

Chapter 4

Welfare measures

4.1 The bill contains 13 measures that relate to welfare expenditure:

- removes the job commitment bonus (schedule 4);
- removes the waiting period exemption for new migrants who are family members of Australian citizens or long-term permanent residents (schedule 10);
- repeals the student start-up scholarship payment (schedule 11);
- applies an interest charge to certain government debts (schedule 12);
- introduces departure prohibition orders (DPOs) to prevent certain government debtors from leaving Australia (schedule 13);
- includes Commonwealth parental leave payments in the income test for income support payments (schedule 14);
- changes how fringe benefits are treated under income tests for family assistance, youth income support payments and other related purposes (schedule 15);
- removes the backdating provision for the Carer's Allowance (schedule 16);
- pauses indexation for certain family tax benefit limits and the income limit for paid parental leave payments (schedule 17);
- removes the social security income and asset tests test exemptions for certain aged care residents (schedule 18);
- removes the nil rate period exemption from the income test for certain family and youth support payments (schedule 19);
- applies equal treatment in respect of social security payments for people charged with a serious offence, irrespective of whether they are confined in a psychiatric institution or prison (schedule 20); and
- prevents new recipients of welfare payments or concession cards from being paid the energy supplement from 20 March 2017 (schedule 21).

4.2 The committee received evidence on all of the above schedules. This chapter provides an overview of submitters' views on the various measures contained in these schedules.

Schedule 4: Job commitment bonus

4.3 Schedule 4 removes the job commitment bonus. Currently, a person aged between 18 and 30 who has been receiving the Newstart allowance for at least 12 months can qualify for the bonus if they complete 12 months of continuous paid

employment. The completion of a further 12 months attracts a second bonus. The value of the bonus is \$2 500 for the first year, and \$4 000 for the second year.¹

4.4 The bonus was intended to encourage young long-term unemployed job seekers to keep and find a job. Analysis of the program has shown that it has not had an appreciable effect on young job seekers. The Explanatory Memorandum explains:

The job commitment bonus has had low take-up since its introduction, with less than 30 per cent of expected claims for the 2015–16 financial year being achieved. Further, the job commitment bonus did not increase job seekers' efforts to find a job and generally was not an incentive for potentially eligible individuals to stay in a job. Survey results show that, of those people who were aware of the bonus, the majority said that the bonus did not increase their job application effort, the number of jobs they applied for, or their motivation to find a job. Individuals who were potentially eligible for the bonus generally stated that their main motivation was to move from welfare into work. Once they got work, they expressed a desire to stay in work and off income support, regardless of the bonus.²

4.5 The bill makes provisions so that a person who qualified before the commencement date is still able to claim bonuses for which they are eligible.³

Views on schedule 4

4.6 The National Welfare Rights Network (NWRN) echoed the government's position, noting that the job commitment bonus 'was based on the flawed assumption that lack of motivation is a significant factor in youth unemployment'.⁴ The Australia Institute and the NWRN both supported the move to end the job commitment bonus.⁵

Schedule 10: Newly arrived resident's waiting period

4.7 Schedule 10 seeks to remove the exemption from the newly arrived resident's two year waiting period for new migrants who are family members of Australian citizens or long-term permanent residents.

Background

4.8 Currently, exemptions are provided for certain newly arrived residents to access a social security payment, a concession card or farm household allowance for new migrants who are family members of Australian citizens or long-term permanent

1 Explanatory Memorandum, p. 35.

2 Explanatory Memorandum, p. 35.

3 Explanatory Memorandum, p. 39.

4 National Welfare Rights Network, *Submission 163*, p. 5.

5 The Australia Institute, *Submission 169*, p. 14; National Welfare Rights Network, *Submission 163*, p. 5.

residents under section 3 of the *Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997* (Newly Arrived Resident's Waiting Period Act).

4.9 The two year (104 weeks) waiting periods in the Social Security Act do not apply to refugees, former refugees, family members of refugees, Australian citizens, family members of Australian citizens, a person who has been an Australian resident for a continuous period of two years and the family member of a person who has been an Australian resident for a continuous period of two years.

4.10 Under the proposed changes, schedule 10 will remove the exemption from the waiting period for family members of Australian citizens and family members of persons who have been Australian residents for a continuous period of two years. The change is designed to align the Social Security waiting period for working age payments for all newly arrived migrants to Australia, apart from refugees, former refugees and their family members.

4.11 Those who are no longer exempt will be required to serve the current newly arrived resident's waiting period of 104 weeks before being able to access a social security payment, a concession card or farm household allowance. The Explanatory Memorandum states that by moving the exemption provisions (section 3) from the Newly Arrived Resident's Waiting Period Act into the Social Security Act and the Farm Household Act there will be less confusion regarding the various waiting periods across the acts. The Explanatory Memorandum also notes that there is an expectation that 'migrants, particularly those with family members living in Australia, should be financially secure or at least have arrangements in place to support themselves prior to moving to Australia.' The Explanatory Memorandum also suggests that the impact of the measure will be minimal.⁶

Views expressed

4.12 In its submission, the Australian Council of Social Service (ACOSS) noted that the 2015–16 Additional Senate Estimates Community Affairs question on notice (QoN) highlighted that a change to the waiting period had the potential to 'impact approximately 5 700 people each year, and threatens to place affected families on low incomes in severe financial hardship'.⁷ The same Community Affairs QoN estimated the potential whole of government savings over the forward estimates of this measure to be in the vicinity of \$225 million.⁸

6 Explanatory Memorandum, p. 91.

7 Senate Community Affairs Committee, 'Answers to estimates questions on notice - Social Services portfolio', Question no. SQ16-000154, 2016.

