



Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Bill 2005

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Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Bill 2005

Date Introduced: 9 November 2005

House: House of Representatives

Portfolio: Employment and Workplace Relations

Commencement: The main consequential provisions concerning the welfare to work initiatives for the Disability Support Pension (DSP) and the parenting payments (Parenting Payment – Partnered and Parenting Payment – Single) (PP) are to commence from 1 July 2006. Other commencement dates are set out in the Table in Clause 2 of the Bill.

Purpose

To provide the legislation to support the government's welfare to work reforms that were announced in the 2005-06 Budget.

Background

Schedule Disability Support Pension (DSP)

Introduction

The provisions in this Bill change requirements to qualify for the DSP. The Bill puts in place stricter criteria for assessing a person's 'continuing inability to work' which will tighten the DSP incapacity for work qualification requirements. The proposed reforms to the DSP program were announced in the 2005-06 Budget.¹ In tightening the qualification criteria for access to DSP by reducing the work incapacity test from 30 hours a week down to 15 hours a week, fewer persons with a disability will be able to access DSP. The vast majority of those not able to access DSP will be provided with 'enhanced' New Start Allowance (NSA).

Background

The government has attempted three times to change the DSP qualification requirements but the changes were not passed by the Parliament. The relevant Bills were:

- *Family and Community Services Legislation Amendment (Disability Reform) Bill 2002*. The [Bills Digest](#) for that Bill is No. 157 2001-02.²

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- *Family and Community Services Legislation Amendment (Disability Reform) Bill (No. 2) 2002*. The [Bills Digest](#) for that Bill is No. 3 2002-03.³
- *Family and Community Services Legislation Amendment (Disability Reform) Bill (No. 2) 2002 [No. 2]*. The [Bills Digest](#) for that Bill is No. 125 2002-03.⁴

Influences driving the changes to the DSP qualification rules

The ever increasing numbers of DSP recipients over the past 15 years is one of the main influences driving the Government in pressing for changes to the DSP qualification criteria. In June 1990 there were 316,713 DSP recipients⁵ and as at June 2005 there were 706,800 recipients.⁶

A background to increasing DSP recipient population is provided in the [Bills Digest](#) to the first of the above Bills (*Family and Community Services Legislation Amendment (Disability Reform) Bill 2002*).⁷

Another impetus for the proposed changes to the DSP program in this Bill arises from the recommendations from the [McClure Report](#) into welfare reform of July 2000. The McClure Report recommended the development of expected levels of participation for people with a disability and also a review of the capacity for work criterion (the 30-hour threshold) for people with disabilities, ensuring that any such criterion is in line with contemporary patterns of labour market participation.⁸

Expenditure and savings attached to these DSP reform proposals

The total estimated cost of the DSP reforms presented in the 2005-06 Budget were then \$562.3 million over four years. \$38.8 million in 2005-06, \$153.7 million in 2006-07, \$160.2 million in 2007-08 and \$209.6 million in 2008-09.⁹

The extra expenditure involved in this proposal is largely made up of the money allocated for training, rehabilitation and job enhancement programs and also on Job Network employment placement assistance for jobseekers as announced in the Budget. There are some program savings in having jobseekers on payments that cost less to administer and deliver, like 'enhanced' Newstart Allowance (NSA), rather than being on more expensive programs like DSP and PP – Single. See *'How will savings be realised with more persons paid NSA and less persons paid DSP and PP - Single?'* in this Digest.

The Government's estimate of reduced outlays for DSP and increased outlays for NSA, YA and other allowance payments were provided in an answer to a question on notice (No. W156-06) asked by Senator Penny Wong at Senate Employment, Workplace Relations and Education Legislation Committee estimates hearings for the 2005-2006 Budget:

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The estimated changes to income support payments administered by the Department of Employment and Workplace Relations as a result of the Welfare to Work, increasing participation of people with a disability measure are:

Estimated Payment Cost (\$m) - People with a Disability

Payment Type:	2006/07	2007/08	2008/09	3 Yr Total
Disability Support Pension	-443.978-	-766.265	-1094.508-	-2304.751
Mobility Allowance	27.963	34.23	40.602	102.795
Newstart	283.94	470.492	663.635	1418.067
Pensioner Education Supplement	-1.162	-1.985	-2.8	-5.947
Parenting Payment - Partnered	6.779	11.238	15.853	33.87
Parenting Payment - Single	14.066	23.603	33.703	71.372
Youth Allowance (Unemployed)	27.624	31.393	35.054	94.071 ¹⁰

Program savings in the DSP and Employment Entry payment (EEP) programs are more than offset by the proposed extra spending on employment placement assistance.

Current DSP 'continuing inability to work' test

The current DSP incapacity for work test as spelt out in section 94 of the *Social Security Act 1991* (SSA) is basically made up of two main components:

1. the person has an impairment (as measured by the DSP impairment tables) of at least 20 points or more; and
2. because of this impairment, the person has a continuing inability to work.¹¹

The current DSP definition of 'continuing inability to work' as defined by sub-section 94(2) of the SSA is:

the impairment is of itself sufficient to prevent the person from doing any work within the next 2 years.

'Work' is defined in sub-section 94(5) of the SSA as:

- (a) that is for at least 30 hours per week at award wages or above; and
- (b) that exists in Australia, even if not within the person's locally accessible labour market.

Just because a person has a an impairment of 20 points or more does not automatically mean they are qualified for DSP. They must also meet the continuing inability to work test. There will be many claimants with high impairment levels, for example 30 points or

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even 60 points, but they may also be able to do substantial levels of work (that is for 30 hours a week or more) and will therefore not qualify for DSP. For example, an accountant who has lost the use of both legs will have a high impairment rating but may also be able to work full-time, so is not qualified for DSP.

The continuing inability to work test is a subjective test. It is applied by the delegate and it is the delegate under the SSA who makes this decision, not the claimant's treating doctor or the Australian Government Health Service medical officer.

Current local labour market rule for DSP claimants aged 55 or more

Currently, section 94(4) of the *Social Security Act 1991* (SSA) allows for a special work test for claimants aged 55 or more, with the work test only against work in their locally accessible labour market.¹² For persons aged up to 54, work means any work the person could be reasonably able to do, regardless whether the work is locally available or not.¹³ This means the test is not against any work the person could reasonable do, regardless if it is locally available or not, rather only against work available in the local labour market. This has allowed many older aged DSP claimants in remote/regional areas, where the labour market is a lot more limited, access to DSP. This special labour market test for those aged 55 or more partially explains why rural and regional Australia has a higher proportion of DSP recipients than metropolitan Australia.¹⁴

This Bill proposes to remove sub-section 94(4) from the SSA and consequently will see fewer numbers of older aged DSP claimants qualifying for DSP.

Proposed changes to DSP continuing inability to work test

The Bill does not propose to make any changes to the DSP impairment tables or to the 20 points impairment rating requirement.

30 hour a week test to a 15 hour a week test

The Bill does propose to alter the 'work' definition in the continuing inability to work test by reducing the 30 hours a week test to a 15 hours a week test. This is the same change presented in the three previous DSP amendment Bills – see above. However, only the first of the previous Bills had a retrospective element to apply the 15 hour rule to all DSP recipients and claimants. This Bill, like the latter two earlier Bills, makes it prospective – in this case from 1 July 2006.

