NATIONAL WELFARE RIGHTS NETWORK

7 September 2016

Committee Secretariat
Senate Standing Committees on Economics
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Dear Committee Secretary

Inquiry into the Budget Savings (Omnibus) Bill 2016

Thank you for the opportunity to make a submission to the Standing Committees on Economics in relation to the *Budget Savings (Omnibus) Bill 2016* (**Omnibus Bill**).

The National Welfare Rights Network (**NWRN**) is the peak community organisation in the area of social security and family assistance law, policy and administration. Our members and associate members are community legal centres and organisations across the country which provide free and independent legal services directly to current and former social security and family assistance recipients. The NWRN draws on the experience and expertise of its members in developing its submissions and policy positions.

Part 1 – Executive Summary and Discontinuation of the Energy Supplement

This submission addresses the schedules to the Omnibus Bill which make changes to social security and family assistance legislation. A summary of our recommendations in relation to each schedule is below.

The largest savings in the Omnibus Bill come from the measure in Schedule 21, which discontinues the carbon tax compensation to new recipients of income support payments. This is projected to save close to $1.3 billion over the four year forward estimates.[1]

This measure discontinues the Energy Supplement, which tops up all the main social security and family assistance payments, including pensions, Family Tax Benefit and working age payments such as Parenting Payment, Newstart Allowance and Youth Allowance. People who become new recipients of these payments on or after 20 September 2016 (including those who lose entitlement to a payment after 19 September 2016 and then reclaim) will lose entitlement to the supplement from 20 March 2017.

It also discontinues the Single Income Family Supplement to new recipients from 1 July 2017.

[1] *Budget Savings (Omnibus) Bill 2016*, explanatory memorandum, at 6.

The discontinuation of the Energy Supplement affects many recipients of income support. It will have a significant impact on parents, but its impact on recipients of Newstart Allowance is the greatest concern. Newstart Allowance is the income support payment for unemployed job seekers. But the practical reality is that it has become the default payment in the social security system. It is received by a wide range of working age people in need of income support including parents of school age children and people with a significant disability which restricts their ability to work but who do not qualify for the Disability Support Pension. Many recipients of the payment are older Australians under retirement age, many of whom have long work histories but now face significant barriers to finding and keeping work.

As many have continued to point out, Newstart Allowance is low by international standards. It has fallen significantly against the minimum wage over the last 20 years. In fact it has not risen in real terms since 1996. Further, discontinuation of the Energy Supplement does not just remove an additional top up to Newstart Allowance, it actually cuts the payment below the level it would be had normal indexation arrangements been applied. This is because normal indexation was included in the Supplement when it was introduced. Despite this fact, the Government continues to argue that this measure removes compensation no longer needed because of the repeal of the carbon tax.[2]

The impact of discontinuing the Energy Supplement would also come on top of the abolition of the Income Support Bonus after September 2016, which is already legislated. The Government has also reintroduced a range of measures which would further cut the incomes of the poorest in our community including: a general one week waiting period for working age payments, a four week waiting period for job seekers under 25, a reduction in basic rates of payment for job seekers aged 22 to 24 and major cuts to Family Tax Benefit.[3]

At the same time, as many have pointed out, tax cuts introduced to compensate higher income households for costs increases associated with a carbon price are to be retained and the Government is giving a further tax cut for higher income households by raising the second top tax threshold to $87,000. The fate of superannuation reform seems unclear.

In short, the Government continues to place the burden of Budget repair disproportionately on the poorest and most vulnerable members of our community.

The NWRN recognises the importance of Budget repair. But this needs to be fair and, where there is room for reform in the area of social services, it needs to be done in a considered and comprehensive way rather than in a piecemeal grab for savings which impacts on vulnerable Australians.

The discontinuation of the Job Commitment Bonus (Schedule 4) is an example of a more considered approach from Government which has garnered widespread support from key stakeholders. The discontinuation of this payment, combined with the scaling back of Work for the Dole, is part of a package of measures aimed at shifting spending towards more effective programs for young job seekers. Although concerns exist about the detail of aspects of this proposal (especially the internship element), the package as a whole has gained widespread support.

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[2] *Budget Savings (Omnibus) Bill 2016*, explanatory memorandum, at 285.
[3] *Social Services Legislation Amendment (Youth Employment) Bill 2016*, *Social Services Legislation Amendment (Budget Repair) Bill 2016* and *Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill 2016*.

However, other measures in the Omnibus Bill do not meet this test. Schedule 18 removes income and asset test exemptions for pensioners in aged care associated with the assessment of the former home. There is a case for considered and careful reform of aged care means testing arrangements and their interaction with the pension system. But this is an isolated grab for savings which undermines older Australians' choices about how to pay for aged care. Among other matters, it does not consider carefully enough the impact on former carers and other close relatives of older Australians who live in the former home.

Similarly, schedule 20 of the Omnibus Bill simply reintroduces a measure to close off access to income support for persons in psychiatric confinement which attracted widespread concern from major stakeholders in this area across the country, including: the Royal Australian and New Zealand College of Psychiatrists, the Australian Association of Social Workers, the Australian Human Rights Commission and Australian Council of Human Rights Authorities, the Victorian Government, the South Australian Office of the Public Advocate, the NSW Mental Health Review Board and so on. The explanatory memorandum does not disclose that any steps have been taken to address these concerns or ensure proper support and rehabilitation for forensic patients if access to Commonwealth income support is withdrawn.

The effect of Schedule 10 would be to reduce income support for new migrants to Australia in the initial period following their migration to Australia. It is a measure that would disproportionately impact on low income families and mainly on women. It increases financial hardship and dependence for women in these situations, recognised risk factors for family breakdown and violence. It is difficult to see how this proposal fits within a comprehensive response to either family violence or approach to migration which recognises the benefits and value of migration from more than a narrowly economic perspective.

The Government cannot win widespread support from the community and from organisations who work with vulnerable Australians for Budget repair without doing the harder work of developing comprehensive, considered and fair proposals for reform.

Finally we recommend that the Committee give careful consideration to Schedule 10 of this bill. On our first review of it in the short timeframe available, it is clear that it makes additional, substantive changes to social security residence rules. Although these changes are described in the detailed explanation in the explanatory memorandum, they are not adverted to in the general overview of this measure and may otherwise be missed.

We provide more detail about the measures in this bill which affect social security and family assistance law (apart from Schedule 21, addressed above). But in summary, our recommendations are:

Schedule 4 (Job Commitment Bonus): the NWRN supports this measure.

Schedule 10 (Newly arrived resident's waiting period): the NWRN opposes this measure (except in so far as it merely transfers existing exemptions into the *Social Security Act*).

Schedule 11 (Student Start-up Scholarships): the NWRN opposes this measure.

Schedule 12 (Interest charge): the NWRN opposes this measure.

Schedule 13 (Debt recovery): the NWRN opposes this measure.

Schedule 14 (Parental leave payments): the NWRN does not oppose this measure.

Schedule 15 (Fringe benefits): the NWRN does not oppose this measure.

Schedule 16 (Carer Allowance): the NWRN opposes this measure.

