

Report

Introduction

1.1 On 4 February 2016, the Senate referred the provisions of the Social Services Legislation Amendment (Miscellaneous Measures) Bill 2015 (Bill) to the Senate Community Affairs Legislation Committee for inquiry and report by 10 March 2016.

Objectives of the Bill

1.2 The Bill was introduced in the House of Representatives on 2 December 2015. The Bill amends the *Social Security Act 1991* (Social Security Act) in relation to:

- special benefit payments;
- assessment of full-time study load for Youth Allowance and Austudy payments;
- the definition of new apprentices;
- exemptions from the assets test for Austudy payments;
- indexation of the pharmaceutical allowance;
- calculating allowable income for the purposes of step 2 of the health care card income test calculator; and
- to make technical corrections.

1.3 The Bill also amends the *A New Tax (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act) to re-align the time period for income reconciliation for certain family tax benefit recipients and remove a delegation provision.

1.4 In introducing the Bill, the Minister for Social Services, Mr Christian Porter MP, stated that the Bill introduces a number of minor 'housekeeping' amendments to social security law and family assistance law to correct technical errors and clarify intended policy by removing minor ambiguities and anomalies.¹

Conduct of the inquiry

1.5 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to relevant individuals and organisation inviting submissions to the inquiry by 26 February 2016. The committee received five submissions, which are listed at Appendix 1. These submissions are also available on the committee's website: http://www.aph.gov.au/senate_ca. The committee thanks those submitters who contributed to the inquiry.

1 [House of Representatives Hansard](#), Wednesday 2 December 2015, p. 14 430.

Summary of the Bill

1.6 Schedule 1 of the Bill will amend the Social Security Act to clarify that special benefit is not payable to people while they are serving an income maintenance period for another income support payment.²

1.7 Schedule 2 of the Bill seeks to amend the Family Assistance Administration Act to align the timeframes for meeting the family tax benefit (FTB) reconciliation conditions and related amendments, including changes to the date of effect provisions.

1.8 Schedule 3 clarifies that in assessing a full-time study load for Youth Allowance (student) and Austudy payment, only one course of education is to be taken into account.

1.9 Schedule 4 seeks to amend the definition of new apprentice in the Social Security Act so that it is defined by reference to a person who meets the requirements determined by the Minister in a legislative instrument.

1.10 The amendments in Schedule 5 are intended to clarify that a person is exempt from the assets test for Austudy payment if their partner is receiving a relevant pension, benefit, allowance or compensation.

1.11 Schedule 6 sets out amendments to make minor technical corrections to existing provisions in Part 3.16 of the Social Security Act to correct cross-references, clarify various abbreviations and add additional guidance material.

1.12 Schedule 7 seeks to clarify how to calculate the amount of a person's 'allowable income' for the purposes of step 2 of the health care card income test calculator for a health care card in Division 3 of Part 2A.1 of the Social Security Act.

1.13 Schedule 8 of the Bill would amend the Family Assistance Administration Act to remove the requirement for the Secretary of the Department of Social Services (DSS) to seek the agreement of the Secretary of the Department of Human Services (DHS) to the delegation of the Secretary's powers to officers of the DHS under family assistance law. The amendments are intended to reduce the administrative burden and the time taken in the making of instruments of delegation under family assistance law and will bring the relevant delegation provisions into line with those in the *Social Security Administration Act 1999*.

Legislative scrutiny

1.14 The Senate Standing Committee for the Scrutiny of Bills considered the Bill in its Alert Digest No. 1 of 2016 and made no comment.³

1.15 The Parliamentary Joint Committee on Human Rights (PJCHR) considered the Bill in its 33rd Report of the 44th Parliament. The PJCHR noted that the amendments in Schedule 3 of the Bill engage and limit the right to social security and

2 Special Benefit is a payment 'if you are in severe hardship, not able to support yourself and your dependents and are unable to receive another income support payment from [Centrelink]'. See: <https://www.humanservices.gov.au/customer/services/centrelink/special-benefit>.

3 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 1 of 2016, p. [viii].

the right to education and concluded that the statement of compatibility does not sufficiently justify that limitation. The PJCHR sought further advice from the Minister.⁴ To date the PJCHR has not published a response from the Minister.

Discussion of issues raised

Schedule 1 – Special benefit

1.16 Submissions to the inquiry focussed primarily on the proposed amendments in Schedule 1 which seek to clarify that people serving an income maintenance period (IMP) for a mainstream payment, such as Newstart Allowance, should not access special benefit during that period.