The change from a 30 hours a week test to a 15 hour a week test means that applicants will have a lower work capacity in order to qualify. The amendments in the Bill will therefore see reduced access to DSP for new claimants.

For the vast majority of current DSP recipients no record is kept as to their work capacity either at the grant or review stage. An assessment of actual hours of work capacity is not

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made, the only assessment being against whether they fall above or below the 30 hour a week requirement.

The proposed 15 hour a week test is only to apply to DSP claimants who claim on or after 1 July 2006 and also to those granted DSP between 11 May 2005 and 30 June 2006 at the time of their 2 or 5 year review. Every DSP recipient has a qualification and payment rate review every 2 or 5 years, depending on the severity of their inability to work, with the less severe being reviewed every 2 years.

Changes to definition of continuing inability to work

The Bill also proposes to change the definition of ‘continuing inability to work’ in subsection 94(2) of the SSA. The proposed replacement 94(2) is:

94(2) A person has a ***continuing inability to work*** because of an impairment if the Secretary is satisfied that:

(a) the impairment is of itself sufficient to prevent the person from doing any work independently of a program of support within the next 2 years; and

(b) either:

(i) the impairment is of itself sufficient to prevent the person from undertaking a training activity during the next 2 years; or

(ii) if the impairment does not prevent the person from undertaking a training activity—such activity is unlikely (because of the impairment) to enable the person to do any work independently of a program of support within the next 2 years. Note: For ***work*** see subsection (5).

The proposed new sub-section 94(2)(a) adds the qualification that ‘work’ means ‘work independently of a program of support’. This change of work definition makes it clearer that where a person needs significant support to achieve employment of more than 15 hours a week (for example attendant care, with toileting or eating), they will qualify for DSP. For some this expands opportunities for access to DSP.

The proposed amendments also mean that where the person is assessed as being unable to work for at least 15 hours a week at the time of assessment, but it is also assessed they could work for more than 15 hours a week with targeted assistance within the next two years they do not qualify for DSP. For some this reduces opportunities to access DSP.

New definition of ‘doing work independently of a program of support’

Item 5 in Part 1 of Schedule 2 provides a new definition of ‘doing work independently of a program of support’:

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A person is treated as doing work *independently of a program of support* if the Secretary is satisfied that to do the work the person:

- (a) is unlikely to need a program of support that:
 - (i) is designed to assist the person to prepare for, find or maintain work; and
 - (ii) is funded (wholly or partly) by the Commonwealth or is of a type that the Secretary considers is similar to a program of support that is funded (wholly or partly) by the Commonwealth; or
- (b) is likely to need such a program of support provided occasionally; or
- (c) is likely to need such a program of support that is not ongoing.

Interpretations of the meaning of ‘occasionally’ and ‘not ongoing’ may be a matter that is decided by the tribunals or the courts. There are some helpful case examples in the Explanatory Memorandum¹⁵ providing some clarity as to the intention of ‘occasionally’ and ‘not ongoing’, but interpretation may be subject to some dispute or contention as cases come close to the definition.

New and broader definition of ‘training activity’

The proposed sub-section 94(2)(b)(i) deletes the previous ‘educational or vocational training or on-the-job training’ and replaces it with ‘training activity’. Training activity is proposed to be defined as including:

- education,
- pre-vocational training,
- vocational training,
- vocational rehabilitation, and
- work-related training (including on-the-job training).

This is a much broader definition of training than the current ‘educational or vocational training or ‘on-the-job training’ definitions being:

"educational or vocational training" does not include a program designed specifically for people with physical, intellectual or psychiatric impairments;

'on-the-job training' does not include a program designed specifically for people with physical, intellectual or psychiatric impairments;¹⁶

The current ‘educational or vocational training or on-the-job training’ definition in 94(2)(b)(i) deliberately and specifically excluded any reference to programs designed specifically for people with physical, intellectual or psychiatric impairment. This

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provision goes back to the introduction of DSP in November 1991 and was done so that where it was considered a claimant could be rehabilitated and/or trained to work for more than 30 hours a week within 2 years, they could initially gain access to DSP but would then be taken off DSP (over the next two years), as they were exposed to that appropriate rehabilitation and/or training. In most cases this exposure to rehabilitation and/or training has not happened and these claimants have remained on DSP.

The proposed changes to the DSP qualification requirements means that where a person is assessed as not being able to work for at least 15 hours a week now, but is considered to be able to work for more than 15 hours a week in the next two years without ongoing assistance. Access to DSP will be more difficult.

Schedule 1 – Part 1 - New definition of ‘partial capacity for work’

The Bill proposes to insert a new definition of ‘partial capacity to work’ using a new section 16B. This will be used for those assessed as being able to work for more than 15 hours a week (and therefore do not qualify for DSP), but are able to work for less than 30 hours a week independently of a program of support and where no training or assistance program will increase their work capacity to over the 30 hours a week in the next two years. These persons are to be provided with ‘enhanced’ NSA/YA or PP.

Comment

There has not been nor has there been a need for a definition of ‘partial capacity for work’ in the SSA before. Where a person did not meet the requirement of being unable to work for 30 hours a week or more, it was just assumed that they had a sufficient work capacity to work part-time work or even for some full-time.

Even under the new lower qualification requirement of 15 hours a week work, a DSP qualified recipient may work 14 hours a week and continue to receive DSP (subject to the income test being met), so long as the recipient is unable to work for 15 hours a week or more. This new ‘partial capacity for work’ definition in the SSA is likely to be used for those recipients on ‘enhanced’ NSA and PP, who can be required to undertake work enhancement activities like training, job search activities and even a program of work. These persons might have work enhancement activities modified or reduced recognising their reduced work capacity.

Second assessment of continuing inability to work after two years - qualification to DSP

Introduction

The proposed new section 94A would allow qualification for DSP where a two year income support recipient (not on DSP) has a second assessment and is assessed as being unable to work for at least 15 hours a week.

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Background

The proposed amendment to the DSP ‘continuing inability to work test’ discussed above relates to being unable to work for at least 15 hours a week at assessment and also for the next two years without ongoing assistance. This could apply in cases where a person paid NSA and receives some work enhancement assistance over that two year period, and is again assessed as being unable to work for at least 15 hours a week. In this sort of case, the person could qualify for DSP. This access to DSP on the second assessment is not to be retrospective, only prospective, that is from the date of the second assessment.

To qualify for DSP under the proposed section 94A there are other requirements that will also need to be met:

- the Secretary is satisfied that the person has a current continuing inability to work (that is, is unable to work for at least 15 hours a week or more),
- is currently in receipt of an income support payment (other than DSP),
- has been continuously in receipt of that payment for two or more years,
- it is two years or more since a previous assessment as to continuing inability to work requirements for DSP has been made, and
- the person has complied with any training activities required of the person during the two year period.

Comment

This proposed new section 94A is beneficial legislation in that it will prevent rolling non-qualification for DSP for claimants who are repeatedly assessed as being unable to work for 15 hours a week but able to work for more than 15 hours a week in the next two years, and yet after intervention in that two years, are again similarly assessed.

DSP recipients and claimants – overview of who will be affected when and how?