8 Senate Community Affairs Committee, 'Answers to estimates questions on notice - Social Services portfolio', Question no. SQ16-000154, 2016.

Increased hardship on new migrant families

4.13 Both ACOSS and the NWRN noted that there could be significant risks of increased domestic violence incidents due to the removal of the exemptions and that this change may disproportionately affect women.⁹ ACOSS submitted:

There is also a valid concern that denying family members access to income support payments for two years could heighten the risk of domestic violence and prevent people from leaving abusive situations because they are financially dependent on their family member. ACOSS understands three-quarters of people who will be affected by this change are women.¹⁰

4.14 The Disabled People's Organisations Australia (DPO Australia) also noted that the present exemptions provide significant support to spouses, partners and/or children of Australian citizens just as they are trying to establish themselves. Furthermore, DPO Australia highlighted the significant impact that the measure will have on new families supporting a family member with a disability:

For families who are supporting a family member with disability, who are subject to a ten year waiting period for the Disability Support Pension, the removal of this exemption will result in greater hardship. It will significantly reduce support and increase financial pressure at a critical time of facing challenges associated with adapting to life in a new country.¹¹

Schedule 11: Student Start-up scholarships

4.15 Schedule 11 repeals the student start-up scholarship payment from 1 July 2017, or the first of 1 January or 1 July following Royal Assent if Royal Assent is after 1 July 2017. The earliest this Schedule can commence is 1 July 2017.

Background

4.16 On 1 January 2016, Schedule 11 to the *Labor 2013-14 Budget Savings (Measures No. 2) Act 2015* (Budget Savings Measures No. 2 Act) amended the Social Security Act and Student Assistance Act to provide for the student start-up loan and ABSTUDY student start-up loan. These loans are income contingent and repayable under similar arrangements to the Higher Education Loan Programme. The qualification provisions for the student start-up loan and ABSTUDY student start-up loan are similar to the qualification provisions for the student start-up scholarship currently contained in Division 1 of Part 2.11B of the Social Security Act.

4.17 The Budget Savings Measures No. 2 Act also amended the qualification provisions for the student start-up scholarship payment. As a result of those amendments, a person is qualified for a student start-up scholarship payment only if

9 National Welfare Rights Network, *Submission 163*, p. 3; ACOSS, *Submission 86*, p. 6.

10 ACOSS, *Submission 86*, p. 6.

11 Disabled People's Organisations Australia, *Submission 151*, p. 2.

the person received a student start-up scholarship payment, ABSTUDY student start-up scholarship payment or Commonwealth Education Costs Scholarship before 1 January 2016; and the person has been receiving youth allowance on the basis of undertaking full-time study, Austudy payment or payments under the ABSTUDY Scheme known as Living Allowance for a continuous period since receiving the scholarship.

Views expressed

4.18 In its submission, ACOSS raised concerns regarding the impact of this measure on students with low incomes particularly those who do not have their family to support them with large up-front education costs. In particular, ACOSS and Universities Australia both note that this measure has the potential to impact 80 000 students. ACOSS also suggested that a distributional analysis be undertaken into the impact of the removal of the start-up scholarships before proceeding with this proposal.¹²

4.19 Universities Australia also noted that the measure ends the grandfathering arrangements that cover students who were in receipt of the scholarship before it was replaced by the Student Start-up Loan Scheme (SSLS). As such, Universities Australia considered the measure to be contrary to the intent of the legislation establishing the SSLS, which specifically included the grandfathering arrangements to protect students already in receipt of the Scholarship payments.¹³

Schedule 12: Interest charge

4.20 Schedule 12 seeks to incentivise responsible self-management of debts and encourage debtors to repay their debts in a timely manner, where they have the financial capacity to do so. It does this by applying an interest charge to social security, family assistance (including childcare), paid parental leave and student assistance debts.¹⁴

4.21 The new annual interest charge scheme is proposed to apply from 1 January 2017 to former recipients of social welfare payments who have outstanding debts and have failed to enter into, or have not complied with, an acceptable repayment arrangement. The proposed interest charge would be based on the 90-day Bank Accepted Bill rate (approximately 2 per cent currently), plus an additional 7 per cent. This is consistent with the charge applied by the Australian Taxation Office under the *Taxation Administration Act 1953*.

4.22 The measure was included in the 2015–16 Mid-Year Economic and Fiscal Outlook, and is projected to save \$387 million over the forward estimates.

