



c/-102/55 Holt Street, Surry Hills NSW,2010

Phone: (02) 9211 5300 Fax: (02) 9211 5268

Toll Free: 1800 226 028 TTY: (02) 9211 0238

ABN: 76 002 708 714

welfarerights@welfarerights.org.au www.welfarerights.org.au

21 September 2012

Committee Secretary
Senate Education, Employment and Workplace Relations Committees
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Senate Committee on Education, Employment and Workplace Relations References Committee

RE: Answers to Question on Notice

Dear Committee Secretary

Following our appearance before the Senate Committee on Education, Employment and Workplace Relations References Committee hearings into the adequacy of Newstart and other allowances Senator Rachel Siewert provided a number of questions on notice.

The response from the National Welfare Rights Network is attached, for the information of the Committee.

Yours sincerely

Maree O'Halloran AM
President
National Welfare Rights Network
Surry Hills
NSW 2010

Senator Siewert asks about Special Benefit. Can you explain more about the payment of Special Benefit? What exactly is it? Who is on the benefit? Why aren't they on Newstart?

Broader problems around Special Benefit are explored in considerable detail in the attached policy paper, *Special Benefit – Social Security and Social Exclusion – A call for reform from the National Welfare Rights Network* that was provided to the Committee on 21 August 2012.

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

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

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

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

At as June 1990 there were 27,913 people receiving Special Benefit. This number has steadily decreased over the years to the point where, as at June 2011, there were only 6,385 people receiving Special Benefit.¹ This means that over the past decade the number of people receiving Special Benefit has decreased by over 440 per cent.

Of these 6,385 more than 50 per cent were people who were not residentially qualified for Age Pension (which generally requires at least 10 years of residence from the grant of a permanent resident's visa). Presumably many of these people would have sufficient periods of residence to qualify for another payment (eg Newstart Allowance) but are unable to claim and/or qualify for those payments because they have reached Age Pension age. Certainly, Welfare Rights workers have helped many people in exactly this situation.

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

¹ Department of Families, Housing, Community Services and Indigenous Affairs, *Statistical Paper No. 10 - Income Support Customers: A Statistical Overview*, 2011, p. 62.

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

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

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

Table 1. Profile of Special Benefit recipients	
Age	Just over half (52.1%) of all Special Benefit recipients are aged over 65, reflecting the high numbers of older people unable to meet residency requirements (N= 3,376). These people of Age Pension age live on \$140 less than other older people of similar age. People under 24 account for 18.5% (1,190) of those on Special Benefit and 8.9% (570) are aged under 16.
Country of birth	Almost 48 % live in NSW (3,050), 28% in Victoria (1,776) and 628 in Queensland (9.8%). Looking at country of birth, 24.2% were born in China, followed by 8.3% who were born in Australia, with 6.1% born in the Philippines.
Duration of receipt	Fifty-five % have been on Special Benefit for more than 12 months; The mean time on benefits is 111 weeks.
Source: Department of Families, Housing, Community Services and Indigenous Affairs, <i>Statistical Paper No. 10, Income support customers: a statistical overview, 2011.</i>	

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

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

Issue 1: dollar for dollar reduction

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

A compelling example of the unfairness of the dollar for dollar income test is as follows:

A homeless 14 year old receiving Special Benefit and no other means of support would like to work for MacDonaldis to earn some money to help meet the costs of living. Unfortunately, every dollar of income from MacDonaldis will reduce Special Benefit by a dollar, thus there is no incentive to take

the job. In fact, the Special Benefit is reduced by the “gross” amount of income, thus once tax is taken out, the young person would have less in their pocket each fortnight than if they didn’t have the job. If the person were on any other income support payment (eg Youth Allowance) they would have a free area (ie an allowable amount of income that has no effect on their rate) and a tapered rate of reduction for income over the free area.

Issue 2: long and short term available funds tests

The “short term available funds test” applies where a person is likely to need income support for less than 13 weeks. This test requires that a person’s **savings be less than the equivalent of two weeks** of the maximum rates of Special Benefit and Family Tax Benefit in order for Special Benefit to be payable. This could be as low as \$486.80 for a single adult for example.² These figures and this test expose vulnerable people to too much risk. Where the person has more than this amount, a preclusion period is calculated. If the preclusion period is to be greater than four weeks, the person’s claim is rejected outright.

