

LawRight Submission 9 July 2021



Submission in response to the Senate Standing Committee on Community Affairs' *Inquiry into the purpose, intent and adequacy of the Disability Support Pension*

About LawRight

LawRight is an independent community legal centre and the leading facilitator of pro bono legal services in Queensland, directing the resources of the private legal profession to increase access to justice.

About the Community and Health Justice Partnerships

LawRight's Community and Health Justice Partnerships were established in 2002 to provide free legal assistance and representation to vulnerable Queenslanders. The Community and Health Justice Partnerships collaborate with housing, health, social work and other community professionals to deliver comprehensive, holistic support which meaningfully improves the lives of our clients and reduces barriers to housing.

In the 2019/2020 financial year, LawRight operated 15 Community and Health Justice Partnerships throughout Queensland, providing ongoing legal assistance (casework) to 424 vulnerable people to resolve 706 matters.

Many of our clients experience several forms of disadvantage including mental illness, severe financial hardship, homelessness, addiction, physical or intellectual disabilities and complex family backgrounds. The Disability Support Pension ("DSP") is the sole source of income for a large number of LawRight's clients.

Summary of submissions

LawRight's experience in assisting clients who receive the DSP highlights the importance of significant reform in this area. Our submissions make recommendations for reform in three key areas:

- the rate of the DSP is insufficient to meet the increased cost of living for Australians living with disability;
- the DSP application and assessment process is opaque and time-consuming; and
- the Disability Employment Service system and the DSP compliance regime lead to poor employment and financial outcomes.

Submissions

1. Payment rates and the cost of living

The DSP is one of the largest social welfare programs in Australia. Approximately 746,000 Australians currently receive the DSP, which accounts for 30% of all income support payments.¹ Given that only 10% of Australians living with disability currently receive support from the National Disability Insurance Scheme², the DSP is a cornerstone of Australia's national disability response.

The current maximum rate for a single person receiving the DSP is \$868.30, which falls within the definition of poverty as established by the Henderson Poverty Line.³ Australians living with disability face higher costs associated with housing, healthcare, transport and communications than the broader community,⁴ and the inadequacy of DSP payments to meet basic costs of living has been well established in literature.⁵

The payment rate of the DSP was most recently reindexed in 2011, where it was increased from 25% to 27.7% of Male Total Average Weekly Earnings. This modest increase has been insufficient to meet the increased costs of living for Australians living with disability, particularly given the uncertain employment and housing prospects for vulnerable Australians in the wake of COVID-19.⁶

The current rate of the DSP is insufficient to provide access to appropriate food, transport, healthcare, accommodation, and clothing. It is vital that all Australians are supported to maintain an adequate standard of living, which allows for safety, security, and participation in their communities.

Recommendation: reassess the rate of the Disability Support Pension to ensure it is sufficient to cover basic needs, particularly the increased costs-of-living associated with disability.

2. The application and assessment process

Eligibility requirements for the DSP have grown more stringent over the past decade, reducing the number of Australians living with disability who are able to access the pension. The *Social Security and Other Legislation Amendment (Disability Support Pension Participation Reforms) Act 2012* was introduced “to taper DSP growth and reduce new

¹ Australian Institute for Health and Welfare, [People with disability in Australia](#), accessed 5/07/2021.

² Australian Federation of Disability Organisations, [NDIS Participants and employment](#), accessed 5/07/2021.

³ Melbourne Institute (2020) *Poverty Lines Australia: March Quarter 2020*, p1.

⁴ Vu, B., Khanam, R., Rahman, M. et al (2020) *The costs of disability in Australia: a hybrid panel-data examination*. Health Econ Rev 10, 6.

⁵ Australian Council of Social Services, [Rate of poverty by income support payment](#), accessed 5/07/2021.

⁶ Baker, E., Bentley, R., Beer, A. and Daniel, L. (2020) Renting in the time of COVID-19: understanding the impacts, AHURI Final Report No. 340, Australian Housing and Urban Research Institute Limited, Melbourne.



grants”.⁷ This amendment resulted in both a more burdensome application process, and fewer claims being granted. In 2011 53% of all DSP claimants were found to be eligible⁸, but this fell to 30% in 2018.⁹

These stricter requirements have resulted in many Australians living with disability being excluded from the DSP. Many claimants who would have previously been eligible for the DSP now often find themselves accessing other social security allowances, at a lower rate of payment. It is estimated that 40% of JobSeeker and Youth Allowance recipients are living with disability.¹⁰

As part of the application process, claimants for the DSP are required to provide medical evidence about their condition(s). While some claimants (approximately 5%)¹¹ are granted the DSP outright on the basis of the severity of their condition, most others are required to undergo a Job Capacity Assessment of their medical condition and capacity to work. Many claimants find this process to be practically and administratively challenging, and it may deter or frustrate legitimate DSP claims which would otherwise be granted.¹² Three specific procedural obstacles to a successful claim have been identified:

- **Removal of the Treating Doctor’s Report:** Prior to the 2015 reforms, all claimants for the DSP were issued with a Treating Doctor’s Report (‘TDR’) form, which outlined the necessary information that a medical professional or treating team would need to provide.¹³ The removal of the TDR has led to confusion and delays as claimants and their doctors are often unsure what information to provide to Services Australia.¹⁴
- **Introduction of the Disability Medical Assessment (DMA) process:** The DMA is a medical assessment by a Government-contracted doctor, which has been found to negatively impact the efficiency of processing DSP claims.¹⁵ Many successful DSP claimants experience significant delays as a result of the DMA process.¹⁶
- **Program of Support (POS) requirements.** The POS is an employment support program which must be completed by some claimants to be eligible for DSP. Literature identifies that POS requirements remain a critical issue for many DSP claimants, and that otherwise meritorious claims are being rejected or delayed due to these requirements.¹⁷

Even temporary delays in the application process can leave vulnerable Australians without access to appropriate income, and may lead to increased risk of homelessness, consumer debt or other poor outcomes.¹⁸ It is vital that Australians living with disability have certainty of

⁷ Australian National Audit Office, [Qualifying for the Disability Support Pension](#), accessed 5/07/2021.

⁸ Ibid.

⁹ The Guardian, Access to disability pension slashed by more than half, data shows, 8/6/18.

¹⁰ Australian Federation of Disability Organisations, [Fast Facts: poverty and disability](#), accessed 5/07/2021.

¹¹ Australian National Audit Office, [Qualifying for the Disability Support Pension](#), accessed 5/07/2021.

¹² Ibid.

¹³ National Social Security Rights Network (2018), *Disability Support Pension (DSP) Project: A snapshot of DSP client experiences of claims and assessments since the 2015 changes*, p 10.

¹⁴ Ibid, p 4.

¹⁵ Economic Justice Australia (2018), *Disability Support Pension (DSP) Project: A snapshot of DSP client experiences of claims and assessments since the 2015 changes*.

¹⁶ Ibid.

¹⁷ Productivity Commission (2011), *Disability Care and Support*, Report no. 54, Canberra.

¹⁸ Economic Justice Australia (2018), *Disability Support Pension (DSP) Project: A snapshot of DSP client experiences of claims and assessments since the 2015 changes*.



their eligibility for the DSP, and that the application process is not administratively or practically onerous.

Recommendation: review DSP application and medical assessment processes to reduce delays and ensure that valid claims are not rejected.

3. The DSP compliance regime

Most recipients of the DSP are required to observe a participation plan in order to maintain their payments, which may include work for the dole, work experience, or vocational training programs.¹⁹ A DSP recipient under the age of 35 who is subject to participation requirements must include at least one work-focused activity in their participation plan.²⁰

Although an investment in vocational outcomes and workforce participation is important, a review of the Disability Employment Services ('DES') program found that the compliance regime leads to a number of negative outcomes for participants.²¹ Additionally, this review found that DES providers frequently lack the specialist knowledge required to support jobseekers living with disability.²² International literature demonstrates that, more broadly, burdensome jobseeking and compliance regimes lead to reduced employment and financial outcomes for social security recipients.²³

A stated aim of the DSP compliance regime is to "efficiently achieve outcomes, [and] reduce administrative costs"²⁴. Although these more stringent compliance requirements may reduce the number of DSP recipients, they are unlikely to significantly reduce the Government's overall social security expenditure, nor to reduce Services Australia's administrative burden.

The DSP interacts with other support payments (such as JobSeeker and the Age Pension), and a recipient is likely to move between multiple payments throughout their lifetime. Half of all new DSP recipients have transitioned from another income support payment, and half of all recipients whose DSP ends will begin receiving the Age Pension²⁵. Recipients who lose access to the DSP as a result of a breach are most likely to eventually reengage with Services Australia through another support payment.²⁶

¹⁹ Australian Government, [Budget measures: budget paper no. 2: 2014–15, 2014](#), p. 195, accessed 15 May 2014.

²⁰ Social Security Guide, [s 3.1.6.110](#).

²¹ Department of Social Services (2020), *Mid-term Review of the Disability Employment Services (DES) Program*.

²² Ibid

²³ Economic Justice Australia (2018), *Disability Support Pension (DSP) Project: A snapshot of DSP client experiences of claims and assessments since the 2015 changes*.

²⁴ Parliament of Australia (2016), *Commonwealth Risk Management—Inquiry Based On Auditor-General's Report 18 (2015-16)*.

²⁵ Parliamentary Budget Office (2018) *Disability Support Pension, Historic and Projected Trends*, report 01/2018.

²⁶ Ibid.



Even a minor delay or disruption to payments due to noncompliance can have significant consequences for Australians living with disability, including disruptions to support services and assistance technologies. It is vital that DSP recipients are supported to maintain their engagement with Services Australia, and that compliance requirements are not overly burdensome or punitive.

Recommendation: Review the participation requirements for DSP recipients and the structure of Disability Employment Services, to ensure that jobseeking requirements are appropriate and supported.

Thank you again for the opportunity to make these submissions, which should be read alongside and in the context of submissions prepared by the Queensland Disability Network and the Queensland Council for Social Services.

Submissions made on 9 July 2021 to:

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