12 ACOSS, *Submission 86*, p. 6; Universities Australia, *Submission 128*, p. 1.

13 Universities Australia, *Submission 128*, p. 1.

14 Explanatory Memorandum, pp. 146–147.

Views expressed

4.23 Several submitters, such as the Australian Unemployed Workers Union and The Australia Institute, expressed concern that the imposition of interest charges had the potential to push low-income and vulnerable Australians into further financial distress.¹⁵

4.24 The NRWN contended that this measure was not sufficiently targeted to debtors who deliberately evade their obligations. They suggested the measure be restricted to cases where 'the former payment recipient has persistently and deliberately failed to enter into a repayment arrangement'.¹⁶

Schedule 13: Debt recovery

4.25 Schedule 13 introduces departure prohibition orders (DPOs) so that, in certain cases where a person does not have a satisfactory arrangement in place to repay their social security, family assistance, paid parental leave or student assistance debt(s), they may be prevented from leaving Australia without either having wholly paid their debt(s) or making satisfactory arrangements to pay.

4.26 There are two parts to this measure. The first part amends the *A New Tax System (Family Assistance) (Administration) Act 1999* (Family Assistance Administration Act), *Paid Parental Leave Act 2010*, *Social Security Act 1991* and *Student Assistance Act 1973* to introduce DPOs to prevent debtors under these Acts from leaving the country.

4.27 The second part removes the six-year limit on debt recovery currently in place for social security, family assistance and paid parental leave debts.

4.28 The Explanatory Memorandum states that the number of social welfare payment debtors is higher than the number of child support debtors, and claims that the DPOs will only be issued in the most extreme welfare payment debt cases. Furthermore, the Explanatory Memorandum notes that there are some 2 000 DPOs in place—that is, DPOs apply to less than two per cent of all debtors.

Views expressed

4.29 ACOSS noted that it does not specifically object to this measure, though it is concerned that aggressive debt recovery techniques could potentially push

15 The Australia Institute, *Submission 169*, pp. 15–16; Australian Unemployed Workers' Union, *Submission 156*, [p. 7].

16 National Welfare Rights Network, *Submission 163*, p. 15.

disadvantaged people into further hardship.¹⁷ The Australian Unemployed Workers Union (AUWU) expressed similar concerns.¹⁸

4.30 ACOSS further suggested that 'the Department of Human Services is poorly resourced to manage its existing client base, which impacts on its ability to follow up on debts and prevents debts from occurring'.¹⁹ For its part, the NWRN stated that it believes the increased powers are unwarranted and confer wide ranging discretion on the Secretary of the Department of Human Services.²⁰

Schedule 14: Parental leave payments

4.31 Currently, Commonwealth parental leave payment (PLP) and dad and partner pay (DAPP) recipients can receive the full rate of an income support payment at the same time as PLP or DAPP. This schedule seeks to make changes to the social security and veterans' entitlements legislation to ensure PLP and DAPP payments are included in the income test for income support payments, thereby treating income from PLP or DAPP consistently with the treatment of income from other sources.²¹ The measure was set out in the 2015–16 MYEFO.

Views expressed

4.32 The NRWN highlighted that there is currently an unequal treatment of income for social security purposes. Whereas Commonwealth PLP and DAPP do not count as income for income support purposes, income from employer paid parental leave does. Given the measure will provide for greater equity in this regard, the NRWN indicated that it did not oppose the measure.²²

Schedule 15: Fringe benefits

4.33 Schedule 15 changes the way in which fringe benefits are treated under the income tests for family assistance, youth income support payments and for other related purposes.

4.34 Under current rules, the net value of reportable fringe benefits (or 51 per cent) is used to calculate an individual's adjusted taxable income (ATI). From the first of 1 January or 1 July after the bill receives the Royal Assent, the gross rather than adjusted net value of reportable fringe benefits will be used to calculate an individual's

17 Australian Council of Social Service, *Submission 86*, p. 6.

18 Australian Unemployed Workers' Union, *Submission 156*, [p. 6].

19 Australian Council of Social Service, *Submission 86*, p. 6.

20 National Welfare Rights Network, *Submission 163*, pp.15-17; ACOSS, *Submission 86*, p. 6.

21 Explanatory Memorandum, p. 193.

22 National Welfare Rights Network, *Submission 163*, p. 19.

ATI, except in relation to fringe benefits which are received by individuals working for certain not-for-profit organisations.²³

4.35 Fringe benefits received by an individual who is employed by a not-for-profit institution defined under section 57A of the *Fringe Benefits Tax Assessment Act 1986* (public benevolent institutions, health promotion charities and some hospitals and public ambulance services) will continue to be assessed under current arrangements.²⁴

4.36 Affected payments include Family Tax Benefit (FTB) Part A and Part B, Child Care Benefit (CCB), Parental Leave Pay, Dad and Partner Pay, Stillborn Baby Payment, Youth Allowance, and payments under the ABSTUDY scheme and Assistance for Isolated Children scheme.²⁵