The “long term available funds test”, generally applies where a person is likely to need income support for more than 13 weeks, requires that a person has less than \$5,000 in available funds, irrespective of marital status or number of dependents. Unbelievably, this threshold figure has not been increased or indexed and has remained at \$5,000 for **at least** the past 14 years.³

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

These separate tests for the one payment are unnecessarily complicated and unfair. A person must effectively fall well below the Poverty Line before they can even have a claim processed.⁴ Assistance to a person already assessed as being without a sufficient livelihood should not be denied financial assistance on the grounds that they have not yet spent the last of their usually meagre savings especially when those savings may be the difference between being able to afford essential costs such as housing, utilities and food.

Issue 3: treatment of “in kind” support

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

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

² Centrelink, *A Guide to Australian Government Payments*, 20 September to 31, December 2011 published at <http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm>

³ DSS Guide to the Administration of the Social Security Act, Volume 1 at 15.900; Guide Issue No.988G. We understand that the threshold has not changed since 1990, ie for 21 years, but have not been able to independently verify this.

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

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

The NWRN has developed a series of recommendations to address the deficiencies that are apparent with the existing rules that apply to Special Benefit recipients.

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

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

You say "Australia's Social Security system was not designed for a world of casual, temporary and contract work. Many overpayments and consequent debts, although not all arise from the interaction between insecure work and the social security safety net." Can you explain this to the Committee?

In what way is the social security system not coping with changing labour market?

Modern paid work becomes more fractured and the causalisation of the workforce is now endemic.

Our submission highlights the impact of changing work arrangements on people's interactions with Centrelink and its "old world" reporting requirements.⁵ Many people who contact our member centres do not know from week to week what hours they will work, and often juggle multiple jobs. They frequently need to guess their rates of pay, penalties and overtime.

For many, 'work' is a succession of low paid and insecure jobs. Many are confronted by out-dated income reporting rules, which require reporting income when earned, than received, as we explain in greater detail on page 39 of our submission.

Since the 1990s, the Australian labour market has undergone a major transformation, converting to a multi-tiered system where some people are in secure employment and others are in insecure casual or contract employment. This shift is increasingly involuntary and not a life-style choice.

Increasingly, people are cycling in and out of the labour market and on and off the social security safety-net. For many working people, the future of work will be characterised by growth of low skilled part time employment.

⁵ National Welfare Rights Network, *Submission to Senate Committee on Education, Employment and Workplace Relations Committee into the Adequacy of the Newstart and Other Allowances*, August 2012, p. 38.

Underemployment impacts upon 7.6 per cent of workers, with 873,500 seeking more work in November 2011.⁶ In the year ending February 2012 some 2.5 million Australians were forced to leave a job, according to the Australian Bureau of Statistics *Labour Mobility* study.⁷

In 2010, around 1 in 5 people reported that they lost their job because they were retrenched, made redundant or their employer went out of business. A clear indication of the changing labour market was the finding that in 2008 just 1 in 10 lost their job for the same reasons.

Welfare Rights regularly interacts with income support recipients who churn in and out of employment – from work to income support and back to work again. Social security policies – especially the 2006 Welfare to Work reforms affecting many parents and people with disabilities, have changed the landscape considerably.

NWRN has long supported measures to increase workforce participation. Of critical importance are policies that ensured that people do not suffer punishingly high withdrawal rates for taking on paid hours of employment.

Successive changes to income test arrangements and taper rates, along with selective easing for some groups, has meant that many more people are now combining income support and paid work.

The success of the current arrangements is mixed: the work incentives of the current arrangements were canvassed in detail in evidence and the report by the recent Senate inquiry into changes for single parents and young people.⁸

What is the relationship between overpayment and increase in casual work?

Most importantly, how can we adapt the allowance system to better meet the needs of people in insecure/casual work?