Schedule 17 (Indexation of Family Tax Benefit and parental leave thresholds): the NWRN opposes this measure.

Schedule 18 (Pension means testing for aged care residents): the NWRN opposes this measure.

Schedule 19 (Employment income): the NWRN opposes this measure.

Schedule 20 (Psychiatric confinement): the NWRN opposes this measure.

Schedule 21 (Closing carbon tax to new welfare recipients): the NWRN opposes this measure.

Part 2 – Detailed consideration of social security and family assistance measures

<u>Schedule 4 – Job Commitment Bonus</u>

This measure amends social security legislation to discontinue the Job commitment bonus.

The Job Commitment Bonus was introduced from mid 2014.[4] Its aim is to encourage young long-term job seekers to find and keep work. Job seekers are eligible for a first tax free bonus payment of $2500 if they are:

- aged 18 to 30
- in receipt of Newstart Allowance or Youth Allowance (other) for at least 12 months, and
- complete a 12 month period of continuous gainful work without receiving income support.

They are eligible for a second bonus payment of $4000 if they complete a further 12 month period of continuous gainful work without receiving income support.

Given the minimum periods of work, the earliest job seekers could become eligible for the first bonus payment was 1 July 2015 and 1 July 2016 for the second. As at 31 March 2016, there had been 3138 claims for the first job commitment bonus of $2500.[5]

This measure proposes to discontinue the Job Commitment Bonus from 31 December 2016. There are grandfathering provisions which entitle job seekers who become eligible before this date to claim the bonus, so long as they do so within the existing time limit which is generally 90 days (unless there are special circumstances).[6]

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[4] *Social Security Legislation Amendment (Increased Employment Participation) Act 2014* (Cth), mainly introducing new Part 2.16A into the *Social Security Act 1991* (Cth).

[5] Senate Education and Employment Legislation Committee, Estimates, 6 May 2016, Official Committee Hansard, at 54 (accessible at http://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/eetctte/estimates/bud1617/index).

[6] Schedule 4, Part 3, item 13, *Budget Savings (Omnibus) Bill 2016*. Among other matters, this preserves the existing time limit in s 27D of the *Social Security (Administration) Act 1999* (Cth) for grandfathered claims.

The NWRN was concerned about the effectiveness of the Job Commitment Bonus to address long-term youth unemployment when it was introduced. Most fundamentally, it was based on the flawed assumption that lack of motivation is a significant factor in youth unemployment. It is welcome to see the explicit acknowledgment that job seekers are motivated to find and keep work and get off income support without the bonus in the explanatory memorandum.[7] Social policy based on flawed assumptions without any evidence base is likely to fail.

Its discontinuation is part of a new Youth Employment Package which shifts spending away from ineffective measures such as this and Work for the Dole to a new package of measures more in line with evidence about successful employment programs. Although concerns about some aspects of this new approach exist (especially the proposed internships), it has attracted widespread support from community organisations and other stakeholders.

As such, the NWRN supports this measure as part of a reallocation of funding to more effective responses to helping and supporting young people into work.

Grandfathering is appropriate. People who accrue a right to this kind of one-off payment should generally be protected from retrospective application of legislation. Further, as further claims for the bonus can only be made within a few months of this change, it will not lead to ongoing complexity in the income support system.

Schedule 10 – newly arrived resident's waiting period

This measure removes an exemption from the two year newly arrived resident's waiting period for new migrants to Australia who are family members of Australian citizens or long-term permanent residents. It also consolidates other exemptions from this waiting period into the primary social security legislation, the *Social Security Act 1991* (Cth), and removes a number of savings provisions.

Further, it makes some additional substantive changes to exemptions from waiting periods for income support payments. These are described in the detailed parts of the explanatory memorandum, but not in the overview section and we are concerned that they may be missed given the size of this bill.

Removal of the exemption for family members of Australian citizens and long-term permanent residents

The newly arrived resident's waiting period (**NARWP**) is a two year waiting period which applies before new migrants to Australia can access the most working age social security payments such as Newstart Allowance.

There are a number of exemptions from the NARWP, including the series of generally applicable exemptions in section 3 of the *Social Security Legislation Amendment (Newly Arrived Resident's Waiting Period and Other Measures) Act 1997* (Cth) (**NARWP Act**). These exemptions include exemptions for refugees and their family members and, relevantly, exemptions for family members of Australian citizens and permanent residents with at least two years continuous residence in

[7] *Budget Savings (Omnibus) Bill 2016*, explanatory memorandum, at 35.

Australia.[8] Family members are limited to partners and dependent children.[9] There is a discretion to treat another person as a family member, but in our experience this is rarely exercised.[10]

Since 1 January 2012 the exemption for family members of Australian citizens or long-term permanent residents has not been available to temporary partner visa holders, who hold subclass 309 or 820 visas.[11] Holders of these visas may only access Special Benefit and only if they are in severe financial hardship due to a substantial change in circumstances beyond their control.[12]

However, the exemption for family members of Australian citizens and long-term permanent residents has continued to be available to other visa holders, including permanent partner visa holders. In our experience permanent partner visa holders, mainly women, are the main beneficiaries of this exemption from the NARWP. This is borne out by Department of Social Services projections, which estimate that about three quarters of the nearly 6000 people affected every year will be women.[13]

Schedule 10 removes this exemption for all new migrants to Australia. It preserves the other exemptions in section 3 of the NARWP Act for refugees, former refugees and their family members (partners and children).

Its main impact will be to prevent the majority of women migrating to Australia to live with an Australian citizen or permanent resident partner from accessing income support for at least two years. This will have the largest impact on the poorest households without access to other sources of support.

The explanatory memorandum offers two basic rationales for this change, that it "aligns" the waiting period for working age payments for all new migrants (except for refugees, former refugees and their family members) and it "reinforces" the Government's policy that new migrants should support themselves in the "immediate" period after arrival in Australia.

In the NWRN's view, neither of these rationales is sound or sufficient to justify this change. The reference to "aligning" waiting periods seems primarily a reference to the fact that temporary partner visa holders do not have access to the family member exemption. However, alignment of waiting periods for all partner visa holders is only sound if there are no relevant distinctions between these groups, when there is in fact one clear distinction, namely possession of a permanent visa.

Further, our experience since 2012 has shown that the removal of the family member exemption for temporary partner visa holders has had a significant impact on the poorest households, with consequent financial stress and hardship. It is preferable to "align" the waiting periods by restoring the family member exemption generally, including for temporary partner visa holders.

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[8] Sections 3(1)(e) and 3(1)(g), *Social Security Legislation Amendment (Newly Arrived Resident's Waiting Period and Other Mesures) Act 1997* (Cth).
[9] Section 3(2), *Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997* and s 7(6D), *Social Security Act 1991* (Cth).
[10] Section 3(2), *Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997* and s 7(6D), *Social Security Act 1991* (Cth).
[11] Section 739A(8), *Social Security Act 1991*, and *Social Security (Class of Visas – Newly Arrived Resident's Waiting Period for Special Benefit) Determination 2015 (No. 2)*, s 7.
[12] Pursuant to the general exemption from the Special Benefit NARWP in s 739A(7) of the *Social Security Act 1991* (Cth).
[13] Senate Community Affairs Committee, Answers to questions on notice, Social Services portfolio, 2015-16 Additional estimates hearings, question no. SQ16-000154, available at http://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/clacctte/estimates/add1516/DSS/index.