4.37 This schedule seeks to apply a new treatment of reportable fringe benefits to certain tax offsets. These offsets include the Net Rebate for Medical Expenses, Rebate for Low Income Aged Persons and Pensioners, Dependant (Invalid and Carer) Tax Offset and Dependant (non-student child under 21 or student) Notional Tax Offset.²⁶

Views expressed

4.38 The NWRN argued that the measure will disproportionately affect workers in the community sector, where some employers offer salary packaging to increase their attractiveness to the workforce. Using the grossed up value of fringe benefits in assessing certain family assistance payments will reduce the rate of payment to some low and middle income households and offset some of the benefits of salary packaging.²⁷

Schedule 16: Carer's allowance

4.39 Under current rules, the start day for carer allowance for a disabled child, or for an adult where the disability affecting the adult is due to an acute onset, may be backdated by up to 12 weeks before the day on which the person made the claim. By contrast, the start day for carer payment cannot be earlier than the day worked out under the general start day rules.²⁸

4.40 Schedule 16 seeks to amend the rules so that a person's start day for carer allowance will be day worked out under the general start day rules.

23 Explanatory Memorandum, p. 202.

24 Explanatory Memorandum, p. 202.

25 Explanatory Memorandum, p. 202.

26 Explanatory Memorandum, p. 202.

27 National Welfare Rights Network, *Submission 163*, p. 19.

28 The backdated start day rules are contained in Part 3 of Schedule 18 of the *Social Security Administration Act 1999* while the general start day rules are contained in Part 2 of Schedule 18. Explanatory Memorandum, p. 211.

Views expressed

4.41 Disabled People's Organisations Australia reflected that the backdating provisions were introduced as a means to recognise and address the significant turmoil, disruption and financial impact experienced by carers when they take on a caring role.²⁹ The Council of the Aging (COTA), meanwhile, highlighted that few carers consider applying for Carers Allowance on the day they commence caring:

It is unfathomable that in those moments of crisis, individuals would think or be able, to attend a Centrelink office in order to submit a form to claim the Allowance.³⁰

4.42 Similarly, the Combined Pensioners and Superannuants Association (CPSA) submitted that:

The provision, in its current form, allows carers to focus on the provision of care immediately following an acute incident (when care needs are likely to be greatest), with the knowledge that they will be able to seek financial support retrospectively.³¹

4.43 The Superannuated Commonwealth Officers' Association (SCOA) proposed a compromise:

SCOA believes that it is only reasonable to allow some backdating, say up to four weeks, because people may become carers as a result of an unexpected illness, accident or natural disaster and, in the first few weeks, may have more important things to deal with than filing in the Centrelink form.³²

4.44 COTA also noted that carers from culturally and linguistically diverse backgrounds face additional barriers in becoming aware of and navigating complex public support mechanisms, such as Carers Allowance. As such, these carers may lose out if the capacity to backdate claims is removed.³³

4.45 Taking a broader view, the CPSA considered that this measure would not provide the savings envisaged over time:

The longer term costs of withdrawing support for informal carers, in terms of a reduced capacity to care, far outweigh the potential short-term Budget savings produced through Measure 16 of the Omnibus Bill.³⁴

29 Disabled People's Organisation Australia, *Submission 151*, p. 3.

30 COTA Australia, *Submission 180*, p. 5.

31 Combined Pensioners and Superannuants Association, *Submission 126*, p. 4.

32 Superannuated Commonwealth Officers' Association, *Submission 127*, [p. 2].

33 COTA Australia, *Submission 180*, p. 5.

34 Combined Pensioners and Superannuants Association, *Submission 126*, p. 4.

Schedule 17: Indexation of family tax benefit and parental leave thresholds

4.46 Schedule 17 seeks to make amendments to pause indexation for family tax benefit (FTB) Part A and the primary earner income limit for FTB Part B until 1 July 2020. The income limit for parental leave pay (PLP) will also be paused for a further three years, until 1 July 2020.

4.47 FTB Part A is subject to an income test based on family income. There are two income test thresholds. The upper threshold is currently \$94 316. If an individual's adjusted taxable income (ATI) is above this threshold the per-child rate is reduced by 30 cents for each dollar over the threshold.

4.48 The primary earner income limit for FTB Part B is currently \$100 000. An individual cannot access FTB Part B if their ATI is more than this amount (unless they or their partner are receiving an income support payment). The amendments made in this measure pause indexation for three years.

4.49 To be eligible for PLP or dad and partner pay (DAPP), a person must satisfy an income test. In general terms, to satisfy the income test, the person's income for a particular income year must not be more than the PPL income limit. Under the current rules, this limit is \$150 000 until 30 June 2017 and is then to be indexed.

