

*Department of the  
Parliamentary Library*



INFORMATION AND RESEARCH SERVICES

Bills Digest

No. 157 2001–02

Family and Community Services Legislation  
Amendment (Disability Reform) Bill 2002

ISSN 1328-8091

© Copyright Commonwealth of Australia 2002

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

## Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2413.

Information and Research Services publications are available on the ParlInfo database. On the Internet the Department of the Parliamentary Library can be found at:  
<http://www.aph.gov.au/library/>

Published by the Department of the Parliamentary Library, 2002

INFORMATION AND RESEARCH SERVICES

Bills Digest  
No. 157 2001-02

Family and Community Services Legislation Amendment  
(Disability Reform) Bill 2002

Peter Yeend  
Social Policy Group  
28 May 2002

# Contents

Purpose .....	1
Background .....	2
Schedule 1 – Amendments relating to disability support pension (DSP) .....	2
Schedule 2 – Amendments relating to Newstart Allowance (NSA) .....	13
Main Provisions .....	15
Schedule 1 .....	15
Schedule 2 .....	16
Schedule 3 .....	16
Concluding Comments .....	16
Endnotes .....	17

# Family and Community Services Legislation Amendment (Disability Reform) Bill 2002

**Date Introduced:** 16 May 2002

**House:** Representatives

**Portfolio:** Family and Community Services

**Commencement:** There are three Schedules in the Bill. However, within each Schedule, different sections and items have various commencement dates. These commencement dates are set out in detail in the Table set out in **Item 2** of the Bill.

## Purpose

To provide for legislative amendment to the qualification criteria for the Disability Support Pension (DSP) program, paid under the *Social Security Act 1991* (SSA). The proposed legislative amendments are aimed at people of working age to provide for greater engagement in social and economic participation.

It is proposed to make two changes to the DSP qualification criteria. Firstly, change the continuing inability to work test from a 30 hour a week test to a 15 hour a week test. Secondly, change the special inability to work test applied for those aged 55 or more, from referring only to the local labour market to considering the labour market generally, as is currently the case for those aged less than 55 years.

These changes are proposed to commence from 1 July 2003.

The Bill also proposes to amend the work search activity test requirements in the SSA for Newstart and Youth Allowance, so that jobseekers temporarily incapacitated for work and unable to work for 8 hours a week or more, can still be required to undertake prescribed activities.

This change is proposed to commence from 20 September 2002.

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

## Background

### Schedule 1 – Amendments relating to disability support pension (DSP)

#### Invalid pension – 1910 to 1991

The Invalid Pension (IP) was introduced along with the old age pension with legislation passed in 1908 and payments commenced in 1910. IP was essentially unchanged from its introduction until 1991, when it was replaced by DSP in November 1991, under the Disability Reform Package. The DSP qualification criteria have been unchanged since 1991, and this proposed Bill, if passed, will see the first change.

#### Invalid pension – permanently incapacitated for work

From 1910, amongst other age and resident criteria, IP was paid to a person ‘*permanently incapacitated for work*’. Up to 1941, the phrase ‘*permanently incapacitated for work*’ was interpreted as meaning totally and permanently incapacitated for work. This understanding was modified by legislation passed in 1941, which stated a claimant could be considered ‘*permanently incapacitated for work*’ if the degree of capacity for work did not exceed 15%.

Legislation was passed in 1947, specifying that a person would be deemed ‘*permanently incapacitated for work*’, if the degree of permanent incapacity for work was not less than 85%. In May 1979, new guidelines were introduced for the Government Medical Officers removing reference to educational, environmental and labour market factors in assessing incapacity for work. In May 1981, further guidelines allowed the consideration of age, education and work skills in assessing incapacity for work. From March 1987, the guidelines required that the 85% be made up of at least a 50% medically based incapacity.

#### Who determines eligibility to DSP – the doctor or the delegate?

In the context of these changes it is important to note that at all times since 1910, it has been the delegate under the SSA who makes the decision as to qualification for IP or DSP. Certainly, there has always been extensive use of Commonwealth Medical Officers (CMO) to provide examinations, reports, opinions and advice. However, CMOs have only ever provided advice and opinions as to medical conditions, the impact of conditions and work capacity or incapacity. The popular myth, that continues today, that CMOs or doctors determine eligibility, is exactly that. It is true that for much of history of IP and DSP, CMO opinions as to capacity for work were largely accepted in the vast majority of cases and, as a matter of practice, their advice wasn’t questioned or challenged. This is the origin of the myth that the CMO or doctor decides.

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

### **Grants of IP for socio-economic rather than medical condition based incapacity for work reasons leads to reforms**

The changes made in 1979, 1981 and 1987, were in response to concerns that too often CMOs were taking socio-economic factors far too much into consideration, in providing opinions as to work capacity, rather than concentrating only on the impairment and work capacity arising from the impairment. Socio-economic factors refer to age, labour market skills and experience, ethnicity, English language skills and local labour market conditions. These concerns were brought into focus with the then increasing numbers gaining access to IP, being the first manifestations of an ageing population and labour force, the decline of secondary industry and with it access to low-paid unskilled job opportunities. The factory workers of the 1950s/60s had reached older age.

### **Invalid pension (IP) replaced by DSP**

The DSP replaced IP in the Disability Reform Package (DRP) of November 1991. Increasing numbers of IP recipients and the need for a more active approach to income support for people with disabilities prompted the change. The 85% permanently incapacitated for work qualification requirement was changed with DSP to:

- An impairment of at least 20% against the DSP Impairment Tables (IT); and
- An inability to work at full-award wages for at least 30 hours a week for the next two years.

### **DSP purpose**

In talking to the DRP, the then Minister for Health, Housing and Community Services the Hon. Brian Howe MP stated:

The package of new labour market and income support arrangements, known as the disability reform package and introduced in the 1990 Budget, is one demonstration of the Government's response to implementing practical measures for full and active integration of people with disabilities into the labour market. The package is built on earlier Government initiatives in the provision of support for people with disabilities; it involves an active system of payment and support for people with disabilities, and links new disability support pension recipients with appropriate vocational training, rehabilitation and employment placement services. The disability reform package will bring into sharper focus the special needs of clients with disabilities and is an outstanding illustration of the Government's broad approach to reform.<sup>1</sup>

DSP was seen to be a complete break from the IP payment it was replacing, with an emphasis on providing income support and training and rehabilitation assistance to maximise labour market and social participation for recipients. The DSP was introduced under the umbrella of the DRP, which contained significant increased funding for training and rehabilitation. New processes were developed to ensure adequate and proper assessment of training and rehabilitation needs and assistance and also the provision of

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

guidance in accessing programs. For the first time the Department of Social Security (DSS) employed specialist Disability Support Officers (DSOs) who conducted interviews of all DSP applicants jointly with Commonwealth Employment Service (CES) and Commonwealth Rehabilitation Service (CRS) officers, providing holistic assessments and management.