The NWRN also questions the application of the justification that new migrants should be self-supporting to this measure. In our view, this justification has most force when applied to the skilled migration stream, where economic self-interest has a significant place in policy. But Schedule 10 will impact in practice mainly on women migrating to Australia to live with their partners through the social migration stream. Supporting new migrants to start family life in Australia is a valuable and important policy objective. Reducing financial support to these families mainly impacts on the poorest households. It undermines the goals of this migration stream, as financial hardship is a recognised risk factor for family breakdown.

We are also concerned that depriving new migrants of financial independence through access to income support is a recognised risk factor for family and domestic violence.

Incorporation of exemptions into the Social Security Act

The second element if this measure is the incorporation of the remaining exemptions in s 3 of the NARWP Act into the primary social security legislation, the *Social Security Act 1991* (Cth). Although the NARWP Act is amending legislation, it has not been incorporated into the primary Act. This is a useful "red tape" measure.

However, we are very concerned that on a first review of the complex amendments this entails there are in fact some substantive changes to the residence rules in the *Social Security Act*. This is not in fact simply a tidy up measure.

For example, Schedule 10 makes a substantive change restricting an exemption from the NARWP which applies to Special Benefit and reversing the effect of longstanding Federal Court authority.

Special Benefit is a discretionary, back stop, income support payment for people in severe financial hardship and ineligible to receive another income support payment. It plays an important role for a small number of very vulnerable people each year who are unable to access another payment, despite being in financial need.

It is subject to the two year NARWP. However, crucially, there is a general exemption for a person who suffers a substantial change in circumstances beyond their control.[14] This exemption, for example, is what permits women fleeing violent relationships to access income support, if they have not resided in Australia for two years.

In practice, this exemption is usually applicable because of an event which occurs after arrival in Australia. This is an inevitable practical corollary of the requirement that the person's hardship be beyond their control. However, this temporal requirement is not part of the legislation. As a result, the Federal Court has found that the events leading to the person's hardship in Australia may occur before arrival, at least where the person is "irrevocably committed" to migration when they occur.[15]

Schedule 10 seeks to reverse this position and confine the exemption to events that occur after arrival in Australia, by adding the qualification "after the person first entered Australia".

The NWRN opposes this change. The current state of the law is a fair and sensible interpretation of the provision as drafted, and achieves a fair result as there have been and will continue to be a small

[14] Section 739A(7), *Social Security Act 1991* (Cth).
[15] *Secretary, Department of Social Security v Secara* [1998] FCA 1510 (FC), approving *Chelechkov and Secretary, Department of Social Security* [1998] AATA 94.

number of cases where the person is committed to migration to Australia when a significant adverse event occurs, even though they have not yet arrived in Australia.[16]

Similarly, Schedule 10 also makes a substantive change to exemptions from the waiting period for Parenting Payment, narrowing their application.

Parenting Payment is not subject to a NARWP. However it is subject to an equivalent two year residence requirement.[17] As the explanatory memorandum notes, Schedule 10 will narrow the exemptions to this residence requirement.[18] Relevantly, the current exemption for family members of refugees or former refugees at the time they arrive in Australia,[19] is to be narrowed so that they must continue to be a family member of the refugee/former refugee up to the time of claim or the person's death.[20]

The rationale for this is to align the treatment of Parenting Payment with other working age payments. However, there is no magic in the classification of Parenting Payment with other working age payments. In the past, Parenting Payment has been treated similarly to pensions on the ground that recipients may be outside the workforce for a longer period. This includes sharing exemptions from the qualifying residence periods applicable to pensions.

The NWRN opposes this measure.

Removal of savings measures

There are a range of savings provisions introduced into the *Social Security Act* along with the NARWP. Generally, these savings provisions give people who entered or began to reside in Australia before the introduction of the NARWP the benefit of the previous rules. In most cases the transition date is 4 March 1997.

Schedule 10 removes these provisions.

We agree that this is unlikely to affect many people. However the simple reality is that it does continue to affect people who first entered Australia before NARWPs were introduced. For example, Schedule 10 would remove the savings provision in relation to Newstart Allowance, which relates to people entering Australia before 1 January 1993.[21] This was applied in *Dunn and Secretary, Department of Social Services* earlier this year.[22] We also see a small number of people relying on the Widow Allowance savings provisions.

These savings provisions were introduced in recognition of the significance of introducing long waiting periods for most payments. They benefit a small number of people, but the rationale for them is still sound. The NWRN does not support this measure.

Schedule 11 – Student Start-up Scholarships

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[16] Schedule 10, Part 1, item 42, *Budget Savings (Omnibus) Bill 2016*.
[17] Section 500(1), *Social Security Act 1991* (Cth).
[18] *Budget Savings (Omnibus) Bill 2016*, explanatory memorandum, at 98.
[19] Section 7(6AA), *Social Security Act 1991* (Cth).
[20] Schedule 10, Part 1, items 17 to 19, *Budget Savings (Omnibus) Bill 2016*.
[21] Section 623(1)(a), *Social Security Act 1991* (Cth), as repealed by Schedule 10, Part 1, item 29, *Budget Savings (Omnibus) Bill 2016*.
[22] [2016] AATA 37.

This measure discontinues Student Start-up Scholarships.

Student start-up scholarships were closed to new recipients from 1 January 2016, and replaced by income contingent Student Start-up Loans.[23]

These changes were grandfathered and existing recipients of the scholarship have continued to be eligible so long as they have remained eligible for a student income support payment. It appears from the explanatory memorandum that there are about 80,000 continuing recipients of the payment, although this cohort would be dwindling rapidly as people complete, cease or take breaks from study.[24]

The NWRN did not support the abolition of Student Start-up Scholarships. The payment (currently $1025, twice per year, to eligible students) is an important additional support for students from low income households who are least able to fall back on family support to help them through studies. It is a particular help with upfront costs such as textbooks and course materials.

There was also a sound case for grandfathering the changes. Further study is a significant commitment for young people from low income backgrounds, and in our experience study is often carefully planned for. It was therefore reasonable to grandfather students from the impact of this change. Further, as the grandfathered cohort will ultimately pass through the system, it does not lead to long term complexity.

As there remains a sound case for grandfathering this cohort, the NWRN opposes this measure.

Schedule 12 – interest charge

Schedule 12 introduces a common legislative framework for imposing interest on certain unpaid debts under social security, family assistance, paid parental leave and ABSTUDY legislation for imposing an interest charge on certain debts owed under this legislation. A bill was introduced for this purpose in the last Parliament but lapsed when the election was called.[25]

Under the proposed framework, an interest charge is applied to outstanding debts if the debtor is not receiving a fortnightly income support payment and has not made an acceptable repayment arrangement or is not complying with such an arrangement. The interest rate will be based on the interest charge applied to unpaid tax debts, which is the 90 day Bank Accepted Bill rate plus 7%, about 9% at current rates.