Views expressed

4.50 Both ACOSS and the NRWN note that the pause on indexation merely continues the existing pause that was introduced in the 2014 Budget, meaning that income tests will be frozen for five years, thus further tightening access to these payments. Both organisations argued that more attention should be placed on investment to address inadequacies in the current family payment system, particularly for single parents and older children.³⁵

Schedule 18: Pension means testing for aged care residents

4.51 This schedule removes the social security income and assets test exemptions that are available to aged care residents who are renting their former home and paying their aged care accommodation costs by periodic payments.³⁶

4.52 New entrants to residential and flexible aged care from the commencement of this schedule have:

- the net rental income from their former home assessed under the social security income test; and

35 National Welfare Rights Network, *Submission 163*, p. 2, ACOSS, *Submission 86*, p. 7.

36 Explanatory Memorandum, p. 225.

- the value of their former home assessed under the social security assets test after two years, unless the home is occupied by a protected person, such as their partner, in which case it will continue to be exempt.³⁷

Views expressed

4.53 Several stakeholders were supportive of the proposed change. The Council of the Aging (COTA) supported this measure as a matter of principle, in that all assets should be treated equally.³⁸ That said, COTA noted that more consideration should be given to the transitional impacts of entering care and paying accommodation fees while the home is being sold. Leading Age Services Australia was supportive of the inclusion of rental income in the means tests.³⁹

4.54 By contrast, other stakeholders considered that the measure limits choice for aged care residents to contribute towards their care and accommodation. For example, ACOSS submitted that:

...this measure will make retaining the home near impossible because it will reduce the income they [Age Pensioners] have to pay for their accommodation...⁴⁰

4.55 Similarly, the NRWN contended that:

There is a case for careful reform of aged care means testing arrangements. But the NRWN does not support this measure as it places further pressure on pensioners to sell their home and limits their choices about how to pay for aged care.⁴¹

Schedule 19: Employment income

Background

4.56 Currently, families receiving FTB Part A are subject to an income test, and dependent young people receiving youth allowance or ABSTUDY living allowance payments are subject to a parental income test when determining their rate of payment, unless the family or parent is eligible for a social security pension or benefit. The income test exemption for income support recipients is extended to income support recipients who are in an employment income nil rate period. An employment income nil rate period allows an income support recipient to retain an entitlement to

37 Explanatory Memorandum, p. 225.

38 COTA Australia, *Submission 180*, pp. 5–6.

39 Leading Age Services Australia, *Submission 157*, p. 8.

40 ACOSS, *Submission 86*, p. 7.

41 National Welfare Rights Network, *Submission 163*, p. 22.

their income support payment for up to 12 weeks if their income support payment is not payable due to employment income (either wholly or partially).⁴²

4.57 Schedule 19 seeks to remove the exemption from the income test for families receiving family tax benefit Part A and the exemption from the parental income test for dependent young people receiving youth support payments, where the family or parent is in an employment income nil rate period.⁴³

Views expressed

4.58 The NRWN expressed its opposition to the measure, submitting:

The purpose of the current rules is to provide an additional incentive for people to take up work, especially casual, short-term or insecure work. It does so by ensuring the person remains on payment and payments are not affected for up to 12 weeks and they can get back onto payments easily if the work does not continue. Although these rules do treat families with similar income levels differently for a period of up to 12 weeks, they do so for the reasonable purpose of recognising the difficulty re-entering the workforce, especially into precarious and insecure work.⁴⁴

4.59 Similarly, the Australian Association of Social Workers considered that this measure 'could prove a disincentive to gaining part-time employment for the families affected'.⁴⁵

4.60 Looking at the broader consequences of the measure, the Australian Unemployed Workers' Union noted that the measure would 'lead to many Australians receiving a lower entitlement, pushing them further below the poverty line'.⁴⁶

Schedule 20: Psychiatric confinement

4.61 Schedule 20 seeks to amend the *Social Security Act 1991* (Social Security Act) to cease social security payments to a person who is undergoing psychiatric confinement because they have been charged with a serious offence.⁴⁷

4.62 The amendments made by this schedule seek to ensure equal treatment in respect of social security payments for people charged with a serious offence, irrespective of whether they are confined in a psychiatric institution or prison.⁴⁸

42 Explanatory Memorandum, p. 229.

43 Explanatory Memorandum, p. 229.

44 National Welfare Rights Network, *Submission 163*, p. 22.

45 Australian Association of Social Workers, *Submission 150*, p. 3.

46 Australian Unemployed Workers' Union, *Submission 156*, [p. 7].

47 Explanatory Memorandum, p. 233.

48 Explanatory Memorandum, p. 240.

4.63 The provisions of schedule 20 are equivalent to the Social Services Legislation Amendment Bill 2015, which was first introduced to the House of Representatives on 25 March 2015. On 26 March 2015, the Senate referred that bill to the Community Affairs Legislation Committee for inquiry and report by 15 June 2015.⁴⁹ The Social Services Legislation Amendment Bill 2015 lapsed with the prorogation of the 44th Parliament in April 2016.