### **DSP qualification – 20% impairment minimum**

As indicated, the first limb of the qualification requirements for DSP is 20% impairment.

At first glance the 20% impairment requirement for DSP seemed far less rigorous than the 85% permanent incapacity for work requirement for IP. However, the then new DSP also had new impairment tables. Mindful that the application of the 85% IP rule had allowed a significant number of applicants access to the payment, who were more labour market disadvantaged than incapacitated for work, the new DSP impairment tables set the requirements to achieve a 20% impairment, at a level requiring a significant impairment.

The rigour lies within the second phase, the continuing ability to work test. For example, an accountant with the loss of two legs easily meets the 20% impairment requirement, but would commonly be able to work for 30 hours a week or more, and DSP qualification is then not met. This case highlights that there are many cases where a person would have otherwise qualified for the old IP but not DSP.

### **DSP qualification - unable to work for 30 hours a week**

Also, as indicated, the second limb of the qualification requirements is an inability to work for at least 30 hours a week, at full award wages, for at least the next 2 years.

Thirty 30 hours a week is nearly full-time work and is one of the reasons for the burgeoning numbers on DSP over the past eleven years. The 30 hour a week test was not a matter of concern at the time of introduction of DSP, it being considered that for many recipients, DSP would be a temporary payment. The attached training and rehabilitation programs provided under the DRP would take those with significant work capacities off the payment in a short time anyhow. The then Minister for Social Security, Senator the Hon. Graham Richardson stated in an answer to a Question Without Notice about DSP on 26 November 1991:

When the disability support changes were put through this Parliament in very recent times, we moved away from 85 per cent incapacity as a means of determining who should be eligible or not eligible for these disability support pensions. We moved to a medical test, a 20 per cent impairment level. That was the test that we set and that is the level a person now has to pass. If a person cannot pass it, he or she will not get such a pension.

We estimated that between a quarter and a third of all new entrants to the system after 12 November would be eligible for some form of rehabilitation, some form of training.

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*



I do not think Senator Alston has any idea at all of the kinds of disabilities people have when they are on 20 per cent or 30 per cent impairment levels. Most of them tend to be in the 30 per cent to 40 per cent range, and they are people with very severe problems indeed. At 70 per cent, the level quoted in the Opposition document, such people are in very desperate trouble. The idea of those cases getting regularly reviewed is nonsense.

What happens now is a much more sensible and workable proposal. Anyone who has any kind of medical doubt at all about them is scheduled for a review. The information for that will come from their treating doctor, from a Commonwealth medical officer or from a disability review officer in the Department.<sup>2</sup>

The 30 hour test was not then seen as a risk in terms of letting applicants on DSP with significant work capacities, as the review processes and attached training and rehabilitation assistance would take them back into part or full-time employment. The 30 hour rule was also considered appropriate in terms of allowing a smooth transition from DSP to work. It was considered at the time of introduction of DSP, to set the limit lower, eg. 10, 15 or 20 hours a week, might take persons off the pension too quickly as they increase their work capacity/activity. This might act as a deterrent to recipients increasing their work capacity for fearing of losing their pension. This concern did not apply to employees in sheltered workshops (now known as supported employment), it not being employment in the open labour market, but a 30 hour test would provide some support for and encourage a move into open employment.

### **Burgeoning numbers and cost associated with DSP driving proposed changes**

Since the seventies, the numbers of IP/DSP recipients have grown steadily. Invalid Pension numbers stood at 229 219 in 1980.<sup>3</sup> One of the aims of the change from IP to DSP in 1991 was to stem the tide of this increase. In 1991, when DSP replaced the previous IP there were 334 234 recipients.<sup>4</sup> As at March 2002, there were 652 170 DSP recipients.<sup>5</sup>

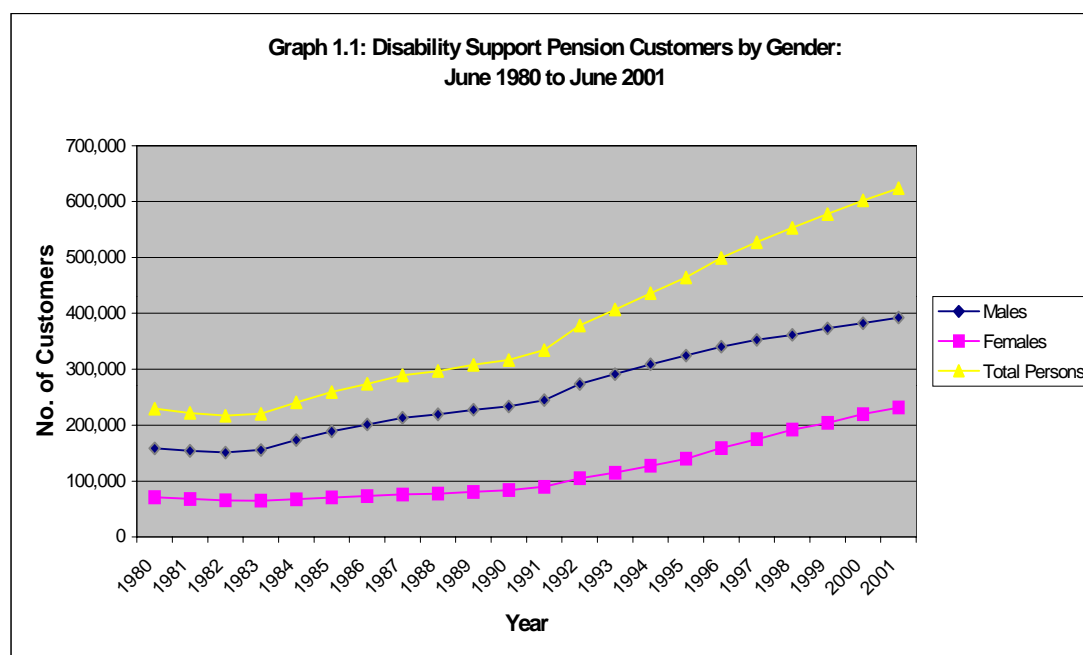
Notwithstanding an ageing population and a changing labour market, it is this extraordinary growth in the DSP numbers and associated cost that is driving the Government's proposed changes to the DSP program. In the 1991-92 year, program outlays for DSP was \$2.8b.<sup>6</sup> The 2002-03 Budget allocates \$6.9b for the DSP program for 2002-03.<sup>7</sup>

