who delay claiming social security

The discussion at 3.5 above about the inequitable impact that waiting periods can have when they apply from the date of claim rather than the date of the event that gave rise to the need for social security applies equally to the OWP.

Recommendation: Schedule 1 should be rejected in its entirety.

5 Raising the Newstart Allowance age

This bill proposes that, from 1 July 2016, young unemployed people aged 22-24 who apply for income support will no longer be eligible for Newstart Allowance. Instead, they may receive the much lower rate of Youth Allowance.

This was originally proposed in Schedule 6 of the No 4 bill but amends the start date of the measure to 1 July 2016. The NWRN's objections to this measure have not changed.

The majority of those affected by this measure will be those claiming Newstart Allowance, as data from the Social Services Portfolio indicates that there are very small numbers of Sickness Allowance claimants in that age group.⁷

Young people who are employed part-time will benefit from the more generous income free areas. This will assist around one-in-five young job seekers.⁸ This is a welcome benefit but does not justify young unemployed people having reduced rates of income support.

Under this proposal, young people who are living away from the parental home would receive just \$426.80 per fortnight on Youth Allowance (other), as opposed to \$519.20 per fortnight on the

⁷ Eg. According to Senate Community Affairs Committee, Answers to Estimates Questions on Notice, Social Services Portfolio, 2013-14, *Additional Estimates Hearings, Question No. 662. There were only 490 people receiving Sickness Allowance aged between 21 and 24 in December 2013*

⁸ Senate Community Affairs Committee, Answers to Estimates Questions on Notice, Social Services Portfolio, 2013-14, *Additional Estimates Hearings, Question No 346*

Newstart Allowance. This is a reduction of \$92.40 per fortnight, and equal to a loss of a fifth of weekly incomes for people on the lowest rates of income support payments.

Young people who do not qualify for the “Independent” rate could be even worse off, as they would be subject to the Parental Income Test (PIT). Under this test, payments start reducing by 20 cents for every \$1.00 of parental income over \$50,151. These cuts may cause hardship for low income families who have less capacity to support the young person financially.

Accommodation costs are a major problem for many young people who will face a payment loss under this reform. Sixty-nine per cent of those on Youth Allowance who receive Rent Assistance are in “housing stress”, and pay more than 30% of their income in rent, and 26% are in “severe housing stress”, paying more than half of their income in rent.⁹ Denying young people the extra assistance available to adults on Newstart Allowance will not assist them to engage in study, training or move into employment.

In our response to the 2012 legislation raising the eligibility age of Newstart Allowance (NSA) to 22 years, NWRN ominously warned that Committee about the potential for future, short-sighted cost cutting in this area in stating:

“NWRN considers that the increase to the age of eligibility for NSA is essentially an easy way for the Government to make cuts without any organised lobby group opposing the cuts. In future, any Government looking for easy savings could be tempted to simply rack up the Newstart entitlement age by another year.”¹⁰

While we welcome grandfathering to protect existing Youth Allowance and Sickness Allowance recipients, who have arranged their affairs based on current levels of income support, we note that grandfathering is a tacit admission by the Government that the changes being considered in this bill will be harmful and have negative impacts for young people.

Existing social security payments for young people on Youth Allowance – whether students or unemployed – are inadequate and not sufficient to meet the costs of rent, food and utilities, or cover the costs of looking for work. Young unemployed people receive the lowest rates of social security of all people – with “Independent” rate of Young Allowance being just \$426.80 per fortnight and the rate for young people over 18 living at home is an impossibly low \$281 per fortnight.

The lack of attention to the question of adequacy of student income support was a major criticism of the Government’s review of student assistance that was conducted by Professor Bradley. This measure is counterproductive and does nothing to provide adequate support for young people.

Recommendation: that schedule 2 be rejected in its entirety.

⁹ National Welfare Rights Network, *The impact of Rent Assistance on housing affordability for low-income renters*, March 2014, p. 11.

¹⁰ National Welfare Rights Network, Submission to the Senate Community Affairs Legislation Committee inquiry into the *Social Security and Other Legislation Amendment (Income Support and Other Measures) Bill 2012*, March 2012, p. 7.

6 Freezes to certain means test thresholds

NWRN opposes pauses to indexation of thresholds because freezing income, assets and deeming thresholds will, over time, exacerbate inadequacy of payments, provide for higher effective marginal tax rates and reduced incentives to work.

Moreover, many of these freezes have complex interactions for people when stacking of income tests occurs. The result of this is that people who are subject to more income tests will be disproportionately impacted by freezes to thresholds.

Freezing free areas reduce incentives to work and are at odds with the government's other policies ostensibly aimed at encouraging people into work.

It must also be considered in the broader context of other changes, including those in this bill and in the 2014 Budget FTB changes also before parliament. These have been discussed in detail in the NWRN submission on the Social Services and Other Legislation Amendment (2014 Budget Measures No. 1) Bill 2014 and the Social Services and Other Legislation Amendment (2014 Budget Measures No. 2) Bill 2014 [here](#).

Recommendation: that Schedule 5 of the bill be rejected in its entirety.