Background

4.64 Currently, the Social Security Act restricts certain social security payments being made to persons who are in gaol or psychiatric confinement following being charged with an offence.⁵⁰ As noted in the Senate's previous considerations of the proposed amendments, similar measures have existed in social security law since at least 1947.⁵¹

4.65 However, in 1986, an additional provision was included in the Social Security Act that amended the definition of psychiatric confinement.⁵² This additional provision provides that the confinement of a person in a psychiatric institution is not taken to be in psychiatric confinement for the purpose of social security law provided that the person is undertaking a 'course of rehabilitation'.⁵³

4.66 The interpretation of a 'course of rehabilitation' has evolved since the 1986 amendments. In a 2002 case, the Federal Court ruled that, for purpose of defining psychiatric confinement, a broad interpretation of a 'course of rehabilitation' be upheld.⁵⁴ The effect of this ruling has meant that most people confined in a psychiatric institution are considered to be undertaking a course of rehabilitation. Consequently, relevant social security payments continue to be payable to such persons.⁵⁵

4.67 The bill seeks to support the original policy intention behind section 1158 of the Social Security Act, namely that:

...income support payments are not payable to a person who is in gaol or a person who is undergoing psychiatric confinement because the person has been charged with an offence.⁵⁶

49 *Journals of the Senate*, No. 90, 26 March 2015, pp. 2458–2459.

50 See *Social Security Act 1991*, s. 1158; Explanatory Memorandum, p. 233.

51 Senate Community Affairs Legislation Committee, *Social Services Legislation Amendment Bill 2015 [Provisions]*, June 2016, p. 2.

52 See *Social Security and Veterans' Affairs (Miscellaneous Amendments) Act 1986*, s. 51.

53 Explanatory Memorandum, p. 233.

54 *Franks v Secretary, Department of Family and Community Services* (2002) FCAFC 436.

55 Explanatory Memorandum, p. 233.

56 Explanatory Memorandum, p. 240.

Views expressed

Distinction between serious and non-serious offences

4.68 For the purpose of implementing the proposed amendments to the Social Security Act, the bill provides a definition of what constitutes as serious offence:

A serious offence will include the offences of murder or attempted murder, manslaughter, rape or attempted rape, as well as other violent offences that are punishable by imprisonment for life or for a period (or maximum period) of at least seven years.⁵⁷

4.69 A number of submitters argued that the distinction between serious and non-serious offences is irrelevant. This is because people who are not convicted on the grounds of mental impairment are not deemed to be morally culpable of the offence committed. This is the case regardless of the seriousness of the offence. The National Mental Health Commission, for example, argued:

The nature of the offence with which a person was charged – but not convicted – should not define whether they are taken to be in psychiatric confinement or undertaking a course of rehabilitation, nor should it be relevant to whether they have access to social security payments.⁵⁸

4.70 Submitters also argued that, by ceasing social security payments to affected persons, the bill introduces a punitive dimension to psychiatric confinement and reinforces negative stereotypes regarding mental illness. This risks undermining the primary rehabilitative aim of forensic psychiatric detention:

The detention of these individuals in psychiatric hospitals...is for the purposes of care and rehabilitation, not punishment or deterrence. However, the effect of this punitive Bill would be to criminalise mental illness.⁵⁹

4.71 However, the Explanatory Memorandum outlines:

This policy does not have a punitive intent, rather it is a recognition that people in these circumstances, like those in gaols, have a reduced need for social security payments as their basic needs are met by the states and territories that confine them.⁶⁰

4.72 The committee notes that the concerns raised by submitters with regard to this measure are similar to those previously examined by the Senate as part of the

57 Explanatory Memorandum, p. 234.

58 National Mental Health Commission, *Submission 82*, p. 2.

59 Western Australian Association for Mental Health, *Submission 117*, p. 3.

60 Explanatory Memorandum, p. 241.

Community Affairs Legislation Committee's consideration of the provisions of the Social Services Legislation Amendment Bill 2015.⁶¹

Impact on rehabilitation and reintegration

4.73 Submitters noted that people's economic circumstances are a key determinant of health, and raised concern that this measure will impede recovery by limiting the economic resources necessary for successful rehabilitation and reintegration.

4.74 Some submitters argued that shifting the 'cost burden' to state and territory health systems to fund rehabilitation could also be detrimental to the recovery of people affected. For example, the Western Australian Association for Mental Health commented:

We are extremely concerned that the burden of additional costs for the state government, which will have to fund the daily living expenses for people transitioning to community should this Bill come to pass, will add further impediments to an already slow and challenging release process.⁶²

The definition of a 'period of reintegration'

4.75 Schedule 20 provides that a person in psychiatric confinement because they have been charged with a serious offence will not be taken to be in psychiatric confinement during a period of integration back into the community.

4.76 As noted in the report by the Community Affairs Legislation Committee, the bill will be supported by a legislative instrument which will define the 'period of integration' during which social security payments would resume.⁶³ This would allow easier modification of the definition, should this be required. The Explanatory Memorandum provided an example of what such a definition could include:

A legislative instrument made for the purpose of new subsection 23(9C) may provide, for example, that a period of integration back into the community for a person is where the person regularly spends a set number of nights in a fortnight outside of the psychiatric institution. The legislative instrument may also provide that a person's day of integration back into the community is the first day of the fortnight in which the person spends the set number of nights outside of the psychiatric institution. An effect of this would be that the person's social security payment is payable for the full

61 Senate Community Affairs Legislation Committee, *Social Services Legislation Amendment Bill 2015 [Provisions]*, June 2015, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Social_Services_2015/Report (accessed 7 September 2016).