Generally speaking the tightening of the DSP qualification requirements will see fewer people with a disability qualifying for DSP and being alternatively provided with ‘enhanced’ NSA. The Australian Council of Social Service (ACOSS) has predicted that the changes to the DSP qualification requirements will have a greater affect on people with a disability in regional/rural areas.¹⁷ In response, the Government has suggested that many of these persons will be better off as they are encouraged and supported to maximise their own self-support from employment.

Current DSP recipients

Those who claimed DSP on or before 11 May 2005 will not be affected by the continuing inability to work changes. They will continue to be assessed and reviewed against the current inability to work test, being the 30 hours a week test.

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Persons who claim DSP from 11 May 2005 to 30 June 2006

Persons who claimed DSP between 11 May 2005 to 30 June 2006 will also be assessed against the current continuing inability to work for 30 hours a week test. However, when they are subsequently reviewed (every two or five years) it will be against the proposed 15 hour test. Where it is later assessed that they do not meet the 15 hour test, they will be transferred to 'enhanced' NSA and required to seek part-time work.

Persons who claim DSP on or after 1 July 2006

Persons who claim DSP on or after 1 July 2006 will need to meet the proposed 15 hours a week test. Where a claimant is not qualified for DSP, as they do not meet the 15 hour a week test, and it is assessed that they can work for between 15 to 29 hours a week, they may qualify for 'enhanced' NSA and will be required to seek part-time work.

How many might be affected by this tightening of the DSP incapacity for work test?

Some estimates of the impact of this policy change have been provided in a response to a Question on Notice at Senate Estimates for the 2005-06 Budget from Senator Penny Wong by the Department of Workplace Relations (DEWR):¹⁸

Senator Wong asked:

Question: Out of the 70,000 grants a year for Disability Support Pension, how many fall between the 15-29 work capacity cohort?

Answer: Approximately 14,200 of the 73,500 people granted DSP between 20/9/03 and 20/9/04 have an assessed work capacity of 15 to 29 hours per week.

Therefore approximately 20 per cent of DSP claimants who claimed from 11 May 2005 to 30 June 2005 may be affected. It may therefore also be estimated that for those who claim from 1 July 2006, about 20 per cent might be affected.

Some further figures about anticipated numbers of DSP recipients and new claimants affected were supplied in answers to further Questions on Notice from Senator Wong at 2005-06 Budget estimates – see below:

Senator Wong asked:

How many people who would previously have been on the DSP will be on enhanced Newstart under the Welfare Reform package?

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Answer:

The estimated costs of the Welfare to Work package included, amongst other things, the impact of the following number of people who would have been on DSP, but will instead be on Newstart Allowance, as a result of the *Welfare to Work* package:

- 34,400 in 2006-07;
- 57,900 in 2007-08; and
- 75,700 in 2008-09.

These costing estimates include people who will be granted DSP between 11 May 2005 and 30 June 2006 and will be reviewed with some (those with 15-29 hours per week capacity) transferring to Newstart Allowance as a result of the review process. These estimates represent annual average impacts for the relevant year, and have been rounded to the nearest 100.¹⁹

Schedule 2 - Part 2, Schedule 3, Schedule 4 - Part 3, Schedule 6 – Part 2, Schedule 9 and Schedule 22 – Part 6 – Seasonal work preclusion period

Introduction

The government announced in the 2005-06 Budget the extension of the seasonal work preclusion period (SWPP) to all the income support payments for the working aged and a broadening of the SWPP provisions to also refer to highly paid contract and intermittent workers.²⁰ Various Schedules and Parts of Schedules in this Bill propose to amend the SSA so that the SWPP will also apply to DSP, Carer Payment, PP - Single, Austudy payment and Sickness Allowance from 20 September 2006.

Origins of the SWPP**Background**

The SWPP was originally introduced with the passage of the *Social Security and Veterans' Affairs Legislation Amendment (Budget and Other Measures) Act 1997*. See [Bills Digest No. 138 1997-98](#).²¹ The original SWPP (described below) was designed to prevent high income seasonal workers, intermittent and contract workers from accessing income support payments between seasons or between contracts.²² It was designed to address the issue of seasonal abattoir workers in northern Australia working in remote locations for six months of the year then claiming unemployment payments for the other six months. These workers had very little prospect of finding alternative employment in the six month lay-off due to their remoteness. Often these workers were paid penalty rates when working, recognising that their work was seasonal. The same issues applied to other seasonal workers like seasonal fishing industry workers.

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Current SWPP rules

Currently the SWPP applies to the following payments:

- newstart allowance
- partner allowance
- mature age allowance
- youth allowance – unemployed jobseekers
- widow allowance
- parenting payment - partnered

What is seasonal work?

The Secretary determines what work is seasonal work under sub-section 16A(2) of the SSA and the determination is a disallowable instrument placed before the Parliament.²³ Commonly, seasonal work refers to work that is performed for only part of the year and is often linked to primary production.

What is the SWPP length?

The SWPP period a claimant might have to serve is calculated on an individual basis. The calculation takes into account the number of weeks worked, the period of weeks since they last worked prior to claiming assistance (that is the self-support weeks) and how much earnings the person earned when working, calculated against average ordinary time weekly earnings. Often seasonal workers are provided with a lump-sum payment or a retainer at the end of the season and this can also be regarded when calculating the SWPP.

The SWPP only refers to seasonal work performed in the six month period prior to the date of claim for payment. The SWPP may not apply where the claimant is in severe financial hardship that is unforeseen.

Proposed change to the SWPP

Part 2 of Schedule 1 proposes to expand the definition of seasonal work for the purposes of the SWPP to include work that is:

- intermittent,
- is less than for 12 months,
- was for a specific task, and
- for which the person did not include any leave entitlements.

This is an expansion of the definition of seasonal work and will see the SWPP applied to a greater range of casual work.

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Anticipated savings to government

The 2005-06 Budget papers anticipate the extension of the broadened SWPP (and the expansion of the Income Maintenance Period (IMP)) provisions to all of the current income support payments for persons of working age will save \$43.0 million in 2006-07, \$62.1 million in 2007-08 and \$63.8 million in 2008-09.²⁴ These savings of \$176.1 million over four years are for all the payments proposed to gain the SWPP and the IMP. No discrete savings figure for the expanded SWPP alone was provided in the Budget papers.

Comment

Currently the SWPP is mainly applied to NSA/YA and the expansion of the SWPP to DSP, Carer Payment, PP – Single, Austudy payment and Sickness Allowance will mean the SWPP will apply to all income support payments for the working aged.²⁵

It is not likely that there will be many DSP claimants who will be subject to the SWPP, as it is probably not likely that many DSP claimants, who qualify under the 15 hour a week rule, will also have been seasonal or highly paid contract or intermittent workers. The other payments will probably have a higher incidence of the SWPP being applied.

Schedule 4 - Parenting Payment

History

Parenting Payment was introduced in March 1998 by the merger of Parenting Allowance (PgA) and Sole Parent Pension (SPP).

PgA had been an income support payment for partnered parents who were the primary carer for their children. It was paid at the same rates and under similar income and asset tests to allowances such as Newstart Allowance or Sickness Allowance.

SPP had been an income support payment for single parents caring for dependant children. It was paid at the higher pension rate and under the more generous pension income and assets tests.