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

### DSP recipient numbers<sup>8</sup>



The change to DSP attempted to target the payment at those with more significant medically based incapacities for work and where recipients had capacities for work, to provide appropriate rehabilitation and/or training to move them back to or into work. However, the continued increases post 1991, suggest this has been largely unsuccessful. There are several reasons for the increasing numbers on DSP being:

- the ageing of the population and the working age;
- labour market changes marginalising the unskilled, the semi-skilled, older age workers;
- increased incidence of early retirement;
- reductions in access to alternative income support payments for some persons, eg. phasing out of sheltered employment allowance, rehabilitation allowance, wife pension and widow pension; and
- increased incidence of some acquired disabilities, eg. injuries arising from motor vehicle accidents.

#### DSP has become early age pension payment

The steady increase in numbers does partially reflect the overall increase in the total population, and the fact that the population is ageing. There will always be a proportion of the population with significant levels of disability, either acquired congenitally (eg. Spina

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

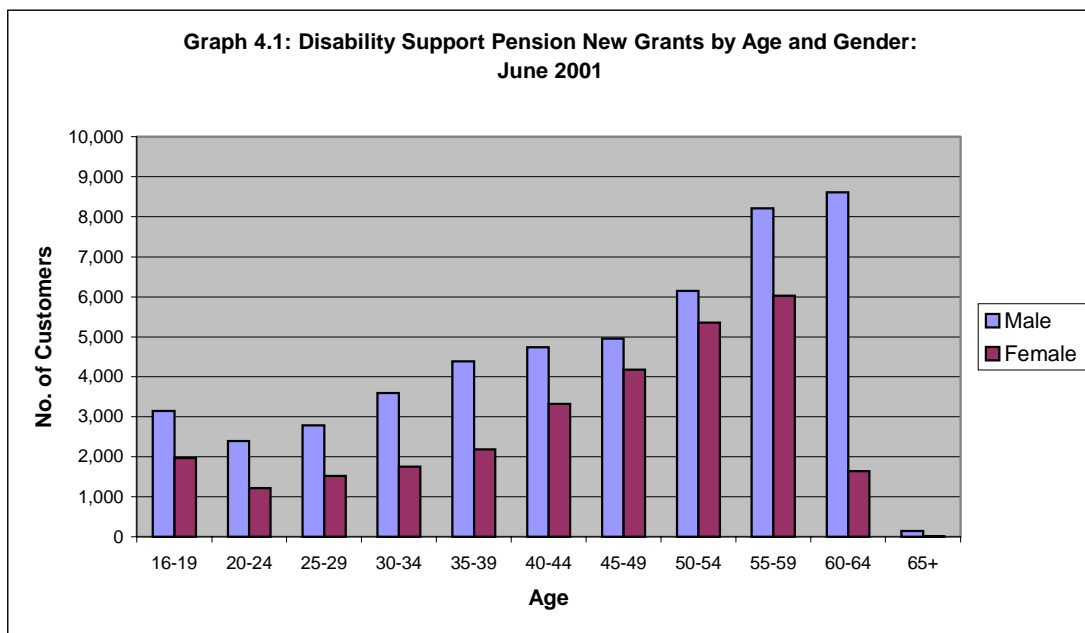
*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

Bifida, Downs Syndrome), or acquired at a later time (eg. spinal injury, head injuries). However, there has been considerable concern that the DSP population of 652 170, as at March 2002, is too high given a national population of 19.4 million (September 2001).<sup>9</sup> This proportion of people, on an income support payment because they have a disability substantially preventing work, is now far higher than it was during the 1950s/60s/70s.

**Older claimants driving the DSP numbers upwards**

As at June 2001, two-thirds of DSP recipients were aged over 45 years and 63% were male<sup>10</sup>. These claimants predominantly have musculo-skeletal impairments, being those commonly acquired by the combined effects of older age degeneration and prolonged periods of manual labour. Generally, the labour market marginalisation of older aged workers, rather than increased incidence of disability in the population are largely fuelling the DSP population increase. Many of new recipients are coming straight out of the labour force. There were around over 77,000 new DSP customers in the 2000-01 financial year with 37% of these coming directly from Newstart or Youth Allowance, 6% from Parenting Payments and 2% from Sickness Allowance. Forty five per cent were not previously in receipt of another Centrelink payment, and many of these probably straight out of the labour force.<sup>11</sup>