62 Western Australian Association for Mental Health, *Submission 117*, p. 7.

63 Senate Community Affairs Legislation Committee, *Social Services Legislation Amendment Bill 2015 [Provisions]*, June 2015, p. 3.

fortnight, even if the person spends some days in that fortnight in the psychiatric institution.⁶⁴

4.77 Submitters raised concerns regarding this proposed definition of a 'period of integration', noting the potential limits on people's access to funds to support themselves, especially with regard to accommodation costs, on days they are not confined.

4.78 Some submitters also highlighted the apparent inequity between the entitlements afforded to people affected by the bill as compared to those who have been convicted of an offence and are serving a period of periodic detention:

No such provisions exist for people found guilty of an offence who are on periodic detention – they instead receive social security payments for any days outside detention.⁶⁵

4.79 Moreover, submitters raised concerns that this inequity in social security entitlements characterises the people affected by the bill as less favourable than those convicted of an offence and serving a period of imprisonment. Consequently, submitters argued that this measure appears to discriminate against those with mental illness or intellectual disability.⁶⁶

Financial impact

4.80 A number of submitters also expressed concern that social security payments are used by people in psychiatric confinement for the purposes of meeting ongoing financial commitments, such as maintaining housing. Submitters argued that the bill will consequently 'impair people's capacity to maintain housing while they are in confinement, increasing the risk of homelessness on return to the community'.⁶⁷

4.81 The Mental Health Review Tribunal raised concerns that people affected by the bill, in addition to meeting ongoing financial obligations, are also reliant on social security entitlements to pay their hospital expenses:

Forensic patients are responsible for their hospital expenses, and are encouraged to pay for these because this is an important step for them to make by acknowledging that they have an illness that requires treatment...⁶⁸

4.82 As noted in the Explanatory Memorandum, people in psychiatric confinement receive 'benefits in kind', such as food and housing, provided by the relevant state or

64 Explanatory Memorandum, p. 236.

65 National Mental Health Commission, *Submission 82*, p. 3.

66 See, for example, National Mental Health Commission, *Submission 82*, p. 3; Mental Health Legal Centre, *Submission 118*, p. 3.

67 ACOSS, *Submission 86*, p. 5.

68 Mental Health Review Tribunal, *Submission 139*, p. 3.

territory institution. The provision of these benefits in kind negates the need for social security payments in these circumstances.⁶⁹

Schedule 21: Closing carbon tax compensation to new welfare recipients

4.83 Schedule 21 prevents new recipients of welfare payments or concession cards from being paid the energy supplement from 20 March 2017.⁷⁰ The measure also prevents the single income family supplement from being paid to new recipients from 1 July 2017. It is anticipated that this measure will result in savings of approximately \$1.3 billion over the forward estimates.

Background

4.84 The energy supplement is an ongoing payment for pensioners, families who receive family assistance, income support and payment customers and Commonwealth Seniors Health Card holders.⁷¹

4.85 The energy supplement was introduced in 2012 to offset the anticipated impact of the Emissions Trading Scheme. The proposed measures will mean that any new recipients of pensions, allowances and FTB will no longer receive the energy supplement (worth \$14.10 per fortnight for a single pensioner and \$8.80 for a single Newstart recipient with no children). Current recipients of the energy supplement will still receive the supplement as long as they remain continuously eligible for a qualifying payment.

Views expressed

The impact on low-income and other vulnerable individuals

4.86 Catholic Social Services Australia, ACOSS, and the NSW Council of Social Service, along with others, raised concerns that the removal of the energy supplement would significantly impact the poorest members of the Australian community.⁷² Concerns were most prominent in relation to the schedule's effect on Newstart payments.⁷³ It was pointed out to the committee that:

69 Explanatory Memorandum, p. 241.

70 Payment recipients and concession card holders who first receive the energy supplement on or after 20 September 2016 will only be able to receive the supplement until 19 March 2017.

71 Department of Human Services, *Energy Supplement*, <https://www.humanservices.gov.au/customer/services/centrelink/energy-supplement> (accessed 7 September 16).

72 Catholic Social Services Australia, *Submission 72*; ACOSS, *Submission 86*; NSW Council of Social Service (NCOSS), *Submission 122*; Salvation Army Australia, *Submission 155*; Disabled Persons Organisation Australia, *Submission 151*; SA Anti-Poverty Network, *Submission 152*; Electrical Trades Union of Australia, *Submission 149*; Australian Unemployed Workers' Union, *Submission 156*.

