

## RESPONSE TO QUESTIONS ON NOTICE

### Adequacy of Newstart and related payments and alternative mechanisms to determine the level of income support payments in Australia

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### GENERAL COMMENTS

*NIL Response*

### SPECIFIC QUESTIONS ON NOTICE

#### Question 1: Increased Data for The Partial Capacity Category

##### Point 1: Rigid definitions of “Partial capacity to work”

“Partial capacity to work” covers a range of capacities to work, measured in hours per week (0-7; 8-14; 15-29). Reasons for assessments for less than full capacity to work include "physical, intellectual or psychiatric impairment" that at least “prevents them from working at least 30 hours per week at the relevant minimum wage... within the next two years” (<https://guides.dss.gov.au/guide-social-security-law/1/1/p/65>).

We note this designation, in effect since 2006, is inflexible and in some cases counterproductive.

“Example 1” from the DSS' Social Security Guide (<https://guides.dss.gov.au/guide-social-security-law/3/2/8/10>) states:

Example 1: Bridget is on NSA and has been assessed as having a “partial capacity to work” of 15-29 hours a week. Bridget works 18 hours a week at a craft store. Bridget is meeting her mutual obligation requirements in full as long as she continues working 15 or more hours a week.

We extend this example as follows:

Bridget gradually increases her workload to 30 hours a week at the craft store. However, Bridget suffers recurring bouts of severe anxiety and depression, and has been diagnosed by her psychiatrist as experiencing Major Depressive Disorder. This means that approximately every 2-3 weeks, Bridget

is unable to work at all. Because most of the time Bridget works full time, she is deemed exempt from "Partial capacity to work". However on average, Bridget continues to work 18 hours per week.

What this example would now show is that for many, 'partial capacity to work' measured in hours per week is at best an approximate measure. Since financial uncertainty is often a compounding factor in the distress experienced by people with disability, addressing this through more flexible methods of assessing and measuring capacity are likely to encourage greater work participation.

### **Point 2: More detailed data**

Further information is required to fully comprehend the breadth of population captured under the category of 'partial capacity to work'. Collection and disaggregation of the data should include the following characteristics:

1. Payment type
2. Indigenous/Non-Indigenous status
3. Main impairment type (including information on additional comorbidities)
4. Gender
5. Country of Birth
6. Age
7. With earnings
8. In receipt of Rent Assistance
9. Who have lodged a claim for the Disability Support Pension (DSP) and been rejected
10. Duration on payment (eg. 1-2 yrs; 2>5 yrs; 6>9yrs and over 10 yrs)
11. Number with 1, 2, 3, 4, 5 or more 'vulnerability indicators'
12. Identification of five (5) most common vulnerability indicators and a breakdown of the numbers with each of the most common five vulnerability indicators.

### **Point 3: Tracking miscategorised Newstart Allowance recipients**

Activity test exemptions for the population designated as 'partial capacity to work' are necessary to ascertain the number of people potentially inappropriately placed on Newstart Allowance instead of the Disability Support Pension, alongside identifying indicators of vulnerability for this population group. Data responding to the following questions would illustrate this specific population in any one quarter and changes within the population across time.

1. Numbers of people with partial capacity to work in any one quarter that are exempt from activity test requirements
2. Disaggregation of categories and associated numbers in each exemption category (i.e. domestic violence, temporary illness, home schooling, four (4) or more dependent children, and so forth).
3. Disaggregation by gender, Indigenous status and country of birth.

### **Point 4: Identify Risk Factors**

Additional areas of data is required around the relationship between the jobseeker compliance requirements and the partial capacity to work category to identify areas of socio-economic vulnerability and other risk factors as identified in point 3 above. These include:

1. Analysis of how people with a partial capacity to work have been impacted by the *Targeted Compliance Framework* in 2018-19
2. Numbers (if any) receiving a financial penalty
3. Numbers (if any) whose payments were suspended and the period of time this suspension remained in place

#### 4. Disaggregation by gender, Indigenous status and country of birth

##### **Point 5: DSS statistics difficult to find or population unclear**

DSS quarterly figures are housed at the ABS, and can be downloaded easily. However much data is not clearly visible (including "Partial capacity to work"). This could be addressed in ensuring all data files include a "Table of Contents", to inform users of what data is contained in the worksheet, and how to access it.

##### **Question 2: Program of Support & Eligibility Determination for the Disability Support Pension (DSP)**

###### **Introduction:**

Program of Support was introduced in 2011 for the population of persons with disability that are assessed as not having a "severe impairment". A "severe impairment" is defined as 20 points for a single listed disability, chronic condition or illness.

To successfully apply for DSP, among other things a person must be assessed as either having a "severe impairment" or have engaged with and met the Program of Support requirements prior to making their claim.

To meet the Program of Support requirements a person must have "actively engaged" with a Program of Support for at least 18 months during a period of 36 months immediately prior to the date of claim – i.e. before lodging their claim for DSP, or in limited circumstances be exempted from this requirement during this period.

These people (this cohort) generally remain on, or are placed on, Newstart Allowance under the category of partial capacity to work until such time as they meet the Program of Support requirements and otherwise qualify for DSP.

##### **Point 1: The Program of Support requirements delay, or prevent, people otherwise qualified from accessing DSP**

The Program of Support Determination acknowledges that some people will, solely because of their impairments, be unable to improve their capacity for paid work by participating in the Program of Support and can then be exempt from further participation (see 7.4 and 7.5 of the Determination). However, a DSP claimant cannot even be considered for these "exemption provisions" if they have not commenced their Program of Support before claiming the DSP.