The new Parenting Payment brought income support for all low-income parents who were primary carers together. However the rates and eligibility conditions for the two superseded payments were largely unchanged resulting in separate rate and eligibility structures for Parenting Payment - Single (PP - Single) and for Parenting Payment – Partnered (PP – Partnered).

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McClure Report

In July 2000 the final report of the Reference Group on Welfare Reform was delivered to Senator Newman the then Minister for Family and Community Affairs.²⁶ The Group, chaired by Patrick McClure of Mission Australia, had been commissioned in October 1999 to advise the Government on possible approaches to welfare reform.

The [McClure Report](#) recommended the extension of a form of mutual obligation to parents receiving income support that took account of their caring responsibilities, while preparing them for workforce re-entry. Recommendation D12 read as follows:²⁷

Implement, with phased transitional arrangements, a participation model of income support for parents with the following features:

- The substantial caring responsibilities of those with children under school age (six years of age) and those caring for a child with a disability be regarded as meeting participation requirements.
- Parents with primary school aged children (six to thirteen years of age) be required to attend an annual compulsory interview to discuss their current and future capacity for increasing participation.
- Parents could choose to enter into a voluntary participation plan, which linked them to available assistance for education, training, employment and other forms of participation. Parents of high school aged children (thirteen and over) be required to enter into a Participation Plan, including job readiness and needs assessment, part-time job search, part-time employment or part-time preparation for paid employment (including education, training, or other relevant forms of participation).

Parents receiving income support had been able to continue for many years without actively preparing for self-support at a time when they no longer had dependent children. Participation in measures to assist them to prepare for that eventuality have been entirely voluntary. Many parents, when their children reached 16 years of age, had difficult transitions back into the workforce, because of the erosion of their skills and loss of networks.

The McClure Report refers to a pilot study by the Department of Family and Community Services (FACS) that suggested that few of this group participate voluntarily in programs like the Jobs Education and Training Program (JET). The results suggested that there is a low uptake in voluntary interviews, making them 'relatively ineffective'. On the other hand, compulsory interviews were found to be valuable and were supported by a majority of participants. The McClure Report concluded that:

'For most groups, it appears as if a structured approach within a requirement framework provides the best measure of assistance for Parenting Payment recipients.'²⁸

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Australians Working Together Package

The Government's response to the McClure Report was the 'Australians Working Together' Package (AWT) in the 2001-02 Budget. The Government addressed the McClure Report recommendations in the following form:

- From September 2002, people who receive PP and whose youngest child was aged 12 to 15 years were required to attend an annual interview with a Centrelink Personal Adviser. From July 2003 they were expected to undertake part-time activity of around six hours each week. A system of participation agreements and participation agreement breach penalties was introduced. Access to approved work programs (Work for the Dole) and the supplement of \$20.80 per fortnight was also provided.
- From July 2003, all people who received PP and whose youngest child was aged 6 to 15 years were required to attend annual interviews at Centrelink.
- A New Transition to Work program to help people return to paid work after long absences was introduced. It built on the Jobs, Education and Training (JET) and Return to Work programs processes.
- Additional assistance with child care was provided.

Those parts of the AWT package requiring legislative amendments were delayed by opposition to the package in the Senate. The amending legislation entitled the *Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2003* introduced into the Parliament in May 2002 but was not passed until March 2003. See [Bills Digest](#) No. 159 2001-02.²⁹ The AWT Bill required that an evaluation of the AWT package be conducted. The report of this evaluation was released in October 2005.³⁰

2005-06 Budget – PP reforms in Welfare to Work

The AWT package was the first round response by the Government to the McClure Report. The 2005-06 Budget provided a second round of reforms to Parenting Payment. Minister Andrews said this of the reforms in his [press release](#):

The 2005-06 Budget invests \$389.7 million over four years to help parents into work. A significant increase in employment services will be combined with changes to income support payments and participation requirements for single and partnered parents with school-aged children. These changes are designed to assist, support and encourage parents to return to work when their children are old enough to go to school. "The changes are designed to increase the workforce participation of parents and reduce their dependency on welfare. The best way to help parents and their children is to help the parents find a job. This change is in step with current community attitudes," said Mr Andrews. "Children growing up in a jobless household often face greater disadvantage in their community and an increased chance of becoming welfare-dependent as they leave school."³¹

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The Budget announcement proposed the following changes to Parenting Payment:³²

- People receiving Parenting Payment on 1 July 2006 would be required to seek part-time work of at least 15 hours per week once their youngest child reached the age of six years. They would be able to continue to receive Parenting Payment until their youngest child reached the age of sixteen years.
- People applying for Parenting Payment after 1 July 2006 would only qualify until their youngest child reached the age of six years. At that time they would transfer to 'enhanced' NSA and be required to seek part-time work of at least 15 hours per week.
- Parents with a youngest child aged between six and fifteen years applying for income support from 1 July 2006 would go straight on to 'enhanced' NSA with the requirement to seek part-time work of at least 15 hours per week.
- The requirement to seek work could be satisfied by job search, participating in Job Network or other services or other mutual obligation activities.
- The work requirement would be modified in special family circumstances such as having a child with a disability.
- Sole parents receiving 'enhanced' NSA would have access to Pharmaceutical Allowance, a Pensioner Concession Card and Employment Entry Payment.
- The NSA income test would be eased by reducing the 70 per cent taper rate to 60 per cent³³ and increasing the threshold at which it comes into effect from \$142 per fortnight to \$250 per fortnight.

These reforms are the subject of the present Bill.

Post 2005-06 Budget Developments

Since the initial announcement the package has been modified in a number of ways. In September 2005 changes to the Carer Payment were announced which broadened the eligibility for carers of children with severe disabilities. The change was in part prompted by the need to provide for PP recipients who would otherwise be required to seek part-time work under the welfare to work measures announced in the Budget³⁴. As this measure is not included in the present Bill, it may be expected to be dealt with in the form of amendments to this Bill or in a subsequent Bill.

The following changes were announced just before the Bill was introduced to Parliament and are included in this Bill:

- Sole parents will be able to remain on Parenting Payment until their youngest child reaches the age of eight years. They will however still be required to seek part-time work once their youngest child reaches six years of age.³⁵
- Parents on NSA or Youth Allowance (YA) or other allowance payments and who are the 'principal carer' or are a 'registered and active foster carer', or a 'home educator'

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or a 'distance educator', as defined in **Schedule 1** of this Bill, will automatically be exempt from the part-time work requirements. Sole parents in this category will receive a higher rate of NSA/YA, which will bring their income support payment up to the equivalent of the PP –Single rate.³⁶

- The legislative definition of unsuitable work will be adjusted for parents so that:

'Parents will not have to accept a job if there is no appropriate schooling or outside school hours care available at the times they are expected to undertake the work, or if the costs of outside school hours care make the job financially unviable.

Nor will parents have to accept a job if the travel to and from the place of employment is unreasonably difficult, that is, if it is too long or expensive. The guidelines to the Act will state that a general travel time rule of more than 60 minutes is to be considered unsuitable for commuting between home and work and vice versa. The job seeker will not be required to accept job offers exceeding the 60 minute travel rule.