73 National Welfare Rights Network, *Submission 163*, p. 2.

Removal of the energy supplement will abolish the first above CPI increase to Newstart in over two decades and follows the removal of the \$4 per week Income Support Bonus. The current rate of Newstart is well below the poverty line of \$38 per day.⁷⁴

4.87 Good Shepherd Microfinance (GSM)—Australia's largest microfinancing organisation—highlighted that any reduction of income to very low income households will limit their access to credit markets. It noted that a \$4.40 per week reduction in income for people on low incomes represents 'a third of the weekly repayment for an \$800 [No Interest Loan Scheme] loan'.⁷⁵ GSM expressed fears that the changes proposed in the schedule will move people towards 'high cost fringe credit and goods rental'.⁷⁶

4.88 Carers Australia informed the committee that carers are heavy users of energy as they are home longer hours than most Australians, and may be required to operate specialist energy-intensive equipment or maintain a constant climate.⁷⁷ Pensioners are also vulnerable as they are not in a position to readily increase their income by other means. Disabled People's Organisations Australia raised concerns that a further effective reduction in income for their constituents will reduce their ability 'to be able to participate fully in the economic, social, cultural, civil and political life of Australia'.⁷⁸

Payments recipients may be worse off than if supplement had not been introduced

4.89 Some submitters, including Carers Australia, pointed out that had the energy supplement never been introduced, the basic rate of payment of CPI indexed payments would have been higher today. To prevent welfare recipients being compensated twice (through the energy supplement and normal indexation of prices) basic payments were adjusted at the time of the introduction of the energy supplement.⁷⁹ Removing the energy supplement therefore means that recipients of these payments will have missed out on an indexation payment in an earlier year, meaning their payments are lower today.⁸⁰

4.90 Similarly, Mr David Plunkett suggested that by removing the energy supplement, a sole parent on Newstart with two children, aged 8 and 10, would be worse off by an estimated \$7.50 per week than if the energy supplement had never

74 Catholic Social Services Australia, *Submission 72*, p. 1.

75 Good Shepherd Microfinance, *Submission 167*, p. 2.

76 Good Shepherd Microfinance, *Submission 167*, p. 2.

77 Carers Australia, *Submission 71*, p. 5.

78 Disabled People's Organisations Australia, *Submission 151*, p. 6.

79 Carers Australia, *Submission 71*, p. 5.

80 cohealth, *Submission 131*, p. 4.

been introduced.⁸¹ To remedy this apparent problem, the Superannuated Commonwealth Officers' Association suggested that a small increase should be applied to affected payments at the same time as the abolition of the energy supplement, thereby at least returning recipients to the same financial position they would have been in if the energy supplement had not been created.⁸²

Increased complexity of administration

4.91 ACOSS also suggested that the proposed changes would create inequality within the payments system and increase the complexity of administering payments:

Cessation of the Energy Supplement will create two levels of payment because existing recipients will continue to receive the supplement. This creates inequality as two people in the same circumstances will receive different rates of payment and will add further complexity to an already complicated income support system.⁸³

4.92 Several stakeholders similarly argued that the measure would create a two-class payment system where the date of eligibility determines access to support.⁸⁴

Perverse incentives

4.93 The Superannuated Commonwealth Officers' Association pointed out that a two-tiered payment system also creates an incentive for people on Newstart *not* to take up short-term work. If a person currently on Newstart interrupted their payment with a short-term contract they would then be worse off if they required Newstart at the conclusion of their contract.⁸⁵

The rationale for the measure

4.94 ACOSS questioned the Australian Government's rationale of removing the payments on the grounds that the Carbon Pollution Reduction Scheme has been abolished. It was observed that tax reductions for wage earners, introduced as part of the package of compensation measures, have not been rescinded.⁸⁶

4.95 The Treasurer, the Hon Scott Morrison MP, noted that the carbon tax is no longer in existence, and it was not necessary to compensate people for a tax that no

81 David Plunkett, *Submission 24*, pp. 3–4.

82 Superannuated Commonwealth Officers' Association, *Submission 127*, p. 1.

83 ACOSS, *Submission 86*, p. 3.

84 Combined Pensioners and Superannuants Association, *Submission 126*, p. 5; cohealth, *Submission 131*, p. 4; Superannuated Commonwealth Officers' Association, *Submission 127*, p. 1.

85 Superannuated Commonwealth Officers' Association, *Submission 127*, p. 1.

86 ACOSS, *Submission 86*, p. 3; Disabled People's Organisations Australia, *Submission 151*, p. 5; Australia Institute, *Submission 169* p. 16.

longer exists.⁸⁷ Speaking more broadly to this measure and other changes proposed in the bill regarding the welfare system, Mr Morrison further emphasised that the government 'remains committed to ensuring the welfare system continues to provide a welfare safety net for Australia's most vulnerable people and families'.⁸⁸

Committee view

4.96 The committee notes the concerns raised by submitters in relation to the welfare measures covered by the schedules in this chapter. Indeed, the committee is cognisant that these measures will adversely affect the welfare benefits that some people may receive in the future. However, the government is committed to ensuring the welfare system is equitable while also undertaking the significant task of repairing the federal budget.

4.97 On balance, the committee considers that these measures will contribute to greater consistency across different welfare entitlements and improve the sustainability of the welfare system in the longer term.

87 The Hon. Scott Morrison MP, Treasurer of Australia, *House of Representatives Hansard*, 31 August 2016, p. 35.

88 The Hon. Scott Morrison MP, Treasurer of Australia, *House of Representatives Hansard*, 31 August 2016, p. 35.