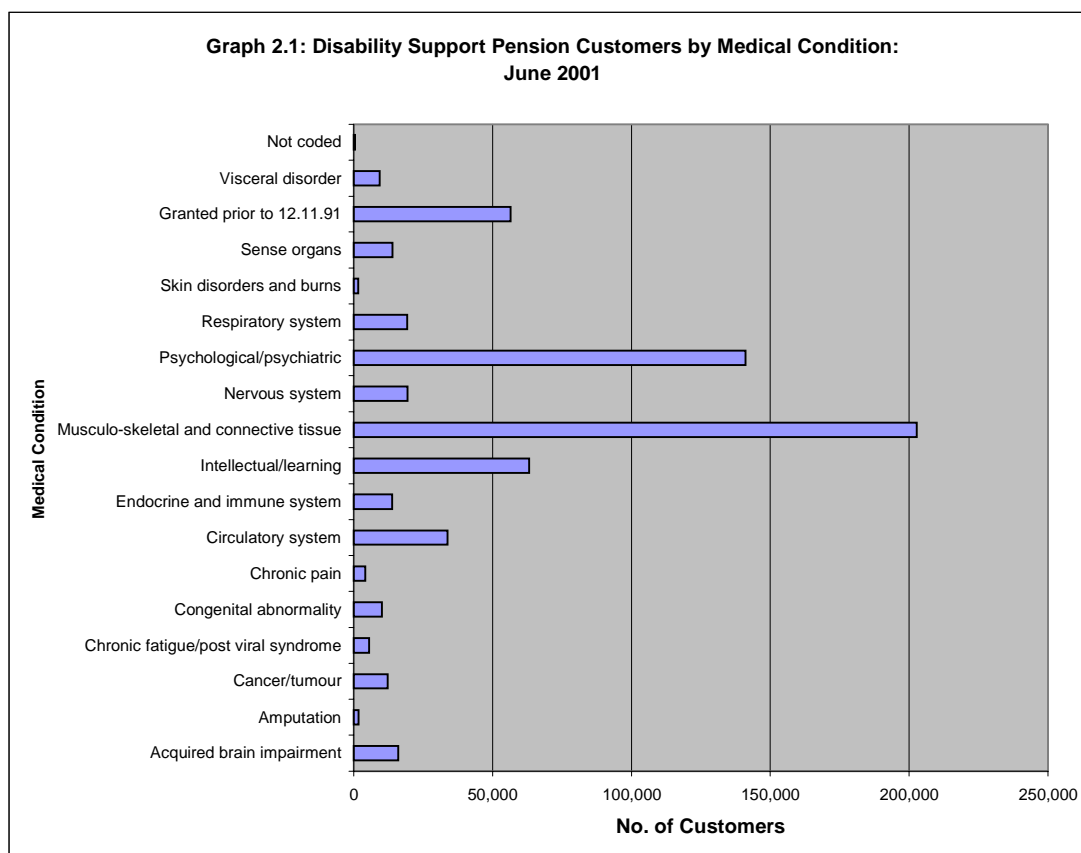
**DSP grants by age and gender<sup>12</sup>**



**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

**DSP and medical conditions<sup>13</sup>****Did the training and rehabilitation assistance arrangements assist DSP recipients into or back to work?**

Only a small percentage of DSP recipients currently have earnings related to work (9.1%).<sup>14</sup> This has increased from 8.4% in June 2000 and 6% in June 1994. This compares to 3.8% of the invalid pension population with earned income in June 1991.<sup>15</sup> The majority of recipients have earnings in the lower income ranges. A small group of recipients, comprising 18% of all those with earned income, earn in excess of \$300 per week. The characteristics of DSP earned income were:<sup>16</sup>

- Single recipients represented 50% of the recipients with employment earnings but represented only 36% of the total DSP population.
- Recipients with intellectual or learning disabilities represented 23% of recipients with employment earnings but only represented 10% of the total DSP population. Even though this group was more likely to have employment earnings, the majority only had earnings of less than \$75 per week. These would be persons in sheltered employment (today called supported employment), so the number of DSP recipients in open employment is actually less than 9%.

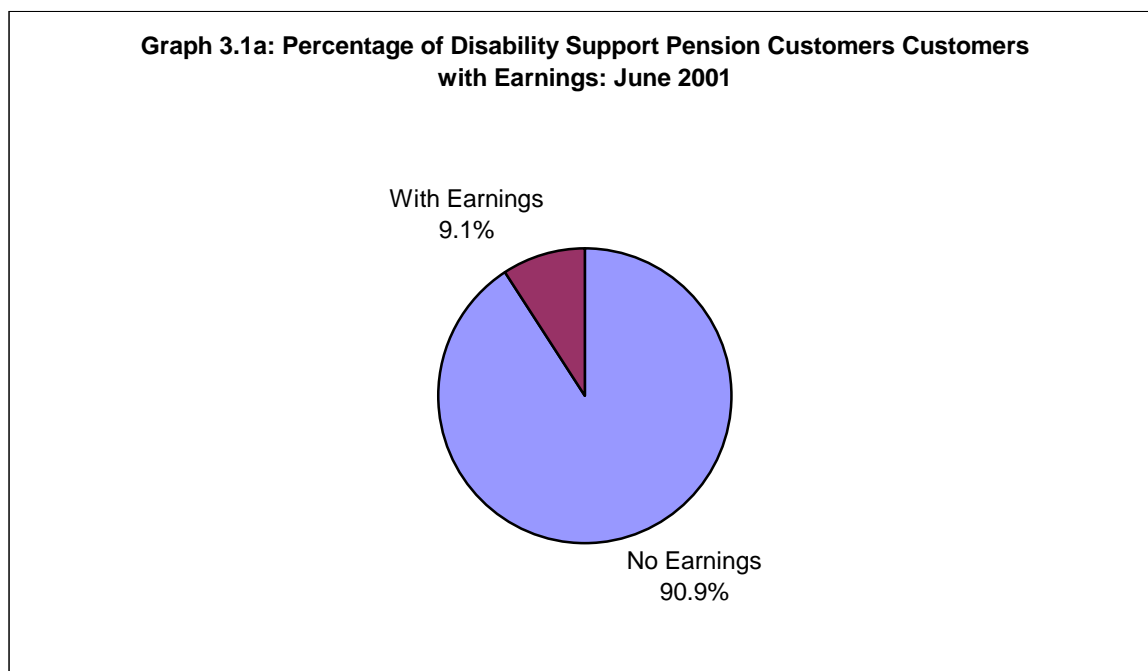
**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- Recipients aged less than 50 years were more likely to have earnings from employment than older recipients. Sixty four per cent of recipients aged less than 50 years had employment earnings but only represented 48% of the total population.

### DSP recipients with earnings<sup>17</sup>



In an answer to a Question on Notice on 30 October 2000, the Government reported that according to a 1998 ABS survey only 2.4% of DSP respondents contacted said they were looking for work.<sup>18</sup> Not only does this partially explain why so few DSP recipients have earned income, as so few are even looking for work, but it also shows it has been known for some time that very few DSP recipients are looking for work.

