

Labor Senators' Dissenting Report

Introduction

1.1 This dissenting report from Labor Senators on the Committee relates specifically to Schedule 1 of the Social Services Legislation Amendment (Miscellaneous Measures) Bill 2015 and does not deal further with the other schedules which are adequately considered in the Chair's report.

1.2 As set out in the Chair's report, Schedule 1 of the Bill seeks to amend the Social Security Act to establish that Special Benefit is not payable to people while they are serving any Income Maintenance Period (IMP) for another income support payment.

1.3 The impact of an IMP is to reduce a person's rate of income support or to preclude them from receipt of payment for a period following receipt of a payment for retrenchment.

1.4 The Social Security Act provides that an IMP can be reduced or waived if a person is in 'severe financial hardship' as a result of 'reasonable or unavoidable expenditure'.

1.5 The Social Security Act provides that Special Benefit can be granted to people in severe financial hardship due to circumstances beyond their control, who are unable to earn enough income to support themselves and their dependants, and who are not able to receive any other income support payment.

1.6 Special Benefit is a discretionary payment. The circumstances under which the payment is granted and the amount paid are determined by a delegate of the Secretary of the Department of Social Services.

1.7 In their submission to this inquiry the National Welfare Rights Network (NWRN) rightly describe the payment as a payment of 'last resort'.¹

1.8 As set out in the Chair's report, the submission from the NWRN outlines concerns with the amendments in Schedule 1 based on its experience of advocating for clients seeking payment of Special Benefit.

1.9 The NWRN previously made two complaints to the Commonwealth Ombudsman in relation to the practice of automatically rejecting Special Benefit claims, which led to the Ombudsman's examination of the policy instructions provided by the Department of Social Services to the Department of Human Services.

1.10 The Ombudsman's report on *Income Maintenance Periods and Special Benefit* was released on 7 March 2016.

1 *Submission 2*, p. 4

1.11 The Chair's report summarises the conclusions of the Commonwealth Ombudsman's report at paragraph 1.23 and the recommendations of the report at paragraph 1.27.

1.12 Based on the findings of the Ombudsman's report it is clear that this schedule of the Bill does not 'correct technical errors and clarify intended policy by removing minor ambiguities and anomalies'² rather it gives effect to the policy which has been applied by the Department contrary to the current Act.

1.13 This will have the effect of removing the final safety net, Special Benefit, which supports people in rare cases of extreme hardship that cannot be remedied by existing IMP waivers.

1.14 Submissions to the inquiry highlighted the types of financial hardships which can be experienced by someone serving an IMP that may not satisfy the waiver conditions, and identified a number of common factors that lead to this financial hardship.

1.15 The common factors identified in the NWRN submission were:

- ill health or disability impacting capacity to make rational decisions;
- inability to re-enter the workforce (eg due to lack of skills diversity, health, disability and age discrimination)
- financial exploitation;
- poor financial literacy and/or inexperience managing large sums of money;
- pre-existing debt;
- lack of English or low educational attainment;
- difficulty adjusting to unemployment (sometimes coinciding with adjustment to new disability) both emotionally and financially
- addictions;
- incorrect advice affecting decision making;
- failed investments;
- strong personal and cultural obligations to financially for extended family;
- emotional issues, such as depression and anxiety; and
- social isolation.³

1.16 This was elucidated by the submission of Professor Peter Whiteford and Ms Sue Regan, of the Social Policy Institute, Crawford School of Public Policy, Australian National University, who have been commissioned by the NWRN to undertake research relating to people excluded from income support because they are serving an IMP and who are in financial difficulty.

2 *House of Representatives Hansard*, Wednesday 2 December 2015, p. 14430.

3 *Submission 2*, p. 5.

1.17 The three main factors which have been identified by Professor Whiteford and Ms Regan's preliminary research as contributing to people experiencing financial difficulty while serving an IMP are:

- lack of awareness of IMPs;
- spending behaviour; and
- adverse life events and on-going problems.⁴

1.18 The submission from NWRN succinctly highlighted the impacts of the resulting financial hardship, stating:

The consequences of running out of money cannot be understated. It can lead to homelessness, social isolation, exacerbation of mental and physical illness, economic and social exclusion. Being without money can be a barrier to participation in the paid workforce.⁵

1.19 While the Social Security Act does set out circumstances under which an IMP can be reduced or waived to respond to cases of 'severe financial hardships', submitters to the inquiry argued that these provisions are insufficiently flexible.

1.20 In considering the adequacy of current IMP waivers NWRN stated in its submission:

While we agree that ordinarily relief from an IMP should be assessed under the IMP waiver rules, the existence of those rules is not inconsistent with the policy intent behind special benefits which recognises that from time to time there are special circumstances under which a person should be paid income support despite not meeting the usual requirements or exemptions contained under the Act.⁶

1.21 In their submission the Nations Union of Students (NUS) raised concerns about removing the safety net provided by Special Benefit. The NUS submission recommends that the Committee confirm 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 process can be accessed in a timely manner.⁷

1.22 The Bill and supporting documents provide no assurances or indication that there is any alternative assistance to be made available to people who, in exceptional circumstances, find themselves in financial hardship which does not meet the criteria for a IMP waiver.

1.23 Labor Senators are persuaded by the evidence from submitters which is set out in the Chair's report and have concluded that retaining Special Benefit for people serving an IMP is not inconsistent with the policy intention of the payment

4 *Submission 5*, p 2.

5 *Submission 2*, p 5.

6 *Submission 2*, p 8.

7 *Submission 1*, p 1.

1.24 Special Benefit is designed to recognise that in some rare instances there are circumstances that should give rise to income support payments even where a person does not meet the usual requirements. As People with Disability stated in its submission:

Special benefit is designed to ensure that when all other income support payments are excluded, and if a person is in a dire financial position with no other prospect of supporting themselves, they are able to access this payment.

...

This benefit recognises that there are some instances where the discretion to assist ensures that people with no support are not further financially disadvantaged.⁸

1.25 Labor Senators are of the view that it is appropriate that the current arrangements remain in place, with the broad discretion remaining with the delegate of the Secretary of the Department to grant special benefit to alleviate financial hardship experienced by someone unable to qualify for another income support payments as they are serving an IMP.

1.26 Accordingly, Labor Senators have formed the view that the Bill be amended to remove Schedule 1.

Recommendation 1

1.27 Labor Senators recommend that the Social Services Legislation Amendment (Miscellaneous Measures) Bill 2015 be amended to remove Schedule 1.

Senator Carol Brown

Senator Katy Gallagher