A person can most easily meet their income reporting obligations where they have a single permanent job, where the hours and the pay levels never vary. For those working one or more than one job, where the work is temporary, casual or contract based, this usually means their level of pay is subject to fluctuation. In some cases a person can be required to calculate their income based on their Centrelink reporting fortnightly period, against more than one pay period for a number of employers.

Where a person's reporting obligations become more complicated, there is increased potential for overpayment, even where a person is doing what they believe to be everything within their power to make Centrelink aware of their level of income (for example providing pay slips).

Providing pay slips alone will not prevent overpayment, because of the rules about when income must be reported, and the rules placing the onus on the person themselves to declare the gross income earned derived or received over their own specific reporting period.

⁶ Australian Bureau of Statistics, *Australian Labor Market Statistics*, January 2012, Cat. No. 6105.0 Australia.

⁷ Australian Bureau of Statistics. *Labour Mobility*, Australia, February 2012, Cat. No. 6209.0

⁸ Senate Committee Report, Community Affairs Legislation Committee, *Social Security and Other Legislation Amendment (Income Support and Other Measures Bill 2012 [Provisions]*, p. 15. See also evidence by National Welfare Rights Network.

Other submissions have suggested it would have to allow people to report on the date they are paid not the date they worked, would that go some of the way to addressing the compliance and debt problem?

We commonly see people who work in a particular fortnight, but are not paid until later (sometimes months later). Currently, that income must be declared when it is first earned, even if it is not yet received. This means that a person's income support will reduce or cease, even though the person has not received the very income that is reducing their income support payment. Unless the person has savings, they are left with nothing to pay for food, medication, rent etc. Some people tell us they felt they had no option but to defer reporting their income in such circumstances. Some then say that once the payment was received, they were too frightened to tell Centrelink because it had not been declared at the time and they were fearful of Centrelink's response.

Allowing reporting on the day a person is paid will help with income reporting compliance (as distinct from activity test "compliance").

It would reduce the big income debts problem, but depending on how it worked, it may be that a person would incur small debts instead (like a Family Tax Benefit reconciliation or a compensation charge) when the pay is finally received and apportioned over the period to which it relates. It may be that an end of tax year reconciliation process may be appropriate in some cases.

In effect the person would be receiving social security and, when the pay is finally received, have to repay the social security overpayment at the time of receipt (or perhaps after a reconciliation at the end of the financial year).

Such a system (regular repayment of small debts) would remove the risk of a person/their employer manipulating pay dates for a financial advantage.

It is important to understand person would not receive any more income support than they were legally entitled to, but they would get income stability which would remove the desperation and remove the trigger that sometimes makes people delay reporting until the money is received. This approach would probably work well for self-employed people also, who are currently paid on the basis of three monthly or annual income assessments.

You say "NWRN has long supported programs for job seekers that deliver real skills and opportunities" What would that look like? Do we need a new stream beyond stream-4? Additional funding for work experience? What else is needed to overcome barriers?

Some ways in which the current problems could be overcome could include:

- A more accurate and generous streaming of people into stream 4 – we see many clients struggling on higher streams;
- better individual tailoring by providers to a jobseeker's own circumstances – many clients we see are simply presented with a standard Employment Pathway Plan and report being "told to sign";
- more funding for the programs people find useful and would like to continue. The programs we hear people currently wanting to remain with are usually those targeted

for people with a Disability, which currently have a time limit on how long a person can participate.

The growth in numbers of job seekers with 'Partial Capacity To Work' requires that increased supports be made available to job seekers if the system is to be more than just activity for activities sake.

Can you explain why in 2010-2011, serious non-compliance penalties rose almost 20 fold?

Under the previous Government extremely high numbers of social security penalties were applied. In 2001-02 around 390,000 financial penalties were applied, with clear evidence that the system was contributing to homelessness. In 2009 the current Government introduced a new compliance system, to replace the harsh "three strikes" approach of the former Government. For over a decade when not in government, Labor had been highly critical of the compliance system, frequently labelling it 'excessive' and 'harsh'.