### DSP recipients returning to work

Of the DSP recipients who leave the payment, how many do so due to returning to work? The majority of customers who were on DSP in June 2000 but were not on DSP in June 2001 moved on to Age Pension (58.3%).<sup>19</sup> As customers reach Age Pension eligibility age, the vast majority transfer across, although a small percentage of customers choose to remain on DSP. A further 19.1% of customers left payments entirely.<sup>20</sup> A substantial proportion (18.2%) of exits from DSP was because of the death of the recipient.<sup>21</sup> For those who left payment entirely, there would be a range of reasons for this being:

- returned to work;

**Warning:**

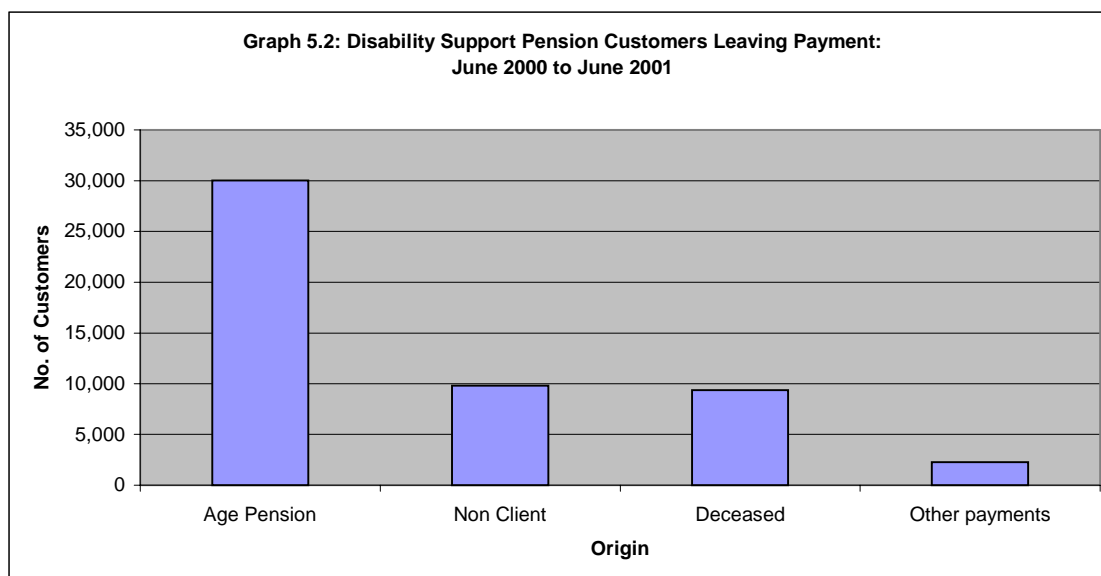
*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- partner’s income precludes payment; or
- short-term temporary cancellations as the recipient failed to contact Centrelink – later to be restored on contact.

Information about DSP recipients returning to work was provided in an answer to a Question on Notice (No.821) on 22 September 1999, in which it was detailed that for the 1998-99 year, that 10 855 DSP recipients had payment cancelled as they returned to work.<sup>22</sup> Even 10 855 is a low figure, in the context for the 30-hour test and a then population of 577 682 recipients. Again, it has been known for some time that the DSP return to work rate is very low.

### Destinations of DSP exits<sup>23</sup>



### Proposed reforms to more tightly target DSP

In the 2002-03 Budget, the Government announced revised assessment processes for DSP.<sup>24</sup> It is proposed to make two changes to the DSP qualification criteria:

- Firstly, change the continuing inability to work test from a 30 hour a week test to a 15 hour a week test; and
- Secondly, change the special inability to work test applied for those aged 55 or more, from referring only to the local labour market to considering the labour market generally, as is currently the case for those aged less than 55 years.

The changes are proposed to commence from 1 July 2003.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

### **Newstart allowance (NSA) will be the main alternative assistance option and comparisons with DSP**

New claimants and current DSP recipients who fail to gain access to DSP will be compelled to seek alternative income support payments, mainly NSA. There are significant differences in assistance between DSP and NSA. The May 2002 single NSA rate (\$369) is \$52 a fortnight less than the DSP rate (\$421.80). DSP is not taxable, NSA has stricter income and assets testing, DSP has no Mutual Obligation requirements and NSA only provides a health care card, not a pension concession card.

### **Costs/Savings**

The proposed changes to the DSP qualification criteria involve savings and there is some associated proposed additional expenditure. The estimated savings are \$7.176 m in 2002-03, \$13.9 m in 2003-04, \$120.0m in 2004-05 and \$279.2m in 2005-06.<sup>25</sup>

The proposal also commits to providing an additional 73 000 new places in disability employment assistance over three years at a cost of \$258 m:<sup>26</sup>

- 17 200 in disability employment services under the third (Commonwealth/State/Territories Disability Agreement (CSTDA));
- 37 600 in the Job Network;
- 14 700 rehabilitation places;
- 3 200 places in the Personal Support Program;
- 600 places in the Language, Literacy and Numeracy Program;
- access to Centrelink Personal Advisers to provide guidance and help for people with disabilities to prepare for work and access appropriate support services;
- better assessment of whether re-skilling can improve a person's work capacity; and
- additional \$33m to the States and Territories for mainstream vocational education and training places.

### **Will the extra assistance be effective and helpful?**

The funding of an extra additional 73 000 new places in disability employment assistance over three years refers only to existing programs. There is no reference to new or more innovative assistance and the performance of these programs in the past for the DSP recipient population raises the issue of their effectiveness. In the answer to a Question on Notice (No.821)<sup>27</sup> on 22 September 1999, it was detailed that for the 1998-99 year 10 855 DSP recipients had payment cancelled returning to work. In the current DSP population, only 9% have earned income and in the recent June 2001 Department of Family and

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

Community Services (F&CS) DSP<sup>28</sup> report, how many had returned to work in the 2000-01 year was unable to be determined (for systems reasons).

Current disability assistance programs have been subject to some criticism. Fay Rice (Head Injury Council of Australia) and Jenny Crosbie (Association for Competitive Employment) criticised the Job Network on 15 May 2002, as being ineffectual in locating people with a disability into employment.<sup>29</sup>

Perhaps the fact that on NSA activity testing and Mutual Obligation requirements will apply, leads the Government to assume that the existing programs will be more effective in placing people into employment?

### **How many DSP recipients will be affected?**

The proposed reduction from 30 to 15 hours a week is significant and will see reduced access to DSP for new claimants and a significant number will no longer qualify when reviewed. No figures are provided as to the numbers adversely affected under this proposal, probably because the 15 hour a week test has not been applied in any other income support payment, or especially to the DSP population. For current DSP recipients, no record is kept as to their work capacity at grant or review. An assessment of actual work capacity is not made, the only assessment being against the 30 hour a week requirement.