Job seekers will also not be expected to take a job if their travel costs are likely to exceed 10% of their gross wage.³⁷

Senate Committee referral

On 9 November 2005 the Senate referred the Bill to the Senate Community Affairs Committee for inquiry and report by 28 November 2005.³⁸ The Committee received over fifty submissions.³⁹ The Committee's [report](#) was published on 29 November 2005.⁴⁰

Reduced expenditure on Parenting Payment

The package of measures designed to address welfare to work for parents involves expenditure of \$389.7 million over 4 years.⁴¹ The changes to PP eligibility will result in reductions to the forward estimates for that payment and increases to the forward estimates for those payments such as NSA. Estimates provided in the Budget Estimates.⁴²

The estimated changes to income support payments administered by the Department of Employment and Workplace Relations as a result of the Welfare to Work, increasing participation of parents measure are:

	Estimated Payment Cost (\$m)			
Parents – Income Support Payment:	2006/07	2007/08	2008/09	3 Year Total
Disability Support Pension	0.364	29.117	46.526	86.007
Newstart	186.704	518.216	818.088	1,523.008
Pensioner Education Supplement	-6.370	-6.565	-6.716	-19.651
Parenting Payment Partnered	75.039	78.251	75.077	228.367
Parenting Payment Single	-302.556	-748.566	-1,191.062	-2,242.194

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Note: 1 Slight discrepancies may occur between the sum of the three years and the total figure due to rounding. 2 There are no administered costs for income support payments in 2005-06.

This data indicates that the increased expenditure identified in the Budget will in large part be offset by the reduced expenditure in the PP.

Major Changes

Participation Requirements

The adjustments to the original package in relation to the obligations required of ‘principal carer’ parents may arguably significantly influence the effectiveness of the reform program. See also discussion below in relation to **Schedule 5 – Part 2 (YA), Schedule 7 – Part 2 (NSA), Schedule 10 – Part 1 (Special Benefit) – Participation.**

Exemptions

The Bill provides for exemptions from the participation requirements for NSA and PP where:

- Recent domestic violence has occurred,
- Care of children with disabilities are involved,
- The parent is a foster carer,
- The parent is a Home educator or distance educator, or
- The parent fits into a class of people determined by legislative instrument.

The last group could include people in a diverse set of circumstances according to the DEWR submission to the Senate inquiry.⁴³ The Explanatory Memorandum specifically mentions that principal carers with large families are likely to be included.⁴⁴

Unsuitable work

The definition of unsuitable work is also modified in the Bill to take account of ‘principal carers’ particular circumstances, particularly in relation to access to appropriate child care and limits to travel times and costs. The DEWR submission gives some detail on how this is likely to operate.⁴⁵

Suitable activities

At present section 501B(2) of the SSA sets out the approved activities that can be used to satisfy the requirements of a Parenting Payment participation agreement.

The Bill replaces this approach with a statement that a person can be required ‘to undertake activities that the Secretary regards as suitable for the person’ in new section 501A.(1) – see discussion about Schedule 5 – Part 2, Schedule 7 – Part 2, Schedule 10 –

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Part 1 – Participation in this Digest. The Secretary may however determine by legislative instrument requirements that cannot be made under an activity agreement. According to the Explanatory Memorandum this new approach is ‘less restrictive and more flexible’ but ensures that jobseekers are ‘not permitted or compelled to undertake activities that are not consistent with the Government’s policy intention’.⁴⁶

At least 15 hours but up to 25 hours

The original Budget announcement made it clear that ‘principal carers’ will be required to seek part-time employment of at least 15 hours per week.⁴⁷ However, the Bill makes it clear that they may be required to undertake work of up to 25 hours per week provided it was not unsuitable work and that was within their capacity (taking into account such things as child care and travel). This has come as something of a surprise to some interested sections.⁴⁸

Reduced level of income support

ACOSS and others have expressed reservations about the shift from pensions to benefits for many people with disabilities and for sole parents. In their response to the Government proposals in July they had this to say:⁴⁹

We acknowledge and support the main elements of the investment needed to get jobless people into employment. However, as it is presently structured, the “Welfare to Work” package has critical weaknesses that will reduce the employment gains and push many people into poverty.

It is of deep concern to us that the Welfare to Work package diverts many future applicants for income support from pensions down to lower allowance payments – sharply reducing their income support...

The Government has acknowledged that the present division between pensions and allowances for people of workforce age is unfair and discourages participation in the workforce. By making pensions harder to get in future, the Welfare to Work package entrenches these problems. There is no need to reduce people’s future payments to help them into employment.

The National Council of Single Mothers and their Children in their submission to the Senate inquiry had this to say on the same subject:⁵⁰

The legislation will increase financial hardship and reduce social security protections for vulnerable families. Children in single parent households will have reduced access to parental care and income support can be more easily stopped with fewer protections from unfair and ill-informed decisions. The legislation seriously erodes the social safety net for single parents and their children and the consequences of this will have the highest adverse impact on the children whose families are further impoverished.

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Impact on those affected

The Government view of the impact of these Welfare to Work changes is clearly expressed in the second reading speech:

Moving from welfare to work helps people achieve higher incomes and a better standard of living, participate in mainstream social and economic life and achieve a better future for their families. It also reduces the obligation on taxpayers, creating a positive cycle of work, higher incomes and more sustainable and better targeted welfare expenditure.⁵¹

The Government has also provided estimates on the impact of the changes on the number of people who are expected to be unable to qualify for PP and the payments they are likely to receive instead.⁵²

- In 2006-07, it is estimated that around 23,900 sole parents will receive an alternative payment (to Parenting Payment Single) as a result of the eligibility changes associated with the Welfare to Work reforms. This estimate increases to around 63,100 in 2007-08 and around 95,100 in 2008-09.
- The estimated number of partnered parents who are expected to receive an alternative payment (to Parenting Payment Partnered) is around 7,770 in 2006-07, increasing to around 19,400 in 2007-08 and 26,100 in 2008-09. For costing purposes only, this group were treated as if they were remaining on Parenting Payment Partnered after their youngest child turns six rather than moving to another payment. As a consequence, there is no breakdown of customers who were estimated to receive an alternative payment to Parenting Payment Partnered (see part (d)). The vast majority of this group will receive Newstart Allowance, which has the same rate of payment as Parenting Payment Partnered, and therefore, this will have a negligible cost impact.
- In 2006-07, it is estimated that around 100 people will receive no payment as a result of the proposed changes to Parenting Payment eligibility rules. This estimate increases to 1,600 in 2007-08 and 4,800 in 2008-09.

Please note that these figures are annual averages and have been rounded to the nearest 100.

(d) In the main, people who do not meet the new eligibility requirements for Parenting Payment may be eligible for:

- Newstart Allowance,
- Austudy,
- Disability Support Pension, or

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• Carer Payment.

Customers estimated to receive alternative payments other than PPS

Payment	2006/7	2007/8	2008/9
Newstart Allowance	21,800	57,300	86,200
Austudy	900	2,500	3,800
DSP	1,000	2,700	4,100
Carer Payment	200	600	1,000

Notes: 1 These figures have been rounded to the nearest hundred, and therefore components may not add to the total provided in the first dot point of part (c).

1 These figures are annual averages.

1 These estimates do not include estimates of alternative payments to PPP (see the answer to the second dot point of part (c)).

It should be noted that this data was provided before the post-Budget modifications to the measures were announced.