On forming Government, former Employment Participation Minister, Brendan O'Connor promised a fairer system. As we point out in our submission, the current system is better than the one it replaced in many aspects, though large numbers of penalties are still being applied. Our experience is that at the start of new compliance system systems employment service providers are wary of imposing excessive numbers of penalties. This was an important factor with the new system in 2009, especially as the new Minister had previously urged providers to essentially 'tread carefully' with job seekers who had suffered unduly under the old system.

Our experience suggests that in the initial first year of the new system Job Services Australia (JSA) providers were extremely cautious about recommending participation reports. However, over time, the "messaging" from government (and its department who managed JSA providers) seemed to suggest that they wanted a harder approach to be taken.

Additionally, the increase in penalties occurred around the time of the Federal election. Essentially, the election policies were noticeable because both of the major parties were trying to outbid the other in terms of which party had the "tougher" policies on job seekers.

The report from the Independent job seeker compliance review conducted by Professor Julian Disney also noted that the transition to a new system influenced the levels of failures, stating that "during the first year of the new system, participation failures reached an annual total of about 115,000 after beginning at an abnormally low level due to transitional effects."⁹

Professor Disney explains that the 910 'serious failures during the first year "is likely to be an abnormally low annual total, as it began with no job seeker having started to accumulate the failures which are needed to trigger Serious Failures for persistent non-compliance".¹⁰

⁹ Disney, J. *Review of the Job Seeker Compliance Framework*, p. 55.

¹⁰ Ibid, p. 63.

Can you go into more detail about the repercussions of the harsh compliance regime you outline in your submission? Does it undermine the overall aim of the income support system – to keep people out of poverty and get them into work?

The Department of Education, Employment and Workplace Relations has not reported into any research or surveys of the consequences and impacts of the current compliance arrangements. However, previously it reported on the impacts of the compliance regime on efforts to find work and on participation in general. We believe that similar considerations would be at play in the current regime.

Surveys of job seekers by DEEWR found that penalties had a corrosive effect on the motivation of job seekers and on their ability to look for work.

It found: "...the imposition of an eight week penalty made around 50 per cent of job seekers more motivated to find work. However, around 75 per cent of job seekers reported that having no income support made it harder to look for work, with over 50 per cent reporting that it made it a lot harder."¹¹

DEEWR found that that an eight week penalty was not successful in compelling job seekers to find sustainable employment: "75 per cent of job seekers who receive an eight week non-payment penalty are soon back on benefits, most of them within a fortnight of finishing their non-payment period."¹²

While the configuration of the compliance arrangements is different today, and some penalties can be 'worked off' by undertaking a 'compliance activity', the negative impacts of the regime, and the consequential loss of income, are significant.

According to Wong and Saunders, one in ten Australians on the Newstart Allowance is unable get a substantial meal each day, one in eight is unable to buy prescribed medicines, and one in twenty cannot heat their homes. While just 1.2% of age pensioners experience difficulty purchasing medicines, 22% of job seekers could not afford medications.¹³

The job seeker compliance regime leaves many job seekers with even less income to live on, impoverishing many. The loss of funds at a daily rate of 14 per cent of payments can have a major impact, of up to \$48 a day for a person on the basic rate of Newstart Allowance. The financial impact upon young people on Youth Allowance is even greater, as the loss of income is from a much lower base rate of payment. Vulnerable, long term unemployed and Indigenous job seekers are already disadvantaged in numerous ways, and the compliance regime can be particularly harsh on these job seekers.

The loss of income from an eight week no-payment penalty can have severe consequences, resulting in a payment cut of \$1,960.

In remote Indigenous communities the non-payment period can have a significant impact on the job seeker and their extended family when or if it is applied.

The true numbers of compliance penalties upon very vulnerable job seekers is not known, as many job seekers with vulnerabilities do not disclose them, and the Government does not regularly provide this information to the public.

¹¹ Department of Education, Employment and Workplace Relations, *Submission to Employment Services Reform Bill, 2008*.

¹² Ibid.

¹³ Saunders, P. and Wong, M. *Deprivation and Other Indicators of Living Standards of Older Australians*, Commissioned by the Department of Families, Housing, Community Services and Indigenous Affairs, Social Policy Research Centre, November 2008.