### **Review of current DSP recipients**

Currently, DSP recipients more able to work are reviewed every two years and those with a greater inability to work (ie. manifest) are reviewed every five years. The annual number of DSP reviews ranges from 30 000 to 90 000 a year, with an average of 50 000 a year. It is not possible to estimate the number of current DSP recipients who will lose qualification, but some broad generalisations will probably apply:

- those who have been on DSP for longer will be less likely to lose qualification, their prolonged absence from the labour market affecting their assessed work capacity;
- those who are younger and with lesser impairment levels will be more likely to lose qualification;
- the over 55s in poor labour market areas will find it harder to access/retain DSP, being assessed against the labour market generally;
- those with lower impairment levels will be more likely to lose qualification; and
- overall, many current recipients will lose qualification as the reduction from 30 to 15 hours a week is significant.

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*



### **Government's funding offer for the Commonwealth State Territories Disability Agreement (CSTDA) is contingent on the proposed DSP amendments being passed**

In the 2002-03 Budget, the Government proposed a funding offer to the States and Territories for a third (CSTDA).<sup>30</sup> The funding offer is for \$2.7 billion over five years from 1 July 2002 to 30 June 2007.

Under the CSTDA, in general terms, the Commonwealth provides employment services (including both open and supported employment services) and the States and Territories provide accommodation, community and respite care services. The Commonwealth provides much of the funding for State and Territory responsibilities.<sup>31</sup> Both the Commonwealth and the States, under the CSTDA, share some services, notably advocacy and research and development.

The funding offer is contingent on the DSP legislation in **Schedule 1** in this Bill being passed by the Commonwealth Parliament. The Minister for Family and Community Services, Senator the Hon. Amanda Vanstone made this clear in a media release *Record Support for People with Disabilities* on 14 May 2002.<sup>32</sup>

This is the first time that funding to the States and Territories under the CSTDA has been made contingent on the Federal Parliament passing DSP amending legislation. The States and Territories are powerless in this conundrum, having no direct influence on the Federal Parliament, whose decision may deny them access to funding for their programs.

### **Schedule 2 – Amendments relating to Newstart Allowance (NSA)**

#### **Proposed changes to the application of the work search activity test**

The Government announced in the 2002-03 Budget a proposed change to the application of the work search activity test.<sup>33</sup> The initiative is not estimated to involve any extra costs or provide any savings.<sup>34</sup> These proposed changes compliment the proposed changes in **Schedule 1** to the DSP program.

#### **Activity test history**

The *Unemployment and Sickness Benefits Act 1944* introduced the unemployment benefit from July 1945. The Consolidation Act of 1947 saw the introduction of the *Social Security Act 1947*. From 1945, for the unemployment benefit there has always been the expectation the recipient would be required to look for and accept work, ie. the 'work test'. From 1945 to 1979, the imposition and duration of penalties (ie. cancellation of payment or a non-payment period) for failure of the "work test" were at the discretion of the delegate. Under the *1947 Social Security Act*, if an unemployed jobseeker:

- left work voluntarily;
- was dismissed from employment for misconduct;

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- refused, without sufficient reason, to accept a suitable job offer;
- ceased to be registered with the Commonwealth Employment Service; or
- was not taking reasonable steps to obtain employment;

then unemployment benefit was not payable for a period of between 2 and 12 weeks.

So, there has always been a work search activity test attached to the unemployment benefit and legislative provisions for penalties.

### **Activity test – full time work or suitable work?**

The work search test requirements have never had a full-time work requirement, only suitable work. So, in theory, where a jobseeker is only capable of undertaking work for 3 hours a week, so long as he/she is looking for and willing to undertake such work, the activity test requirements of the SSA are met.<sup>35</sup>

### **Current jobseekers on NSA and Youth Allowance are subject to a work search activity test**

Currently, the activity test requires a jobseeker to:

- demonstrate that they are actively looking for suitable paid work;
- accept suitable work offers;
- attend all job interviews;
- agree to attend approved training courses or programs;
- never leave a job, training course or program without a good reason;
- give Centrelink accurate details about any income you have earned; or
- enter into and carry out a Preparing for Work Agreement if asked.

The Activity Test sits along-side Mutual Obligation<sup>36</sup> responsibilities and must be met to continue receiving payment. If any one requirement is not met an activity test penalty may be applied.

### **Activity test doesn't apply when the jobseeker is temporarily incapacitated for work**

Currently, where jobseekers are sick or have had an accident and are temporarily unable to work, they stay on NSA but are not required to meet the activity test requirements. Sub-section 601(2A) of the SSA allows an exemption from the activity test, where the jobseeker is medically not fit for work.<sup>37</sup> In applying this test, current guidelines use an 8 hour a week test. This states that to be exempt from the activity test the jobseeker is required to show:

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- they are unfit to do at least eight hours work a week; and
- have a medical certificate stating they are unfit for work.

Obviously, where a jobseeker has a prolonged incapacity for work preventing them from working for at least 8 hours a week (ie. 12 months or more), DSP would probably be the appropriate income support payment.

### **Jobseekers able to work for at least 8 hours a week or more to be asked to undertake certain activities**

The proposed legislation amends the SSA to provide for jobseekers who are unable to work for at least 8 hours a week or more to still be offered some other suitable activity such as rehabilitation, disability employment services<sup>38</sup> and the Personal Support Program.<sup>39</sup> This means that the activity test requirements and the attached potential for activity test breaches can be applied for jobseekers capable of less than 8 hours a week of work due to a temporary illness. This is unprecedented, with the current activity test not applying to jobseekers temporarily ill and not able to work for at least 8 hours a week or more.

Presumably this legislative amendment is considered necessary to compliment the proposed changes to the DSP legislation presented in **Schedule 1**, which will see some unsuccessful DSP applicants and former DSP recipients claim and be paid NSA and then subject to the activity test requirements. This amendment will prevent jobseekers with a disability and any other jobseeker escaping fully the requirements of the activity test by claiming they are temporarily unable to work for at least 8 hours a week.

## **Main Provisions**

**Item 2** – Commencement sets out a Table of commencement dates for various Items and Sections within the Schedules in this Bill.