Analysis of the impact of the changes was also undertaken by Ann Harding and colleagues at the National Centre for Social and Economic Modelling (NATSEM). Their research was summarised as follows:⁵³

This report analyses the impact of the proposed changes upon the disposable incomes and effective marginal tax rates of these two groups of people. It shows that the disposable incomes of sole parents can be up to about \$100 a week lower under the proposed new system than under the current system and that the losses for people with disabilities could be as high as \$120. It also finds that effective marginal tax rates will be sharply increased under the proposed new system over a reasonably wide range of earned income for these two groups of people.

A further paper from NATSEM examined options to reduce the adverse effects identified. For sole parents the paper suggested that those receiving allowances rather than parenting payment have access to the pensioner tax offset rather than the allowance tax offset. This would both reduce the drop in disposable income and the increase in effective marginal tax rates resulting from a shift from parenting payment to an allowance.⁵⁴

ACOSS has also provided some analysis of regional distribution of the impact of the changes.⁵⁵ The report concluded that:

This research indicates that people living in regional Australia, in the north and west of the country, and in Coalition electorates will be disproportionately affected by the

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cuts to future social security payments proposed in the Government's Welfare to Work policy...

ACOSS supports the Government's objective to assist more single parents and people with disability into employment. However, it is not necessary to cut people's future income support payments to achieve this goal. The proposed cuts are actually counterproductive. They would further constrain people's ability to live in areas where their job prospects are better and would drive more recipients into areas where fewer jobs are available.

How will savings be realised with more persons paid NSA and less persons paid DSP and PP - Single?

The Budget papers indicate that most of those persons unable to access DSP because they can work for more than 15 hours a week, will be provided with 'enhanced' NSA as an alternative income support payment. Similarly with those no longer provided with PP – Single. However, despite more being paid NSA with the reduction in numbers being paid DSP and PP, savings will be realised for several reasons:

- DSP and PP – Single is paid at a higher rate than NSA, even the 'enhanced' NSA
- The DSP and PP – Single income test is less stringent than the NSA income test with a higher free area⁵⁶ and lower taper rate,⁵⁷
- Pensioner Education Supplement (PES) is paid attached to DSP but not attached to NSA (note: some NSA recipients with a partial capacity for work or are a 'principal carer' will continue to qualify for PES – see below),
- DSP attracts the Pensioner Concession Card (PCC) which provides access to a wider range of concessions than the Health Care Card (HCC) which is provided with NSA (note: some NSA recipients with a partial capacity for work or are a 'principal carer' will continue to qualify for a PCC),
- Reduced outlays on [Pharmaceutical Allowance](#) (PhA) as most allowance payment (for example, NSA, YA, Sickness Allowance, Widow Allowance) recipients do not qualify for PhA (note: some NSA/YA recipients with a partial capacity for work or are a 'principal carer' will continue to qualify for a PhA), and
- Reduced outlays on Employment Entry Payment (EEP) as the rate of EEP paid to DSP recipients is higher than for other payments.

DSP is paid at a higher rate than NSA

The current fortnightly maximum single rate of DSP is \$488.90, whereas the fortnightly maximum single rate of NSA is \$404.50 - a difference of \$84.40 per fortnight.

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Tighter income testing on NSA than on DSP

Currently the DSP the income test for a single person has a free area of \$124 per fortnight and income above this reduces the maximum pension rate by 40 cents in the dollar to a cut-out limit of \$1 360.75 a fortnight.

For NSA the income test free area is \$62, then income from \$63 to \$142 reduces the rate by 50 cents in the dollar and income above \$142 reduces the rate by 70 cents in the dollar to a fortnightly cut-out limit of \$655.29.

The 2005–06 Budget proposed the 50 cents in the dollar withdrawal rate apply to income from \$63 to \$250 and for income above this to reduce the rate by 60 cents in the dollar. The amendments to the SSA to effect this are largely presented in Schedule 19 of this Bill.

Pensioner Education Supplement (PES) payment and qualification

The PES of \$62.40 per fortnight is payable to DSP recipients undertaking the requisite amount of study but it is not payable to NSA recipients doing the same study.

This Bill proposes that former DSP and PP – Single recipients who had been receiving PES prior to moving on to NSA or YA will be able to retain their PES, until they complete their present course of study. Also this Bill proposes that former DSP recipients, who claimed between 11 May 2005 and 1 July 2006, will continue to receive PES as will former PP – Single recipients who move to NSA/YA, because their youngest child reaches the age of eight years.

Other allowance recipients, who would formerly have qualified for DSP or PPS will not have access to the PES if they undertake the requisite study.

Schedule 2 –Part 3 Approved program of support supplement

This part of the Bill provides for the payment of a participation supplement to DSP recipients participating in an approved program of work. The participation supplement has its origins as an extra payment for those undertaking a [Work for the Dole \(WftD\) program](#). The WftD supplement was introduced when the WftD legislation was passed, see [Bills Digest](#) No. 136 1996-97.⁵⁸ The WftD participation supplement is currently \$20.80 per fortnight. This Bill provides for the payment of the same amount to DSP recipients.

The original purpose of the WftD participation supplement was to assist persons undertaking a WftD program meet the extra costs of participation, for example transport, clothing, food.

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The participation supplement to DSP recipients undertaking an approved program of work was not provided for in the 2005-06 Budget.

Given the new 15 hours a week test (for new claims from 1 July 2006), most of the DSP recipients who will probably participate in an 'approved program of work' will be those recipients granted DSP before 11 May 2005 who originally qualified under the 30 hours a week incapacity for work rule. The participation supplement will provide an added financial incentive for DSP recipients to participate in a program of work.

Schedule 5 Part 1, Schedule 7 – Part 1 and Schedule 22 – Part 1 – RapidConnect

Introduction

RapidConnect was announced in the 2005-06 Budget.⁵⁹ This Bill proposes to apply the new RapidConnect requirements to unemployed jobseekers claiming either NSA (Schedule 7 – Part 1) or YA (Schedule 5 – Part 1). RapidConnect was explained by the Minister for Workforce Participation, the Hon. Mr Peter Dutton, MP on 10 May 2005 in the context of the 2005-06 Budget.⁶⁰ Under the current NSA/YA claim and payment commencement processes, it can take as much as 3 – 4 weeks before a jobseeker claiming NSA/YA registers with a Job Network provider.

Essentially the revised NSA/YA 'RapidConnect' claim processes presented in this Bill are designed to require an unemployed jobseeker claiming NSA/YA to register with a Job Network provider as a jobseeker and to sign up to a job search activity agreement at the earliest time in the NSA/YA claim process, even before actually lodging a claim for NSA/YA with Centrelink. The proposed changes in this Bill will make it a qualification requirement that the jobseeker register with a Job Network provider. In some cases, even the date of commencement of NSA/YA payment may be delayed where the registration with the Job Network provider is delayed.

The Government's argument for these revised claim processes is essentially presented in the Explanatory Memorandum; that is the jobseekers chances of being assisted and provided with employment are enhanced the earlier the jobseeker is registered with a Job Network provider.⁶¹

Brief overview of current jobseeker NSA/YA registration and referral to Job Network processes

The usual steps taken by an unemployed jobseeker claiming NSA/YA at present are set out below:

1. Unemployed jobseeker contacts Centrelink to register an interest in claiming NSA or YA (or actually lodges a NSA/YA claim form with Centrelink).