The large majority of applicants for the DSP are not aware of the Program of Support prior to applying for DSP.

Unless a prospective DSP claimant has, at a minimum, engaged with and participated in a Program of Support by, at the latest, the day before they lodge their pension claim, they will never be considered to have met the Program of Support requirements for that claim. That is, that claim will never be granted, even if that person would otherwise qualify and everyone accepts that a Program of Support would not assist the person to find or maintain work.

Often applicants for DSP will first hear of the Program of Support requirements in the context of an AAT appeal some 12-18 months or more after they lodged their claim for DSP when they are

advised that they cannot succeed in their appeal and should engage with a Program of Support and then lodge a claim for DSP. As a result, their access to DSP is delayed by several years or more.

**Point 2: Active participation and the prejudicial ‘stop the clock’ criteria**

Temporary medical exemptions from Newstart activity testing requirements for persons with disability also stop the person participating in a Program of Support. This time won’t count towards the 18 month activity requirement within three (3) years and will ‘stop the clock’. An individual who has had consistent medical exemptions due to their impairment, chronic condition and/or illness, may therefore never qualify for the DSP even though it is clear by the medical exemptions that they are unable to work and should be placed directly upon the DSP.

**Point 3: Recognition of multiple impairments**

As noted in the Introduction above, a person with a “severe impairment” is not required to meet the Program of Support requirements. But, this does not include those who have comorbidities above the 20 point threshold but not in a sole category, irrespective of their total impairment rating. The assumption seems to be that a person with a series of moderate impairments each rating 10 points, no matter how many, is no less able to undertake and benefit from a Program of Support than a person with one moderate impairment.

Example 2: Joseph has anxiety and depression and a long term back condition. He has been medically retired from the workforce by his specialists and therefore, his employer will not allow him to return to work. After drawing down on his savings for a three (3) month period, Joseph applies for the DSP submitting all of the required medical evidence as outlined. Centrelink place Joseph on Newstart Allowance during the interim period. Joseph is also issued with an exemption immediately as recommended by his treating medical specialist for a three (3) month period from activity requirements. Joseph’s application is rejected and he remains on Newstart. Joseph’s total ranking on the impairment tables is 35 points across four Tables. He has three “moderate” impairments rated at 10 points each and one “mild” at 5 points. Despite this, he had not been able to enroll in a Program of Support as he had received activity exemptions and in turn, he is ruled as ineligible for the DSP.

**Recommendations:**

We recommend that engagement with a Program of Support should not be a requirement, or barrier, to accessing DSP for a person living with disability and associated costs who would otherwise be qualified for DSP. If it is thought that a person may benefit from engagement in a Program of Support then this is something that could be undertaken after they are granted the DSP.

At a minimum, we recommend that the inherent and unreasonable technical barriers in the current Program of Support determination be removed. In particular, any person found to be unable to benefit from a Program of Support due to their impairments should be exempt from this requirement, whether they enrolled in the Program before claiming DSP or not; and periods where a person is unable to actively participate due to a temporary exemption from the activity test should be counted and should not operate to further delay a person’s access to DSP.

The current situation means that there are many people remaining on Newstart Allowance in the Partial Capacity to Work when they clearly should be placed on the DSP.

<https://www.legislation.gov.au/Details/F2015L00001>)

### **Question 3: DSP eligibility, activity test exemptions and their application to Indigenous/remote peoples requiring dialysis and other medical treatment.**

There is sufficient published evidence to suggest that Indigenous and remote residents undertaking dialysis and other medical treatments have faced significant difficulties in meeting the DSP eligibility threshold and are thus, inappropriately placed on Newstart Allowance. The combined effects of the medical evidence requirements, the Impairment Tables weighted criteria, alongside the criteria of ‘fully diagnosed, fully treated and fully stabilised’ creates significant barriers for this group to achieve successful DSP determination (<https://www.legislation.gov.au/Details/F2011L02716>).

Published material is readily available in both government reports and qualitative peer reviewed research outlining these very issues:

Commonwealth Ombudsman:

[https://www.ombudsman.gov.au/\\_data/assets/pdf\\_file/0024/42558/Accessibility-of-DSP-for-remote-Indigenous-Australians\\_Final-report.pdf](https://www.ombudsman.gov.au/_data/assets/pdf_file/0024/42558/Accessibility-of-DSP-for-remote-Indigenous-Australians_Final-report.pdf)

Published peer-reviewed material available online:

Soldatic (2018): <https://onlinelibrary.wiley.com/doi/full/10.1002/ajs4.51>

Soldatic & Fitts (2019): <https://www.tandfonline.com/doi/abs/10.1080/09687599.2019.1649128>

Fitts & Soldatic (2018): <https://www.hca.westernsydney.edu.au/gmjau/wp-content/uploads/2018/10/GMJAU-Disability-Income-Reform-and-Se...ing-Racial-and-Regional-Discrimination.pdf.pdf>

As noted in ILO C169, Part V: Social Security and Health (A. 24 & 25), there is a direct correlation between national social security schemes and the social determinants of health and social and emotional wellbeing for First Nations people’s health outcomes

([https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169)).

#### **Recommendations:**

We recommend that:

1. A comprehensive national income support policy is developed in line with ILO C 160 Part V: Social Security and Health (A. 24 & 25)
2. Review and revise the Impairment Tables to include compounding contextual issues for First Nations peoples and regional and remote residents living with chronic conditions and illnesses including the specificity of place of residency (regional, rural and remote), medical treatment regimes, and fluctuating variability of conditions.