### Schedule 1

**Item 10** alters the ‘work’ definition within the continuing inability to work test from a 30 hour to a 15 hour a week test. **Items 11 to 14** and also **Items 16** and **17** make consequential and complimentary changes to other sections in the SSA where the DSP 30 hour a week ‘work’ definition is used.

**Item 15** is a transitional provision making it clear the new proposed qualification requirements refer to new DSP claims lodged on or after 1 July 2003. Any person who claims up to an including 30 June 2003 would be tested against the current DSP

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

legislation, but any review subsequently conducted on or after 1 July 2003 would see the new proposed 15 hour a week 'work' definition applied.

## Schedule 2

**Schedule 2** proposes amendments to the activity test provisions that apply for NSA.

**Item 4** empowers the Secretary to make a jobseeker comply with the NSA activity test requirements, notwithstanding that the person may be incapacitated for work due to an illness or injury. This will prevent the presentation of a medical certificate, detailing that the person is unfit from work, from excluding a person in relation to activity test requirements.

**Item 5** puts a definition to the words 'suitable activity' contained in **Item 4** to mean an activity set out in subsection 606(1), being the subsection in the SSA for NSA Activity Agreements.<sup>40</sup> Under sub-section 606(1) the Secretary has the discretion to require a jobseeker to undertake one of a prescribed activity. Failure to comply can constitute a breach of the activity test requirements.

**Item 10** inserts transitional provisions setting out that the revised activity test provisions contained in **Schedule 2** apply on or after 20 September 2002.

## Schedule 3

**Schedule 3** proposes like amendments to **Schedule 2** but for the activity test provisions that apply for Youth Allowance.

## Concluding Comments

The issues of providing income support for people with a disability and determining who is and who is not 'incapacitated for work' is not a new one. Likewise, determining who should be encouraged and assisted to maximise their own self-support from employment is also, not a new issue. The Hawke Government attempted major and radical changes to the disability income support and assistance arrangements in November 1991. In 1991 under the DRP, IP was replaced by DSP and there was extra funding for rehabilitation and training. The issues driving the DRP changes then, are still the same that are driving the current government now, in respect of DSP, ie. burgeoning numbers and cost.

The proposal to reduce the inability to work test from 30 hours a week to 15 hours a week is significant, but, like the replacement of IP with DSP in 1991, the real long-term effectiveness of this change is unknown.

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

The Government has recently signalled its intention to release a discussion paper on further welfare reforms and a universal income support payment in June 2002<sup>41</sup>. In this context, perhaps an even more imaginative approach is needed for disability assistance? In reality, DSP basically provides income support, as do all the other fourteen different income support payments, for people of working age under the SSA.

Given the demonstrated ineffectiveness of current rehabilitation and training programs for DSP recipients, it is also problematic as to whether the extra funding for training and rehabilitation assistance will be effective.

## Endnotes

---

- 1 Ministerial Statement, *Social Justice for People with Disabilities*, The Hon. Brian Howe, MP, House of Representatives *Hansard*, 5 September 1991, p. 788.
- 2 Answer to a Question Without Notice about Disability Support Pension, Senator the Hon. Graham Richardson, Senate *Hansard*, 26 November 1991, p. 3310.
- 3 *Statistical Overview of DSS Clients*, Department of Social Security (DSS), June 1994, p. 4.
- 4 *ibid.*
- 5 *Number of Disability Support Pension Customers*, Knowledge Theme Team, Centrelink, May 2002..
- 6 1992-93 Budget, Budget Paper No. 3, Portfolio Program Estimates, p. 280.
- 7 2002-03 Budget, Budget Related Paper No. 1.8, Portfolio Budget Statements, Family and Community Services, p. 127.
- 8 *Characteristics of DSP Customers - June 2001*, Department of Family and Community Services, p. 4.
- 9 *Estimated Resident Population - September Quarter 2001*, Australian Bureau of Statistics (ABS), Catalogue No. 3.101.0.
- 10 *Characteristics of Disability Support Pension Customers*, *op. cit.*, p. 10.
- 11 *Characteristics of Disability Support Pension Customers*, *op. cit.*, p. 25.
- 12 *Characteristics of Disability Support Pension Customers*, *op. cit.*, p. 22.
- 13 *Characteristics of Disability Support Pension Customers*, *op. cit.*, p. 12.
- 14 *ibid.*
- 15 1993/94 DSS Annual Report, p. 101.
- 16 *Characteristics of Disability Support Pension Customers*, *op. cit.* p. 18.
- 17 *Characteristics of Disability Support Pension Customers*, *op. cit.* p. 17.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- 18 QON No. 1904, *Disability Support Pension Recipients*, House of Representatives, *Hansard*, 30 October 2000, p. 2167.
- 19 *Characteristics of Disability Support Pension Customers*, op. cit. p. 26.
- 20 *ibid.*
- 21 *ibid.*
- 22 QON No. 821, *People With Disability: Labour Market Assistance*, House of Representatives, *Hansard*, 22 September 1999, p. 10333.
- 23 *Characteristics of Disability Support Pension Customers*, op. cit. p. 26.
- 24 2002-03 Budget, Budget Related Paper No. 1.8, op. cit., p. 181.
- 25 *ibid.*
- 26 *Record Support for People with Disabilities*, Media Release by the Minister for Family and Community Services, the Hon. Amanda Vanstone, 14 May 2002.
- 27 QON No. 821, *People With Disability: Labour Market Assistance*, op. cit.
- 28 *Characteristics of Disability Support Pension Customers*, op. cit. p. 26.
- 29 *Employment Providers Doing Little To Help Disabled*, Media Release - Australian General News No. 6871, 15 May 2002.
- 30 2002-03 Budget, Budget Related Paper No. 1.8, op. cit., p. 179.
- 31 *Australia's Welfare 2001*, Australian Institute of Health and Welfare, p.285.