The aim is to provide an incentive for debtors to repay their debts, or enter into and keep to repayment arrangements to avoid the accrual of interest charges.

The measure is now to be implemented from 1 January 2017.

The NWRN opposes this measure.

Our members regularly provide information and advice to current and former recipients of social security and family assistance payments about debts. Many have relatively small debts, which are nonetheless a significant burden for them due to their low incomes. Most are willing to repay their

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[23] *Labour 2013-14 Budget Savings (Measures No. 2) Act 2015* (Cth).
[24] *Budget Savings (Omnibus) Bill 2016*, explanatory memorandum, at 122.
[25] *Social Services Legislation Amendment (Interest Charge) Bill 2016*, at http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5633.

debts and do so steadily, although it may take some years for them to repay even small debts. Despite this, many of them miss repayments and repayment deadlines at times. This is for a range of reasons, sometimes vulnerability (mental health, homelessness), sometimes simply because of the challenges of managing the household budget on a very low level of income. Although in some of these cases, the person might be eligible to have their debt repayments suspended for a period (known as "write-off" in social security and family assistance law) or negotiate a lower rate of repayment, in our experience the same circumstances which lead to them missing payments often lead to them not advising the Department of Human Services/Centrelink (**DHS**) of their situation or seeking relief.

We believe there is a real risk that a significant number of these debtors will get caught up in the new interest charge regime, incur interest and end up with larger debts, further impoverishing them. Although some will respond to the threat of an interest penalty, others under pressure of the circumstances referred to above will continue to miss repayment deadlines and incur interest.

This is an unfair outcome. Repaying an overpayment to which a person was not legally entitled is appropriate in most cases. Applying an interest charge, however, means that the person will end up repaying more than the original overpayment. This should only occur in clear-cut cases where the person has capacity to repay and is deliberately avoiding their obligation to do so. Schedule 12 would need significant amendment to ensure the interest charge only applies in these clear-cut cases.

We provide examples of the common scenarios where people may miss deadlines for repayment of debts and unfairly incur interest under the new scheme below. We also highlight some technical issues with the drafting of the current Bill.

The proposed interest charge framework

Currently, a person who owes a debt under social security or family assistance legislation does not have interest applied to an unpaid debt, even if they are not keeping to a repayment plan. There is an existing interest regime in social security and family assistance legislation (but not the *Student Assistance Act 1973* (Cth), the legislative framework for ABSTUDY) but it is not currently used. Recent attempts to introduce a penalty interest regime for student debts have not had the support of Parliament.[26]

The main features of the proposed legislative framework, using social security legislation as the example, are as follows.

The interest charge applies if a person has been given a notice informing them about the debt and the date it is due and payable (28 days after the date the notice is issued) and does not enter into a repayment arrangement by the due day.[27] The notice must warn them that the interest charge will apply if they do not enter into a repayment arrangement by the due date.[28] Interest accrues daily for every day until the person enters into a repayment arrangement <u>and</u> makes a payment.[29]

This differs from the current (unused) legislative scheme, which provides that if a person does not make a repayment arrangement by the due date, a further notice may be issued giving them a

[26] *Social Services and Other Legislation Amendment Bill 2013* (Schedule 5); *Social Services and Other Legislation Amendment (Student Measures) Bill 2014* (Schedule 1).
[27] Schedule 12, item 35 (proposed s 1229A).
[28] Schedule 12, item 33 (proposed s 1229(1)(ea)).
[29] Schedule 12, item 35 (proposed s 1229A(2)(b)).

further 28 days to pay and warning them that interest may be applied if they do not make a repayment arrangement by then. Interest is applied only after this further notice is not complied with, although the legislation does allow DHS to avoid the requirement for a further notice by including the warning about interest in the original debt notice, so in practice the two schemes could operate similarly.[30]

The schedule also contains provisions which deal specifically with a person who has a repayment arrangement but the arrangement is terminated, or they fail to keep to it. If a person has a repayment arrangement in place and fails to make a payment, then they must pay interest for each day until they catch up their payments.[31] If a repayment arrangement is terminated,[32] then the person has 14 days to enter into a new repayment arrangement, otherwise the interest charge applies until they do so and make a first payment.[33]

The main exemption to this scheme is for a person currently receiving a social security payment or family tax benefit by instalments.[34] As a result of existing provisions dealing with the meaning of "receiving" a payment, this exemption extends generally to circumstances when a person is eligible for a payment, but is not currently being paid it such as during a suspension applied under the compliance system for job seekers.[35] It does not, however, apply to a person who has taken up paid work and whose rate of payment is reduced to $0. Although a person in this situation (known as a "nil rate period") is regarded as continuing to be eligible for their payment for certain purposes, these must be specified in the legislation and do not presently include the application of interest to a debt.[36] The Minister may also specify other circumstances in which a person is not liable to pay the interest charge by legislative instrument.[37]

A person may also be exempt from paying the interest charge in relation to a period where they had a reasonable excuse for failing to enter into, or keep to, a repayment arrangement.[38] A similar provision applies in relation to the compliance system for job seekers, and it is reasonable to assume that the DHS will administer this provision in accordance with a similar policy.[39]

Whilst there is undoubtedly a number of ex-recipient debtors who actively avoid repayment, this measure is not adequately targeted at this class of debtors. A measure targeted at this cohort would be a reasonable and proportionate response to the problem of unpaid debts. However, there are many former recipients of social security and family assistance payments who remain in vulnerable circumstances. In our experience there are some common scenarios which could lead to the person unfairly incurring an increased debt due to the interest charge, despite not being a person actively seeking to evade their obligations.

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[30] Sections 1229, 1229A, *Social Security Act 1991* (Cth).
[31] Proposed s 1229B(1), (2).
[32] Under existing provisions, a repayment arrangement can be terminated at the debtor's request, or with 28 days' notice by DHS or without notice, if DHS believes the person has concealed important information about their financial affairs and capacity to repay the debt. See section 1334(4), *Social Security Act 1991* (Cth).
[33] Proposed s 1229B(4), (5).
[34] Schedule 12, item 35, (proposed section 1229E(1)).
[35] Sections 23(2), 23(4), *Social Security Act 1991* (Cth).
[36] Sections 23(4A), 23(4AA), *Social Security Act 1991* (Cth).
[37] Schedule 12, item 35, (proposed section 1229E(2)).
[38] Schedule 12, item 35, (proposed section 1229F).
[39] See Guide to Social Security Law, 3.1.13.90 (Reasonable Excuse), accessible at http://guides.dss.gov.au/guide-social-security-law/3/1/13/90 (accessed 30 March 2016).