1.17 An IMP is the period of time during which termination payments, such as redundancy or leave payments, are apportioned and treated as ordinary income for certain social security payments. The effect of an IMP is either to reduce the person's income support payment rate or preclude them from receiving payment for the period that the termination payment represents. During this time the person is expected to draw on the resources provided by the termination payment.⁵

1.18 The Social Security Act provides that an income maintenance period can be reduced or waived if a person is in 'severe financial hardship' as result of 'reasonable or unavoidable expenditure' as defined in the Social Security Act.⁶

1.19 Section 729 of the Social Security Act provides that the Secretary may determine that special benefit should be granted to a person in certain circumstances. These include that:

- no other social security pension or benefit is payable to the person;
- the person is unable to earn a sufficient livelihood, because of age, physical or mental disability, domestic circumstances or for any other reason;
- the person is not disqualified from receiving Newstart Allowance, Youth Allowance or parenting payment due to non-compliance;
- the person is in severe financial hardship; and
- is a permanent Australian resident or the holder of an approved temporary visa.

1.20 The Explanatory Memorandum (EM) states the amendment 'clarifies the intention that special benefit should not be paid to a person serving an income maintenance period for another payment as it circumvents the intention of the income

4 Parliamentary Joint Committee on Human Rights, [Human rights scrutiny report](#), Thirty-third report of the 44th Parliament, 2 February 2016, p. 16.

5 [Statement of compatibility with human rights](#), Social Services Legislation Amendment (Miscellaneous Measures) Bill 2015 (SOC), p. 1.

6 [Explanatory Memorandum](#), Social Services Legislation Amendment (Miscellaneous Measures) Bill 2015 (EM), p. 4.

maintenance period that people should use their own resources before drawing on tax payer funded support'.⁷

1.21 The National Welfare Rights Network (NWRN) questioned the categorisation of the amendments as 'minor housekeeping' and expressed concern that the proposed amendments would 'close off the "last resort" payment in our safety net which catches a very small number of deeply disadvantaged people.'⁸

1.22 NWRN submitted that many people who receive termination payments are not aware that under the social security law these payments must be taken into account when assessing whether a person can be paid certain income support payments.

1.23 NWRN stated that it has been advocating in relation to payment of special benefit in rare cases of extreme hardship and contends that these cases cannot be remedied by existing IMP waiver provisions. NWRN states that the DSS 'has, for several years, applied a policy of automatic rejection of special benefit claims, in a matter of special benefit provisions of the Act'.⁹ NWRN has assisted clients to lodge claims for special benefit and has represented clients on appeal to the relevant Tribunal.¹⁰

1.24 As a result of two complaints from NWRN, the Commonwealth Ombudsman (Ombudsman) examined the current policy instructions that the DSS has issued to the DHS about the exercise of the discretions to reduce an IMP or grant special benefit.

1.25 The Ombudsman's report stated:

- for many people, the size of the termination payment will mean they must serve an IMP, which may extend for some months as an IMP applies for the equivalent number of weeks that the employment-related termination payment represents;¹¹
- there is no obligation on employers to advise employees about IMPs and other waiting periods;
- employers are only required to notify the DHS if 15 or more employees are being made redundant; and

7 EM, p. 4.

8 *Submission 2*, p. 4.

9 *Submission 2*, p. 3.

10 *Submission 2*, p. 3.

11 The Ombudsman's report cites data provided by the Department of Social Services on 19 November 2015 that in the 2013–14 financial year 57 382 Income Maintenance Periods (IMP) were applied. In the 2014–15 financial year 54 160 IMPs were applied. Commonwealth Ombudsman, [*Income Maintenance Periods and Special Benefit, A report concerning the Department of Social Services' Policy Instructions to the Department of Human Services – Centrelink*](#), Report No. 02/2016, March 2016 (Ombudsman's Report), p. 3.