Table 7.10: CSDA funding of services by Australian governments, by service type (with administration expenditure), 1999-00 (\$m)

Service type	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	C'wealth	Australia
	<b>Amount</b>									
Accommodation support	417.80	334.84	133.49	117.78	89.72	40.13	16.28	7.03	—	1,157.07
Community support	75.70	62.67	31.47	7.86	46.75	4.71	4.68	3.81	12.57	250.21
Community access	60.35	106.31	24.34	14.42	5.40	8.01	1.73	1.07	0.07	221.70
Respite	33.82	28.56	20.81	19.53	5.15	3.96	2.16	0.73	4.05	118.75
Employment	—	—	—	—	—	—	—	—	220.99	220.99
Other support	5.58	22.91	4.21	20.47	6.64	0.29	0.07	0.08	13.74	73.98
<i>Subtotal</i>	<i>593.24</i>	<i>555.28</i>	<i>214.32</i>	<i>180.06</i>	<i>153.66</i>	<i>57.09</i>	<i>24.92</i>	<i>12.71</i>	<i>251.41</i>	<i>2,042.70</i>
Administration	67.51	58.01	32.30	7.20	5.79	2.86	4.02	1.32	24.70	203.71
<b>Total</b>	<b>660.75</b>	<b>613.29</b>	<b>246.62</b>	<b>187.25</b>	<b>159.46</b>	<b>59.95</b>	<b>28.94</b>	<b>14.03</b>	<b>276.11</b>	<b>2,246.41</b>

*Notes*

- Figures for community access services in Victoria do not include funds previously directed to independent living training services.
- Data provided by the Commonwealth are preliminary and cover 99% of Commonwealth-funded services.

Source: SCRCSSP 2001:Table 13A.8.

- 32 *Record Support for People with Disability*, Media Release, the Minister for Family and Community Services, Senator the Hon. Amanda Vanstone, MP, 14 May 2002:

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

These DSP changes will not only make significant additional funding available under the CSTDA for people with disabilities with high support needs, but will also provide many extra opportunities for people to find work and participate in the community.

Three things should be made crystal clear. First, the additional CSTDA money is contingent on the reforms being passed by Parliament. Second, the States and Territories will have to be true to their word and provide much greater accountability and transparency in relation to what they do with CSTDA funds. I have already made this point and the States and Territories, in principle, agree. Third, the States and Territories will also need to make the same percentage increase in their own funding contributions as the Commonwealth has made to all its CSTDA services, including employment services.

The days of the States simply taking the money and running are over. People with disabilities deserve much better accountability and transparency for all the funds spent under the CSTDA. They also deserve a better deal from the States and Territories. The Commonwealth has made disability issues a high priority for welfare reform. We have substantially increased outlays and commitments across all our areas of responsibility and renewed our commitment to States and Territories for a five year term for the third CSTDA.

33 2002-03 Budget, Budget Related Paper No. 1.8, op. cit. p. 183.

34 *ibid.*

35 601.(1) Activity test

Subject to subsections (1A) and (3), a person satisfies the activity test in respect of a period if the person satisfies the Secretary that, throughout the period, the person is:

(a) actively seeking; and

(b) willing to undertake;

paid work in Australia, other than paid work that is unsuitable to be undertaken by the person.

36 Mutual Obligation requirements affect jobseekers who are:

- aged 18 - 24 years and have been receiving Newstart or Youth Allowance for six months; or
- aged 25 - 34 years and have been receiving Newstart for 12 months.

Mutual Obligation requires participation in extra activities like a program or training course to improve chances of finding work. Mutual Obligation is not applied where the jobseeker is:

- in Intensive assistance or eligible for the Community Support Program;
- in full-time education;

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- ill for an extended period;
- required to care for another person or child;
- living more than 90 minutes from an activity (unless referred to Language, Literacy and Numeracy Program through distance education); or
- exempt from job search activities for other reasons.

37 601.(2A) Subject to subsections (2AA) and (2AB), for the purposes of subsection (1) and subparagraph (2)(a)(I), particular paid work is unsuitable for a person if and only if, in the Secretary's opinion: (b) it has been established that there is medical evidence that the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed.

38 *Disability Employment Services:*

Disability Employment Services are funded by F&CS and provide specialised employment help for people with disabilities. Disability Employment Services fall broadly into three main categories:

- open employment services;
- supported employment services (also known as Business Services); and
- vocational rehabilitation through the CRS.

*Open employment Services:*

Providing one or more of the following:

- support while training for a particular job - the training may be provided by the service or subcontracted to another agency;
- help in finding a job and starting employment in the open labour market; and/or
- continuing support once work has started.

*Supported Employment Services:*

Supported Employment Services employ and support people with disabilities, often in specialist working environments. This type of service approach is aimed at people with disabilities who want to work but choose to do so in a supported employment environment or who, because they have higher support needs, normally find it hard to find and keep a job. Wherever possible, employees in supported employment are provided with the additional skills and support needed to make the transition into open employment.

*Rehabilitation Services:*

F&CS contracts (pays) the CRS to provide vocational rehabilitation and injury management.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*



39 The Personal Support Program is proposed to replace the Community Support Program under the *Family and Community Services Legislation Amendment (Australians Working Together and Other 2001 Budget Measures) Bill 2002*. The Community Support Program supports job seekers who, because of their personal circumstances and special needs, are better served by forms of assistance other than those available in Job Network. Individual assistance can include:

- facilitating access to activities such as drug or alcohol rehabilitation programs;
- other activities addressing significant or debilitating personal development needs;
- counselling; and
- assistance with accessing and maintaining stable accommodation.

This assistance is aimed at:

- addressing and overcoming any personal barrier(s) sufficiently to make the person ready for Intensive assistance in the Job Network;
- facilitating a transfer to the most appropriate payment;
- securing employment, self-employment, an apprenticeship or a traineeship; and
- entering or returning to further education or training.

40 606.(1) Newstart Activity Agreements-terms

A Newstart Activity Agreement with a person is to require the person to undertake one or more of the following activities approved by the Secretary:

- (a) a job search;
- (b) a vocational training course;
- (c) training that would help in searching for work;
- (d) paid work experience;
- (e) measures designed to eliminate or reduce any disadvantage the person has in the labour market;
- (ea) subject to section 607A, development of self-employment;
- (eb) subject to section 607B, development of and/or participation in group enterprises or co-operative enterprises;
- (ec) an approved program of work for an unemployment payment;
- (f) participation in a labour market program;

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

(fa) participation in a rehabilitation program;

(fb) an activity approved by the Employment Secretary under the CSP;

(g) an activity proposed by the person (such as unpaid voluntary work proposed by the person).

- 41 *Lone parents: Swan's scare campaign continues*, Media Release, Senator the Hon. Amanda Vanstone, Minister for Family and Community Services, 27 May 2002.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*