Common situations were people may not repay debts in a timely fashion

People are often afraid to respond to the notice of a debt and delay contacting DHS past the due date

It is very common for people who receive a debt notice to be frightened or worried, including being afraid that they might have to pay the whole amount back at once, that their ongoing income support payment might be suspended until they repay the debt or that they might be prosecuted. This very human and understandable response can be exacerbated by the person's circumstances, such as mental health problems or financial stress. This causes them to delay contacting DHS about the notice. In many cases, our members are able to explain the situation, including that they can make a repayment arrangement if they can't afford to pay the whole amount, and encourage the person to contact DHS. But this may be after the due date has passed due to the person delaying seeking advice.

Under the proposed scheme, the person will begin to accrue interest from the 28th day after the date on the notice, increasing the level of their debt, even though the reason for the delay was not that the debtor was deliberately seeking to evade their obligations.

An additional factor in this scenario is the DHS debt notice. The NWRN has long expressed concern that the wording and format of the notice does not make it clear enough that people do not have to pay the whole amount back at once if they cannot afford it. The debt notice should be urgently reviewed if the proposed interest charge scheme were to go ahead, including consultation with the NWRN and other stakeholders.

People often do not understand why they have the debt or disagree with the debt, and think that if they begin to repay the debt that means they are acknowledging that it is correct

It is very common for our members to speak to people who do not understand why they have the debt, as the debt notice usually contains only a brief explanation for it. Many people delay responding to a debt notice if they are unsure if the debt is correct or disagree with it, believing that if they do begin to repay it this means they will be taken to have accepted the debt. Our members are able to explain to most people in this situation that, even if they appeal, they are generally obliged to begin repaying the debt and encourage them to contact DHS but, again, this often means that these people miss the deadline.

Under the proposed scheme, the person will begin to accrue interest from the 28th day after the date on the notice, increasing the level of their debt, even though the reason for the delay was not the person seeking to evade their obligations.

Vulnerable people frequently do not exercise their right to seek a temporary suspension of their obligation to repay a debt or a reduction in their rate of repayment

A person who is temporarily struggling to meet their repayments can request that the debt be "written-off" for a period due to financial hardship, which means that they do not have to make any repayments. They can also seek to renegotiate a lower rate of repayment. In our members' experience, the most vulnerable people are less likely to contact DHS about their circumstances and seek to change their repayment arrangements. They often miss payments for a few weeks, while they struggle to meet other commitments (such as a large one-off household expense).

Under the proposed regime, a person in this situation may be able to retrospectively assert that they had a reasonable excuse for failing to make repayments on time. But this may not occur. First, the same factors that mean vulnerable debtors do not try to renegotiate repayment arrangements may also mean that they do not advise DHS of circumstances which might lead to the application of the reasonable excuse exemption. Second, in the administration of reasonable excuse provisions there is an inevitable tendency for decision-makers not to accept that a person has a reasonable excuse when they failed to advise DHS of their circumstances or make use of options available to them.

People in remote locations or who lack stable accommodation may not receive the debt notice in a timely way

Our members who provide services to people in regional or remote areas report that, in some cases, mail from DHS can be significantly delayed. Similarly, a person without stable accommodation may not receive mail in a timely fashion because they are using a friend or relative's address as their postal address.

In these cases, they are deemed to have received the notice at the time it would have been delivered in the ordinary course of the post, if the notice was sent to their last known address.[40] This presumption cannot be rebutted by evidence to the contrary. Interest will therefore begin to be charged if they do not enter into an arrangement within 28 days, even if they have not in fact received the notice.

Another situation where this may occur is when DHS raise a debt after the person is no longer receiving a payment. DHS may send a notice to their last known address when they were receiving payment, even though the person may no longer live there and had no reason to update DHS if they moved. Again, DHS get the benefit of the operation of the deemed notice provision, even if they have no reason to believe the person still lives there, and this appears to mean under the proposed measure in this schedule that the interest will begin to run 28 days after the notice is deemed to have been received.

Under the proposed regime this is a situation where a person may be exempt from the interest charge on the basis that they did not receive the notice in a timely fashion and therefore have a reasonable excuse for not entering into a repayment arrangement.[41] But in our experience it can be difficult to persuade DHS decision-makers of this (it is inherently hard to prove a negative, for one thing) and the most vulnerable tend not to raise issues like this or exercise their rights of appeal.

In short, in our submission the proposed interest charge may apply in a number of cases where the person does not in reality fall into the target group of people actively avoiding repaying their debts despite having financial capacity to do so.

Other technical problems

We also note the following technical issues with the measure.

1. Under the schedule's provisions, if a person does not enter into a repayment arrangement by the due date, interest runs until they enter into an arrangement and make a payment.

[40] Section 237, *Social Security (Administration) Act 1999* (Cth); sections 28A, 29, *Acts Interpretation Act 1901* (Cth).
[41] This is the approach taken under Department of Social Services policy in relation to the compliance system. See note 24.

In our view, this is unduly harsh. The main aim of the scheme should be to encourage people to contact DHS and enter into arrangements to repay debts. Once a repayment arrangement is made, interest should stop running. The person may need a week, for example, to get their affairs sorted and begin making repayments. If they have made an agreement to begin making payments from this point in time, interest should not continue to accrue.

We recommend that the Bill be amended so that interest runs only until a repayment arrangement is made (or, where an existing one has been terminated, until a new arrangement is made).

2. Under the schedule's provisions, a person who gets a job and whose payment is reduced to nil by employment income (a "nil rate period") may be liable to an interest charge.

Although we do not understand it to be the intention to apply the interest charge during a nil rate period, the schedule does allow this. Although presumably this situation could be specified as one where interest does not apply via legislative instrument, it should be amended so that a person in a nil rate period (which can be up to 12 weeks long) continues to be exempt from the interest charge regime until their payment is cancelled at the end of that period. People in a nil rate period because they have a job are often going through a difficult period of trying to re-enter the workforce and are also often in financial hardship after a period without work. If they are in insecure work, they may find themselves back on a social security payment before the end of the nil rate period, which is one of the practical reasons for having a nil rate period (it means that their payment can be restored without the need for a fresh claim). This is the kind of stressful and difficult period when they may fail to respond to a notice or to enter into a repayment arrangement in a timely fashion.

Seeking to apply an interest charge in this period may also lead to inefficiency. It is pointless for DHS to issue a debt notice to the person during a nil rate period to trigger the interest charge regime, if the person begins to receive a payment again within a few weeks and becomes exempt from the interest charge regime again.

Addressing this requires amendment to s 23(4AA) of the *Social Security Act 1991* by inserting the interest charge regime as an additional circumstance where a person in a nil rate period because of employment income is still treated as receiving a social security payment.

3. Under the schedule, a person whose repayment arrangement is terminated by DHS begins to incur the interest charge after 14 days, without any obligation on DHS to provide further notice (although it may do so).

The Bill should be amended to oblige DHS to issue a fresh debt notice at this point, warning of the application of the interest charge and allowing 28 days to re-enter a repayment arrangement. This is a reasonable additional protection for vulnerable debtors who may have received the original debt notice years earlier and may not realise they will begin to incur interest.

4. Under the schedule's provisions, a person who fails to keep to a repayment arrangement incurs interest until they catch up with the missed payment.