-
- it is not uncommon for people to spend all of their termination payment before they contact the DHS to apply for income support, some having found themselves in severe financial hardship.¹²

1.26 The Ombudsman's report noted:

The Act does not currently apply IMPs to Special Benefit and there is nothing in the Act that says Special Benefit cannot be paid while a person is serving an IMP for another payment. Contrary to this, DSS had issued a policy instruction that Special Benefit should not be paid to a person who is serving an IMP in relation to another income support payment. Due to this instruction, DHS could not grant Special Benefit to someone serving an IMP. However, if the person sought review of that decision before an external tribunal, it was and remains possible that Special Benefit would be granted.¹³

1.27 The Ombudsman's report recommended that the DSS:

- amend the policy instruction for IMP reduction so that it takes account of each person's circumstances, including the portion of the termination payment that was spent on non-permitted items in relation to the actual size of the payment and the length of the IMP;
- amend its instruction about the grant of special benefit during an IMP so that the DHS is permitted to properly consider, and where appropriate, grant claims in that situation;
- raise community awareness of the impact of employment termination upon income support non-payment and waiting periods.¹⁴

1.28 In releasing the report on 7 March 2016, the Ombudsman noted the DSS' positive response to the investigation and its agreement to address the Ombudsman's recommendations and take steps to improve its policies.¹⁵ The DSS accepted all three of the recommendations and made changes to the Guide to Social Security Law (Guide) on 8 February 2016.¹⁶

1.29 The Ombudsman's report stated that changes to the Guide to date do not satisfactorily address the recommendations in the report and that the Ombudsman will continue to work with the DSS and the DHS to address remaining concerns. The Ombudsman's report noted that while the introduction of the Bill would amend the Act so that a person cannot be paid special benefit while they are serving an IMP, it is important that further changes are made to the policy to ensure DHS decision-makers

12 Ombudsman's Report, pp 3–4.

13 Ombudsman's Report, p. 5.

14 Ombudsman's Report, p. 2.

15 Commonwealth Ombudsman, Media Release, *Ombudsman publishes report on Income Maintenance Periods and Special Benefit*, 7 March 2016.

16 Ombudsman's Report, p. 2.

are provided with the opportunity to properly exercise their full discretion in accordance with the current law.¹⁷

1.30 NWRN has commissioned Professor Peter Whiteford and Ms Sue Regan of the Social Policy Institute, Crawford School of Public Policy, Australian National University, to undertake a research project which relates to people excluded from income support because they are serving an IMP or Compensation Preclusion Period and who are in financial difficulty. The aim of the research is to explore preventative and remedial measures.¹⁸ Professor Whiteford and Ms Regan submitted that while little is known about how many people suffer financial hardship whilst serving an IMP, there is a general lack of awareness of the requirement to serve an IMP prior to receiving income support, with most people only becoming aware of the requirement once their redundancy funds may have already become depleted.

1.31 Professor Whiteford and Ms Regan submitted that this lack of awareness, together with the challenges of managing a lump sum payment, lack of access to financial guidance or advice and a lack of suitable financial products can result in financial hardship for some recipients of employment termination payments. They also noted that seemingly 'wise' spending behaviours such as paying off debts (including a mortgage) and buying a house are not considered 'unavoidable or reasonable' expenses for the purposes of the IMP waiver provisions. Professor Whiteford and Ms Regan submitted that the impact of IMPs would appear to warrant further empirical research and policy analysis.¹⁹

1.32 NWRN submitted that a review of IMP laws, policy and administration is necessary to address poverty traps before access to special benefit is removed.²⁰ NWRN suggested a number of options for reforming IMPs including:

- capping IMPs to align more equitably with Liquid Assets Waiting periods;
- differentiation between types of termination payments according to length of IMP or payment type;
- application of different waiver provisions if an IMP would be longer than 13 weeks;
- application of the same waiver rules as apply to compensation preclusion periods for long IMPs; and
- review of current notification requirements for termination payments.

1.33 Jobs Australia supported the arguments presented by NWRN and stated that it understood special benefit to be a safety-net for citizens at risk of absolute penury. Jobs Australia considered that DHS checks on current financial status are sufficient to

17 Ombudsman's Report, p. 22.

18 *Submission 5*, p. 1.

19 *Submission 5*, p. 3.

20 *Submission 2*, p. 12.

ensure an applicant's circumstances warrant eligibility for special benefit 'when their assets and income are assessed as having reached the appropriate level'.²¹

1.34 The National Union of Students (NUS) concurred with the concerns raised in NWRN's submission and sought confirmation 'that alternative safety net provisions are in place to deal with exceptional circumstances that the special benefit was designed to deal with and that the alternative processes can be accessed in a timely manner'.²²

1.35 People with Disability Australia (PWD) submitted that the amendments in Schedule 1 should be reconsidered to ensure that there is flexibility in the administration of special benefit, to take into account the circumstances of people with disability and to ensure that people do not fall through the gaps into poverty, homelessness and hardship. PWD expressed broad support for the reforms proposed by NWRN and stated that 'while the current IMP regime is in place, the availability of special benefit and the discretion to approve the payment for people in severe financial hardship must remain'.²³