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2. Jobseeker attends an interview at Centrelink where NSA/YA claim, payment processes and the mutual obligation (MO) requirements are explained. MO requirements feature the requirements to hand fortnightly forms in, to attend interviews and to look for work. Another MO requirement, which is to register with a Job Network provider is explained. Jobseeker is issued with NSA/YA claim form (if not already lodged a claim) and other papers necessary for the determination of qualification and payment rate, for example income and assets, proof of identity, living arrangements, partner's details.
3. Jobseeker completes all the NSA/YA claim papers and processes, like proof of identity, proof of income and assets, living arrangements etc and provides them to Centrelink.
4. Jobseeker is provided with a Jobseeker Provider Number by Centrelink to take to register with a Job Network employment placement assistance provider.
5. A determination of NSA payment qualification and payment rate made by Centrelink.
6. Jobseeker hands in first fortnightly NSA continuation form declaring any income earned in the fortnight and efforts to find work.
7. First fortnightly NSA payment made on the basis of information provided on the fortnightly form.
8. Jobseeker registers with Job Network provider.

RapidConnect is designed to move Step 8 above up to Step 2. Therefore until the jobseeker registers with the Job Network provider as a jobseeker, the rest of the NSA/YA claim processes are not advanced by Centrelink.

Change in jobseeker NSA/YA claim and referral to Job Network processes with RapidConnect

If the registration with a Job Network provider by the jobseeker is undertaken within 14 days of registering an interest with Centrelink to claim NSA/YA, then payment will be made from the earliest date of commencement (subject to any waiting and deferment periods). However, if the jobseeker registers with the Job Network provider more than 14 days after registering an interest to claim NSA/YA with Centrelink, then payment will commence from the day of Job Network registration (subject to any other waiting or deferment periods).

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RapidConnect - new requirements for jobseekers claiming NSA/YA

The amendments for RapidConnect place new qualification requirements on jobseekers. One of these is the requirement to attend an interview at a specified time and place with a Job Network provider. If this is not met then the NSA/YA claim can be rejected. The Secretary has the discretion to waive, or change the requirements or deem that they have been met.

RapidConnect is anticipated to save \$7.7 million over 4 years.⁶²

Comment

RapidConnect involves a jobseeker registering a NSA/YA claim or expressing an interest in claiming with Centrelink and then being told to attend an interview with a Job Network provider, in another place with another organisation. There is significant potential for confusion unless this process is explained, communicated and managed very well.

The Australian National Audit Office (ANAO) in its August 2005 report made some critical observations about computer networks between DEWR and Job Network providers.⁶³ The criticisms centred on computer systems problems between DEWR and Job Network providers⁶⁴ and about low jobseeker attendance at jobseeker interviews with Job Network providers.⁶⁵ Addressing these problems was a feature of the implementation of the Employment Services Contract No. 3 (ESC3) from 1 July 2004.⁶⁶

The estimated \$7.7 million in savings over four years is relatively small in the context of the total cost of NSA/YA claim processes.

This focus on Job Network registration is possibly related to the change in administration of the NSA/YA programs from the Family and Community Services portfolio to DEWR.

Schedule 5 – Part 2, Schedule 7 – Part 2, Schedule 10 – Part 1 - Participation

Introduction

The Parts in this Bill titled ‘Participation’, provide special work and activity test rules for jobseekers claiming, or being paid NSA/YA, who have a long-term medical condition and a partial capacity for work and also for ‘principal carers’, who do not qualify for PP. These are jobseekers who do not qualify for DSP, under the new proposed 15 hours a week continuing inability to work test, so therefore can work for 16 hours a week or more but are unable to work full-time. They are also the ‘principal carers’ who do not qualify for PP because of the age of their youngest child. Also see the comments on PP and participation in Schedule 4 above.

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Background

The NSA/YA work test has never been a full-time work test. Essentially work that an unemployed jobseeker on NSA/YA can be required to look for and do is suitable paid employment (sub-section 601(1) of the SSA). Suitable work is not restricted to a person's traditional occupation or to work that they would prefer to do. Jobseekers are encouraged and required to look for all types of suitable work, that is all work that a jobseeker is capable of performing. Where a jobseeker is capable of work, that is up to full-time work, then that is the work they are required to look for and accept. This flows through to the work search activity test requirements, so that jobseekers are required to search for work in a wide range of suitable areas and without a reasonable excuse, may be subject to an activity test breach.

Jobseekers, who due to 'principal carer' status or due to their incapacity, are not able to work full-time or are restricted to a limited range of positions, are expected to look for work to their capacity. Amendments presented in this Bill will mean that a jobseeker in this situation who is undertaking work up to their capacity, will satisfy the activity test.

Legislative rigour behind the activity test

The legislative rigour behind activity test requirements has stemmed from the words in section 601(1) of the SSA:

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.

If a jobseeker did not attend an interview, didn't attend a training course or did not take on a reasonable job offer, then a breach or even cancellation of payment could be made on the grounds that the 'Secretary was no longer satisfied the jobseeker was actively seeking and willing to undertake suitable paid work'.⁶⁷ In the early 1990s, some specific activity test requirements were itemised in the SSA, like attend a training program, attend an interview. The AWT initiative continued this trend.⁶⁸

The amendments to the activity test requirements proposed in the 'Participation' sections of this Bill spell out in more specific detail what the activity requirements and work participation requirements are for jobseekers with a disability and with a reduced work capacity and also for jobseekers who are 'principal carers' of a child.

The amendments to the SSA in the 'participation' parts of the Bill also change what is to be accepted as 'unsuitable paid work'.

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New 'participation' requirements in the SSA for jobseekers with a restricted work capacity due to a medical condition or with 'principal carer' status

The 'participation' provisions for jobseekers with a restricted work capacity due to a medical condition and those with 'principal carer' status include:

- The requirement to attend an interview and/or enter into an activity agreement to qualify for NSA/YA.
- The power for the Secretary to still consider a person as 'unemployed' even though they are working, or involved in an approved activity, to the maximum of their restricted capabilities. This means they can still qualify for NSA/YA.
- The power for the Secretary to regard the 'principal carer' of a child or a person with a partial work capacity to be considered as unemployed and also satisfying the activity test if work for at least 15 hours a week.

Requirement to undertake suitable paid work

A person satisfies the activity test requirements if directed to undertake suitable paid work and they comply with that directive.

Unsuitable paid work

Essentially work that an unemployed jobseeker on NSA/YA can be required to do is 'suitable paid' employment. This arises from sub-section 601(1) of the SSA.⁶⁹ And also for activity test compliance purposes from sub-paragraph 541(1)(b) of the SSA.⁷⁰

Correspondingly there is also a description in the SSA of what is 'unsuitable' paid work in sub-paragraph 541(D)(1)(e).⁷¹

Unsuitable paid work - *What is unsuitable paid work*

541D.(1) Subject to [subsections \(1A\)](#) and [\(1B\)](#), for the purposes of [section 541](#), particular paid work is unsuitable for a person if, and only if, in the Secretary's opinion: (e) the work would be covered by an industrial award but the employer would only employ the person if the person agreed to become a party to an agreement reducing or abolishing rights that the award confers on employees; or

This Bill proposes to replace sub-paragraph (e) in 541(D)(1)(e), which refers to work below award conditions with a reference to the work covered by the an Fair Pay and Conditions Standard (AFPACS). The AFPACS are provided for in the *Workplace Relations Act 1996* (WRA), which is currently subject of amendment by the [Workplace Relations Amendment \(Work Choices\) Bill 2005](#).⁷² See [Bills Digest](#) No. 66 2005-06.⁷³ This may see 'suitable work' that a jobseeker may be required to do being work that is remunerated at less than current awards conditions.