In our view, this is unduly harsh. It is a fairer and more balanced scheme for interest to run only until the person makes their next payment in accordance with the agreement. Making the next scheduled payment is evidence of an intention to repay the debt and should be sufficient for the interest charge to stop. Catching up a missed payment may take a substantial period of time for a person on a low income and it is unfair for them to incur interest until that happens, if they are complying with the arrangement again.

This measure is not a fair and proportionate response to the problem of debtors avoiding repaying social security and family assistance debts. It is not sufficiently targeted to ensure that it applies only to debtors who are deliberately evading their obligation to repay their debts. At a minimum, any interest charge framework should restrict the application of the interest charge to situations where the Secretary is satisfied that the former payment recipient has persistently and deliberately failed to enter into a repayment arrangement.[42]

Schedule 13 – Debt recovery

Schedule 13 contains two measures, originally put forward during the the last Parliament:[43]

1. Introduction into social security, family assistance, paid parental leave and ABSTUDY legislation of a power to make a "departure prohibition order" (**DPO**) prohibiting a person from departing Australia if they have an unpaid debt and have not made a satisfactory arrangement to repay it. Once a DPO is made, it is a criminal offence for the person to depart Australia if they know of the order or are reckless as to its existence.[44]

2. Removal of the statutory limitation period in social security, family assistance and paid parental leave legislation preventing recovery of debts if DHS has not taken action to recover the debt for six years. This measure is also to commence from 1 January 2017 (or the Bill's passage, if later) and is to apply to debts outstanding on, or after its commencement.

Departure Prohibition Orders

The NWRN opposes this measure.

A DPO involves the power to impose a circumscribed but significant restriction on a person's freedom of movement by administrative decision, and attaches criminal penalties to breach of that restriction. As detailed below, the measure confers a wide discretion on the Secretary as to the circumstances when a DPO may be made.

A coercive administrative power of this nature needs a substantial justification. None has been offered. Given that DHS already has extensive powers to recover debts – from an individual's tax returns or bank accounts, for example – we do not think that an adequate justification for why this power is necessary has been provided. It is not clear why these powers are insufficient, nor has the Secretary's discretion to make a DPO been restricted to those cases where alternative means of debt recovery, which do not impinge on basic civil rights, have failed or are not reasonably practicable. The inevitable impression is that this proposal arises more from its potential to facilitate debt recovery in a small number of cases, rather than a careful justification.

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[42] Such a provision could be modelled on the provision in s 42M of the *Social Security (Administration) Act 1999*, which limits the circumstances in which a serious (8 week) failure may be applied under the compliance framework for job seekers.

[43] *Social Services Legislation Amendment (Enhanced Welfare Payment Integrity) Bill 2016*, at http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5634.

[44] Proposed ss 102A, 200A, 1240 and 43G.

Further, a coercive administrative power of this nature should be carefully limited and those limitations should be contained in legislation to be considered and enacted by Parliament. The explanatory memorandum suggests that this power will only be used in "extreme" cases and where there have been lengthy unsuccessful attempts to recover the debt. It says that this policy intent will be supported by policy guidance.[45]

Although the Explanatory Memorandum suggests that it will be applied in a targeted fashion, the draft legislation itself confers a wide discretion as to the circumstances when a DPO may be made. In fact, although this is modelled on the child support regime, the draft legislation specifically leaves out an additional restriction in that legislation, namely that the decision-maker is "satisfied that the person has <u>persistently and without reasonable grounds</u> failed to pay" their child support debts.[46]

As a matter of principle, it is not sufficient to leave the circumscription of a coercive administrative power up to policy and practice at the administrative level. The proposal leaves the Secretary (in practice, senior DHS officers) wide discretion as to its use, subject to the vagaries of administrative policy and practice.

Further, a discrete system of appeal and review for the DPO regime is proposed, which is identical to the one available for DPO decisions under child support legislation. Under this regime, the decision to impose a DPO may only be appealed to a federal court. Decisions in relation to the revocation of a DPO or issuing a departure authorisation certificate (which permits a person to travel despite being subject to a DPO) are subject to review by the Administrative Appeals Tribunal.

We do not believe there is sufficient justification for excluding decisions made under the DPO regime from the general system of appeal. In particular, the general system of merits review is a crucial safeguard in social security and family assistance law, as it is free, informal and allows a fresh look at the facts and evidence in the case. This should extend to the critical decision to make a DPO, which under the proposal, may only be appealed to the federal courts. Although the result of this may be that DHS is administering DPO regimes with differing appeal rights, this situation already exists as child support appeal rights differ from the rights available under social security and family assistance law in any case.

At a minimum, therefore, the following amendments are required to circumscribe the power:

- Restriction of the Secretary's discretion to make a DPO, so that it may be exercised only where it can be shown that a debtor has persistently and unreasonably failed to repay their debts

- Restriction of the Secretary's discretion to make a DPO, so that it may be exercised only where alternative means of debt recovery have failed or are not reasonably practicable.

- Any DPO regime is subject to the general appeal system under the relevant legislation. In particular, if a DPO regime were introduced into social security and family assistance legislation, all decisions made under that regime, including the initial decision to make a DPO, should be subject to the normal system of multiple layers of merits review, internally and by the Administrative Appeals Tribunal.

[45] *Budget Savings (Omnibus) Bill 2016*, explanatory memorandum, at 157, 165.
[46] Section 72D, *Child Support (Registration and Collection) Act 1988* (Cth).

Even with those amendments, it is still not clear whether there is a substantial justification for this power.

Removal of six year limitation period

The NWRN also opposes this measure. In fact, we recommend insertion of the same statutory limitation period into ABSTUDY legislation (the *Student Assistance Act 1973*) to remedy an unjustified difference in the legislative framework for recovery of ABSTUDY debts.[47]

Statutory limitation periods are not arbitrary cut-off points. They exist throughout civil law for a number of important and principled reasons, including the prejudice which can arise to a defendant when important evidence is lost due to the passage of time.

These reasons apply equally in the area of public debts. Although doubtless it is not the intention of the meaure to enable this, without a six year limitation period it is conceivable that DHS could become aware of a debt, take no action in relation to it at all and then raise it and notify the debtor and seek to recover it more than six years later. At this point it may be difficult or impossible for the debtor to challenge the debt, if they disagree with it, due to the passage of time. For example, if DHS allege that the person was a member of a couple and living with their partner, they may no longer be in contact with neighbours or other people who could verify they were not living with them.

In short, the six year limitation period acts as an important discipline on DHS to engage in timely identification, raising, notification and recovery of debts.

Generally, DHS may only use its debt recovery powers in relation to debts, if there has been action to recover the debt within a six year period. Once the six year period expires, DHS cannot take compulsory debt recovery action.

The six year period begins on the day a departmental official becomes aware of the circumstances which have caused the debt, or could reasonably have been expected to have done so. This means, for instance, that where a person has failed to advise the department of a change in circumstances, the six year period will not usually start running until the department becomes aware of the change.

