

The Senate

Community Affairs
Legislation Committee

Social Services Legislation Amendment
(Miscellaneous Measures) Bill 2015
[Provisions]

March 2016

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44th Parliament

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ABBREVIATIONS

Bill	Social Services Legislation Amendment (Miscellaneous Measures) Bill 2015
DHS	Department of Human Services
DSS	Department of Social Services
EM	Explanatory Memorandum, Social Services Legislation Amendment (Miscellaneous Measures) Bill 2015
Family Assistance Administration Act	<i>A New Tax (Family Assistance) (Administration) Act 1999</i>
FTB	Family tax benefit
Guide	Guide to Social Security Law
NUS	National Union of Students
NWRN	National Welfare Rights Network
Ombudsman	Commonwealth Ombudsman
Ombudsman's Report	Commonwealth Ombudsman, <i>Income Maintenance Periods and Special Benefit, A report concerning the Department of Social Services' Policy Instructions to the Department of Human Services – Centrelink</i> , Report No. 02/2016, March 2016
PWD	People with Disability Australia
Social Security Act	<i>Social Security Act 1991</i>
SOC	Statement of compatibility with human rights, Social Services Legislation Amendment (Miscellaneous Measures) Bill 2015
PJCHR	Parliamentary Joint Committee on Human Rights

LIST OF RECOMMENDATIONS

Recommendation 1

1.46 The committee recommends that the Senate pass the Bill.

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.

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- 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.

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

Australian Greens Senators' Dissenting Report

1.1 The Australian Greens do not support the recommendation of the majority report that the Social Services Legislation Amendment (Miscellaneous Measures) Bill 2015 be passed in its current form.

1.2 The Australian Greens recommend that:

- **Schedule 1 of the Bill not be passed;**
- **the Government:**
 - **implement in full the recommendations in the Commonwealth Ombudsman's report, Income Maintenance Periods and Special Benefit;**
 - **ensure that special benefit remains available as an important part of the social safety net; and**
 - **consider the recommendations by the National Welfare Rights Network on this issue.**
- **Schedule 3 of the Bill not be passed.**

Access to special benefit

1.3 As noted in the majority committee report, Schedule 1 of the Bill would amend the Social Security Act to specify that special benefit is not payable to people who are serving an income maintenance period for another income support payment. The Committee received multiple submissions on this issue.

1.4 The evidence provided to the Committee suggested that there is a small cohort of people who may be under an extended IMP due to a termination payment, but for various reasons experience financial hardship. For those people, denying special benefit can be a tipping point that puts people at risk of homelessness and other challenges. Rather than a simple administrative change, denying special benefits to individuals under an IMP would be a change to the social safety net. The cohort affected might be small, but it would have a major impact on those individuals.

1.5 The National Welfare Rights Network (NWRN) submission provides useful context on the length of IMPs. While the average length is less than a month, some can be much longer, including an example of one IMP that was around 20 months long.¹ The NWRN said:

This is a bill that would give effect to a policy that has, in our opinion, been illegally applied for some time. It is not 'minor housekeeping' but rather a

1 *Submission 2*, p. 4.

decision to close off[f] the 'last resort' payment in our safety net which catches a very small number of deeply disadvantaged people.²

1.6 A recent report by the Commonwealth Ombudsman noted that:

At the time of the investigation, DSS's policy instruction to DHS was that Special Benefit was not to be granted to a person who is serving an IMP for another payment. However, this instruction was not supported by the current legislation and was contrary to the way in which the discretion to grant Special Benefit has been exercised by an external tribunal.³

1.7 Academics Ms Sue Regan and Professor Peter Whiteford said that their preliminary analysis found three reasons why people experience financial hardship while completing an income maintenance period:

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

1.8 The NWRN provided a helpful case study, based on an appeal to the Administrative Appeals Tribunal:

Ron received a termination payment of around \$230,000 in July 2013. Although he had been granted a disability support pension it was not payable as he was required to serve an IMP to February 2017.

In March 2015, two years into his IMP, he lodged a claim for special benefit with the assistance of a welfare rights advocate ...

At the time of the hearing Ron was living in Liverpool Hospital, unable to be discharged because he was homeless and could not be placed in assisted housing without an income support payment ...

He had worked for his employer for 28 years when he was made redundant in July 2013. At that time, he was still grieving the loss of his mother. He was unaware of the IMP. He invested in online businesses which failed. He did not have the skills to manage large sums of money. His occupational therapist assessed him as partially dependent for personal care and basic activities of daily living, medication management, shopping and housework and fully dependent for money management. After his mother's death the family home was sold and he used his share to put a deposit on a home unit. However, he was unable to service the loan, so sold the unit and rented. He had never rented before and had to pay 6 months' rent in advance. In March 2015 he was forcibly evicted.

2 *Submission 2*, p. 4.

3 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)

4 *Submission 5*, pp. 2-3.

1.9 This example highlights how for some individuals under an IMP, the special benefit is a crucial part of the safety net. Jobs Australia and People with Disability Australia supported the NWRN's concerns over changes to special benefit access.⁵

1.10 The NWRN recommended that the Government:

- allow waivers for income maintenance periods,
- require similar notifications for termination payments as compensation payments, and
- review 'IMP laws, policy and administration'.⁶

1.11 The Australian Greens recommend that Schedule 1 of the Bill not be passed.

1.12 The Australian Greens recommend that the Government:

- **implement in full the recommendations in the Commonwealth Ombudsman's report, *Income Maintenance Periods and Special Benefit*;**
- **ensure that special benefit remains available as an important part of the social safety net; and**
- **consider the recommendations by the National Welfare Rights Network on this issue.**

Study requirements for social security payments

1.13 As noted in the majority committee report, the Social Security Act currently allows eligible students to qualify for income support by studying a full-time load between two different courses. The changes proposed in the bill would mean that 'only one course of education is to be taken into account', although allowing for formal arrangements for combined courses.⁷

1.14 The National Union of Students said that these changes might:

... restrict student choice and undermine the rhetoric of student centred learning that has dominated higher education policy considerations over the last decade.⁸

1.15 The Explanatory Memorandum notes that only 'a very small number of students' would be affected by the change.⁹

5 *Submission 4, Submission 3.*

6 *Submission 2*, pp. 10-12.

7 [Explanatory Memorandum](#), Social Services Legislation Amendment (Miscellaneous Measures) Bill 2015 (EM), p. 12.

8 NUS, p. 3.

9 EM, p. 6.

1.16 The Australian Greens are concerned about the impacts on students of these changes and therefore cannot support them.

Recommendation 1

1.17 The Australian Greens recommend that Schedule 3 of the Bill not be passed.

Senator Rachel Siewert

APPENDIX 1

Submissions received by the Committee

Submissions

- 1** National Union of Students
- 2** National Welfare Rights Network (plus an attachment)
- 3** People with Disability Australia
- 4** Jobs Australia
- 5** Ms Sue Regan and Professor Peter Whiteford