1.36 PWD expressed concern that the proposed amendments to the rules governing IMPs and special benefit will have a disproportionate impact on people with disability and may result in potential harm to people with disability:

People with disability who receive large payouts, for example as compensation for an injury, may not have, or may no longer have the skills to manage such a large amount of money, nor be sufficiently informed about the IMP duration, given they are unlikely to know about IMP until they apply for Centrelink support. Their IMP may continue for years, whether their payout has been sufficient to cover their expenses during this time.²⁴

Committee view

1.37 The committee notes the amendment proposed in Schedule 1 to the Bill confirms a longstanding policy position that people should use their own resources before drawing on taxpayer-funded support. The committee concurs with the Minister's statement that a person who is unable to have an IMP for another income support payment waived or reduced because the expenditure of their funds is neither unavoidable nor reasonable, should not be paid special benefit.²⁵

Schedule 2 – Family tax benefit

1.38 The amendments in Schedule 2 amend the Family Assistance Administration Act to align the time frames for meeting the FTB reconciliation conditions. The

21 *Submission 4*, p. [1].

22 *Submission 1*, p. [1].

23 *Submission 3*, p. 2.

24 *Submission 3*, pp 1–2.

25 Second Reading Speech, [House of Representatives Hansard](#), 2 December 2016, p.14 430.

Statement of Compatibility with human rights (SOC) for the Bill states that this legislative change will not alter the time frames for notification for FTB recipients.

1.39 NWRN expressed support for the amendments in Schedule 2, noting that it will place people who are not required to lodge a tax return on an equal footing with people who are required to do so and will ensure that in practice, all FTB recipients have access to a 52 week time limit, with a further 52 week extension in special circumstances.²⁶ However, NWRN noted the scope for administrative improvements to minimise complexity and confusion which may lead to underpayment.²⁷

Committee view

1.40 The committee notes that this amendment is intended to realign the time period for income reconciliation for certain Family Tax Benefit recipients. Further, the amendment is expected to have very little practical effect on families, as there are safeguards in place that ensure FTB recipients are aware of their obligations and the one-year timeframe to provide income details or notify of non-lodger status has been communicated to recipients since the implementation of a broader realignment of time periods amendments in 2013.²⁸

Schedule 3 – Study requirements for social security payments

1.41 The NUS does not support the amendment to the Social Security Act proposed in Schedule 3 to the Bill. The NUS submitted that the amendment would restrict student choice, stating that 'some students may need maximum flexibility to be able to mix and match courses to meet the unmet needs of emerging and yet to emerge industries.'²⁹

1.42 The Social Security Act currently allows a person to be 'undertaking full-time study' or 'undertaking qualifying study' if their study load is equal to more than a full-time study load as a result of more than one approved course at or across approved institutions during a study period. The EM to the Bill states that this is an unintended outcome.³⁰

1.43 The SOC to the Bill clarifies that currently a very small number of students have been assessed as undertaking a full-time study load by undertaking multiple unrelated courses on a part-time basis at the same or across multiple institutions.³¹ The SOC goes on to state that the measure will prevent only a very small number of people from being eligible for Youth Allowance(student) and Austudy, and will have limited impact on the ability of these people to access education.³²

26 *Submission 2*, p. [16].

27 *Submission 2*, p. [17].

28 Second Reading Speech, [House of Representatives Hansard](#), 2 December 2016, p. 14 431.

29 *Submission 1*, p. [2].

30 EM, pp 13.

31 SOC, p. 6.

32 SOC, p. 7.

1.44 The EM states that the intent of the measure is to clarify that in assessing full-time study load for youth allowance (student) and Austudy payment, only one course of education is to be taken into account which will allow students to be supported financially to complete a course of education in the minimum amount of time and to enter the labour market.³³

Committee view

1.45 The committee notes that the amendments in Schedule 3 reflect longstanding policy. In his second reading speech, the Minister stated that '[t]he amendment will make the law clearer in this area, so that students are not assessed as undertaking full-time study on the basis of more than one course of education during a single study period.'³⁴

Recommendation 1

1.46 The committee recommends that the Senate pass the Bill.

Senator Zed Seselja

Chair

33 EM, p. 12.

34 Second Reading Speech, [House of Representatives Hansard](#), 2 December 2015, p. 14 431.