It is important to recognise, however, that the six year period can be readily extended. Under Department of Social Services (**DSS**) policy:

The period can be extended if there has been some activity on the debt during that 6 year period. Every time that any activity (such as recovery action) takes place within the initial 6 year period, a new 6 year period begins. In effect, this means that since any action extends the 6 year period, recovery can be extended indefinitely.[48]

Recovery action includes actual recovery, such as by withholdings or garnishee action of a tax return or bank account. However, it also includes minimal activity such as the person acknowledging that they owe the debt or even simply a file review in relation to debt recovery action by a DHS officer.

As DSS policy says:

[47] There is another unjustifiable difference in the treatment of ABSTUDY debts, compared to other social security and family assistance debts, which is the imposition of a 3 month time limit for appealing against the decision to raise and recover a debt. See ss 304 and 312 of the *Student Assistance Act 1973* (Cth). This should also be remedied.
[48] Department of Social Services, Guide to Social Security Law, 6.7.3.08 ("Statutory Limitation Period"), accessible at http://guides.dss.gov.au/guide-social-security-law/6/7/3/08 (accessed 22 March 2016).

If departmental activity (including file review) were begun within the initial 6 year period, the limitation period would be extended a further 6 years. Each resulting recovery action or debt repayment would begin another 6 year period, as above.

This is consistent with our members' experience, and the fact that in the majority of cases they see the six year time limit is not in issue.

In short, this is not a stringent limitation period. It therefore appears that the main reason why debts expire is not the law as such, but the practical limitations on recovery action imposed by DHS's resources and the inability of people on low incomes to repay debts quickly (and only one at a time). As such, we think the solution should be to provide additional resourcing to support DHS's debt recovery operations, or make changes to debt recovery processes, rather than remove this important backstop protection against unfair or oppressive debt recovery.

We note that despite the Government's concern with the burden of outstanding debt, it continues to propose to phase out the Family Tax Benefit Part A and Part B supplements.[49] The supplements have a key role in preventing debts arising from the reconciliation process and the difficulty some families have in accurately estimating their annual income. We are concerned that if this measure proceeds, more families will have a debt at the end of the year. In evidence to the Senate last year, the Department of Social Services indicated that about 12% of families have their debts offset by the supplements, meaning that many of these families may have incurred a debt without them.[50]

Schedule 14 – Parental leave payments

Schedule 14 amends social security and veterans' entitlements legislation to include parental leave and dad and partner pay payments in the income test for income support payments. This is another measure proposed in the last Parliament but the bill lapsed with the election.[51]

This measure will impact on several thousand single and partnered parents each year, either through a reduced rate of payment than would otherwise apply or loss of eligibility for payment.

At present paid parental leave (and dad and partner pay) do not count as income for income support purposes.[52]

This was a deliberate design feature of the scheme, arising out of recommendations by the Productivity Commission in its final report on paid parental leave (but not in its draft report). The concern at the time was to make total financial support to families who elected government-funded paid parental leave greater than the level of support for families who elected to take the baby bonus over paid parental leave. Exempting paid parental leave from the income test for social security payments was intended to achieve that result.

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[49] This is one of the measures in the *Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill 2016*, currently before the Parliament.

[50] Senate Community Affairs Legislation Committee, Official Hansard, Thursday 19 November 2015, p 33, accessible at http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/068adf10-f588-402a-a5b6-c607bb8d507e/toc_pdf/Community%20Affairs%20Legislation%20Committee_2015_11_19_4012_Official.pdf;fileType=application%2Fpdf#search=%22committees/commsen/068adf10-f588-402a-a5b6-c607bb8d507e/0000%22.

[51] *Social Services Legislation Amendment (Consistent Treatment of Parental Leave Payments) Bill 2016*, http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5640.

[52] They are expressly exempted from the meaning of "income" in s 8 of the *Social Security Act 1991* (Cth).

This resulted in the unequal treatment of families receiving paid parental leave under the statutory scheme and families receiving parental leave from their employer, as the latter is income tested for social security purposes.

As the baby bonus has now been abolished, this justification for the inequity in treatment of statutory paid parental leave. On equity grounds, although this will reduce the level of support for some families, the NWRN does not oppose this measure.

Schedule 15 – Fringe benefits

Schedule 15 changes the assessment of fringe benefits for the purpose of family assistance and the parental income test for Youth Allowance recipients who are not independent. Currently the value of fringe benefits is included in these income tests.[53] Schedule 15 modifies this by using the gross value of reportable fringe benefits, rather than the adjusted net reportable value. It exempts people working for public benevolent institutions, health promotion charities, and some hospitals and ambulance services, who will therefore continue to have the adjusted net reportable value of fringe benefits assessed.

The value of fringe benefits is already taken account of in the income test for family assistance payments, including Family Tax Benefit, and the parental income test for Youth Allowance. However, the value used is the net value or "adjusted fringe benefits" amount – in effect, the gross-up factor is subtracted from the reportable amount on a person's payment summary.

Legislation to change this to the grossed up amount was enacted as part of a package of child support reforms in 2006, but was repealed just before it was to commence in mid 2008.

One of the major concerns that led to the repeal of the change prior to its commencement was the impact on the community sector workforce. Due to an exemption from Fringe Benefits Tax for public benevolent institutions, many offer salary packaging in order to increase the attractiveness of salaries to their workforce. The concern was that due to funding constraints, community organisations would not be able to continue to offer competitive salaries to offset the impact on family incomes from the changed assessment for income support purposes.

As the grossed up value of fringe benefits is higher than the adjusted net value, this measure will reduce the rate of payment to some families who receive income in the form of fringe benefits, if not exempt. As these are families in receipt of means tested family assistance payments or Youth Allowance, many of these households will be low or middle income households. The majority of households receiving Family Tax Benefit, for example, have family income below $80,000, that is, below median household income.

It will, however, improve equity in the treatment of some similarly placed families by disregarding differences in how their income is received. It also avoids past concerns about the impact on the community sector workforce. However, it does so at the expense of treating some families with similar financial means differently, on the basis of whether they are employed by a not-for-profit organisation or not.

[53] Schedule 17, *A New Tax System (Family Assistance) Act 1999* (Cth); s 1067G-F11, *Social Security Act 1991* (Cth).

A preferable and more principled overall outcome would be adequate funding of community sector organisations and other not for profit organisations, followed by more comprehensive reform of Fringe Benefits Tax arrangements. In the absence of this, the NWRN does not oppose this measure.

Schedule 16 – Carer allowance

Schedule 16 removes specific backdating provisions applicable to Carer Allowance and aligns them with the general start date provisions applicable to other payments.

Generally, there is only limited backdating of social security payments following the lodgement of a claim.[54] The first date from which payment is made, known in social security legislation as the "start day", is usually the date of claim. There are limited exceptions to this, which permit the start day to be backdated.

Alongside these general rules are some payment-specific rules including for Carer Allowance.[55] For a claim for Carer Allowance in respect of an adult, backdating of up to 12 weeks is available if the need for care is the result of the acute onset of a disability (including a sudden traumatic injury or exacerbation of pre-exisiting condition). Carer Allowance in respect of a child may be generally backdated up to 12 weeks, provided the disability occurred more than 12 weeks prior.[56] This generally requires the care receiver to be at home or in hospital.

The NWRN does not support this proposal. There is a sound justification for the different treatment of Carer Allowance. In our experience, there continues to be a relatively low level of awareness of this entitlement and this, coupled with the often significant upheaval of becoming a carer, often leads to a delay in people lodging claims for payment. The current start day rules provide some limited recognition of this.

Schedule 17 – indexation of family tax benefit and parental leave thresholds

Schedule 17 pauses indexation of the higher income test threshold for Family Tax Benefit Part A and the primary earner income cut out point for Family Tax Benefit Part B until 1 July 2020. The income limit for paid parental leave is also paused until 1 July 2020.

Family Tax Benefit Part A is subject to an income test based on family income. There are two income test thresholds. The upper threshold is currently $94,316. Above this threshold the per child rate is the base rate reduced by 30 cents for each dollar over the threshold.

Family Tax Benefit Part B is limited to families where the higher income earner in a couple (with an eligible child under 13, unless a grandparent or great-grandparent carer) or a single parent has income below the cut-out point, currently $100,000. Single parents whose income is below this cut-out point receive the maximum amount of payment. For couples, the rate of payment is determined by the income of the lower earner.

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[54] Schedule 2, Part 2, *Social Security (Administration) Act 1999* (Cth).
[55] Schedule 2, Part 3, items 16 and 17, *Social Security (Administration) Act 1999* (Cth).
[56] However, this does not apply in cases where qualification for Carer Allowance is dependent on qualification for Carer Payment in respect of the child.

These thresholds are already paused up to and including 1 July 2016. This measure would extend that pause and maintain current thresholds until 1 July 2019, with indexation resuming on 1 July 2020.

Targeting of this threshold freeze to families to the upper threshold means that it affects families with income over $94,000. Over time it will also affect some families whose incomes are close to this threshold and increase above this level. It will not affect the majority of families in receipt of Family Tax Benefit, whose incomes are below $80,000.

However, this measure has to be considered alongside other changes to Family Tax Benefit which the Government has reintroduced in this Parliament, including abolition of the end of year supplements and a major restructure of Family Tax Benefit Part B. These unfair changes will have a significant impact on the disposable incomes of the poorest households.

The NWRN does not support a continued push for further savings from the Family Tax Benefit program in the absence of a commitment from Government to withdrawing harmful measures that fall disproportionately on the poorest in the community and addressing the inadequacies of the current family payments system.

Schedule 18 – pensions means testing for aged care residents

Schedule 18 removes exemptions from the income and assets tests for pensions in aged care who rent out their former home and pay their aged care accommodation costs by periodic payments.

Currently, there are specific rules for assessing the former home (and rental income from it) for pensioners in aged care.

When a pensioner leaves their home to enter aged care, the home is not treated as an asset for 2 years. It continues to be exempt after 2 years if the pensioner’s partner continues to live in it.

It also continues to be exempt from the asset test if the pensioner rents it out and pays their aged care accommodation costs by periodic payments. The rental income is also exempt from the pension income test.

Many pensioners are forced to sell their home to meet aged care fees. However, these income and asset test exemptions are designed to help some low income pensioners, where possible, keep their former home while meeting the costs of aged care.

These rules are different from the rules used to determine the level of aged care fees. From 1 January 2016, rental income from the former home has been included in a person’s income for the purpose of the aged care assessment for all people entering aged care, whereas previously the rules aligned with pension rules

There are also different rules for the assessment of the former home as an asset. The full value of the home is not counted. Instead there is a capped amount, currently about $160,000. The home is also completely exempt if:

-a partner or dependent child lives there

-a carer eligible for an income support payment has been living there for at least 2 years, or

-a close relative eligible for an income support payment has been living there for at least 5 years.

Schedule 18 would align the assessment of rental income with the current aged care rules in place since 1 January 2016. It does not align pension rules with the assessment of the former home under aged care rules, as it does not recognise exemptions applicable where a carer or close relative continue to live in the home.

Many people who move into aged care and whose primary form of wealth is their former home already have to sell the home to meet the costs of aged care. These changes will place further pressure on people to sell their home, as it reduces their ability to help meet those costs through renting out the home by income testing that amount.

There is a case for careful reform of aged care means testing arrangements. But the NWRN does not support this measure as it places further pressure on pensioners to sell their home and limits their choices about how to pay for aged care.

This measure also does not consider the situation of carers and other close relatives who may continue to live in the home, often after living there for many years. At a minimum, exemptions from the pension asset test should be equivalent to those in place for aged care assessments. These exemptions recognise situations where a pensioner may wish to keep the home, as it is being lived in by a long term carer or other relative who has lived in it for a significant period of time.

Schedule 19 – employment income

Schedule 19 of the bill removes the exemption from the income test for Family Tax Benefit Part A and the parental income test for Youth Allowance recipients where the parent is receiving an income support payment and enters a nil rate period due to employment income. The measure is to commence from 1 July 2018.

The rate of Family Tax Benefit Part A is subject to an income test unless the person receiving it, or their partner, is in receipt of an income support payment. This also applies where a person, or their partner's income support payment is reduce to nil as a result of ordinary income, made up wholly or in part of employment income. In this case, they may qualify for an employment income nil rate period of up to 6 fortnights, where they continue to be treated as though receiving the income support payment for certain purposes. One of these is the exemption from the Family Tax Benefit income test.

Similarly, the rate of Youth Allowance for young people who are not independent of their parents is subject to a parental income test. This does not apply if their parent is in receipt of an income support payment or in an employment nil rate period.

The purpose of the current rules is to provide an additional incentive for people to take up work, especially casual, short-term or insecure work. It does so by ensuring the person remains on payment and payments are not affected for up to 12 weeks and they can get back onto payments easily if the work does not continue.

Although these rules do treat families with similar income levels differently for a period of up to 12 weeks, they do so for the reasonable purpose of recognising the difficulty re-entering the workforce, especially into precarious and insecure work. As such, the NWRN does not support this measure.

Schedule 20 – psychiatric confinement

Schedule 20 changes social security law to prevent payment to a person in psychiatric confinement following charge with a serious offence. Currently a person may be paid an income support payment – usually Disability Support Pension – if they are in psychiatric confinement following charge with a serious offence and undergoing a course of rehabilitation.

As noted above, this measure attracted significant opposition from stakeholders in the area of forensic mental health when it was proposed during the previous Parliament. [57] This includes the Royal Australian and New Zealand College of Psychiatrists, the Australian Association of Social Workers, the Australian Human Rights Commission and Australian Council of Human Rights Authorities, the Victorian Government, the South Australian Office of the Public Advocate, the NSW Mental Health Review Board and so on. The submissions, including the NWRN's submission, are available and highlight a range of practical and principled concerns.[58]

The explanatory memorandum to this Bill does not disclose that any steps have been taken to address these concerns or ensure proper support and rehabilitation for forensic patients if access to Commonwealth income support is withdrawn. In the absence of such steps the NWRN continues to oppose this measure.

[57] *Social Services Legislation Amendment Bill 2015*, at http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5442.

[58] http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Social_Services_2015/Submissions