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Repeal of reasonable commuting distance to travel to and from work provisions

The SSA sets out in section 541(D)(2) a 90 minute limit (each way) as a reasonable commuting distance to ask a jobseeker to attend a job. The 90 minute limit is not a restriction on the Secretary in forming another opinion as 541(D)(3) allows.⁷⁴ Even though the Secretary has this discretion the Explanatory Memorandum states that the intention behind repeal of 541(D)(2) and 541(D)(3) is ‘to allow flexibility in dealing with the concept of unreasonably difficult commuting’.⁷⁵

Repeal of SSA provisions that stipulate the situations in which participation in an approved program of work for income support payment cannot be required – no replacement legislation

This Bill includes many new provisions that describe when a jobseeker is required to undertake certain actions, like attend an interview, or undertake a program of work. It also proposes to repeal some existing provisions that currently describe when the Secretary cannot ask a jobseeker to undertake a program of work such as when:⁷⁶

- the person has an illness, disability or injury that would be aggravated by the conditions in which the work would be performed
- performing the work would constitute a risk to health or safety or would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety
- or the program of work requires the person to move from a home in one place to a home in another place.

Attempts by the jobseeker to comply with a directive – removal of the ‘take reasonable steps’ provisions

The Bill proposes to remove the words ‘take reasonable steps to’ from several sections in the current SSA. **Items 11, 33, 35, in Part 2** refer.

As the provisions currently stand in the SSA, where a jobseeker made every reasonable effort to comply, there is discretion to not remove their temporary incapacity for work exemption. For example section 542(B)(1) prescribes when a jobseeker would have their temporary incapacity for work exemption revoked on account of not complying with activity test requirements.⁷⁷ The removal of these words from the SSA will remove the jobseeker’s rights to argue they were not able to comply for reasonable reasons beyond their control, for example a sick child. The Secretary will still have discretion as to whether to withdraw the jobseeker’s temporary incapacity for work exemption, but this is a diminution of jobseeker’s rights as they currently exist in the SSA.

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New categories for exemptions from the requirement to participate in a program of work – domestic violence, caring for disabled child, foster carer, home educator, distance educator

The Bill proposes to insert into the SSA new categories of exemption for jobseekers to undertake a program of work. In doing this the Bill removes the voluntary work exemption, which is not replaced, presumably because voluntary work is no longer to be classified as an activity for the activity test or for the activity agreement exemption.

These new sections also empower the Secretary to change the categories of activity test exemptions (add or delete) by way of a Legislative Instrument. Legislative Instruments are subject to some scrutiny of Parliament.⁷⁸ Essentially a Disallowable Instrument sits on the notice paper before parliament for 15 sitting days. If it is not amended or rejected by a vote of either House of the Parliament in that 15 day period, it then becomes a matter of law.

Exemptions from participation requirements

The proposed amendments set out some circumstances where the Secretary may exempt a person from the participation requirements; for example attend a training program or undertake a program of work.

‘Home educator’ is defined in the proposed section 5C in Schedule 1 of the Bill. However, there is no explanation or justification provided as to why a jobseeker who chooses to educate their child at home, as opposed to sending their child to a school, should be provided with a blanket exemption. Likewise the same issue arises for ‘distance educators’, as is defined in section 5D in Schedule 1 of the Bill.⁷⁹

Activity test requirements – detail to be taken out of the SSA and replaced with a Legislative Instrument specified by the Secretary

Currently, the detailed activity test requirements that a jobseeker can be asked to comply with are spelt in section 544(B)(1) of the SSA.⁸⁰

Youth Allowance Activity Agreements-terms - *Approved activities*

544B.(1) A Youth Allowance 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;

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- (e) measures designed to eliminate or reduce any disadvantage the person has in the labour market;
- (f) subject to subsection (7)-an approved program of work for income support payment;
- (g) subject to section 544D-development of self-employment;
- (h) subject to section 544E-development of and/or participation in group enterprises or co-operative enterprises;
- (i) participation in a labour market program conducted by the Department;
- (ia) participation in the PSP;
- (j) participation in a rehabilitation program;
- (k) a course of education;
- (l) an activity proposed by the person (such as unpaid voluntary work proposed by the person).

The Bill proposes to repeal these specific activity test requirements from the SSA and have them replaced with the power for the Secretary to specify in a Legislative Instrument what the requirements are.

Comment

Unemployed while working to capacity

The amendments detailing that a person is still ‘unemployed’ while working or being active to the maximum of their capacity is a long needed amendment. This is made necessary by the fact there will be far more jobseekers on NSA/YA for the long-term, with restricted work capacities, arising from the tightening of the DSP qualification requirements.

Unsuitable work and award work

The alteration to the definition of ‘unsuitable’ work in sub-paragraph 541(d)(1)(e) in the SSA will refer to all jobseekers claiming/receiving NSA/YA or any other work search activity tested payment like Widow Allowance, Mature Age Allowance, Partner Allowance, Parenting Payment – Partnered and Single. The concern is that suitable work now includes work remunerated at less than award conditions and that unemployed jobseekers may be required to undertake such work and failure to do so could constitute a breach of the activity test requirements.

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Guidelines are discretionary and flexible

While the detailed setting out of the participation requirements in the SSA for jobseekers with a disability, and child carers appears to be setting a new rigor to activity testing, in many ways many of the requirements and exceptions in this Bill are still at the discretion of the Secretary and will therefore be described and prescribed by guidelines.

The most that the amendments is set out in more detail the specific circumstances in which the Secretary should act and can make determinations and form opinions. Where provisions are repealed and not replaced they are likely to be defined by the Secretary's guidelines and to this extent there is likely to be less Parliamentary scrutiny and greater reliance on guidelines that hang off discretionary powers of the Secretary.

It is interesting to note that in some cases that the application of the SSA will be by guidelines set down by the Secretary and in other cases by guidelines set out by the Secretary in a Legislative Instrument, which is subject to some Parliamentary scrutiny. Disallowable Instruments are tabled in Parliament for 15 sittings days but there is no requirement for debate unless a member moves a motion to debate the instrument.

Program deliverers and administrators wanting flexibility are likely to benefit from of Legislative Instruments as they are more quickly changed than Acts of Parliament At the same time they still provide some degree of Parliamentary scrutiny.

Schedule 16, Schedule 17 – Part 6, Schedule 18 – Part 2, Schedule 19 – Part 4,
Schedule 20 – Part 2 - Income maintenance period (IMP)

Introduction

The expansion of the IMP to DSP recipients and the expansion of the IMP provisions to extend to redundancy payments were announced in the 2005-06 Budget.⁸¹

Current IMP application

Currently the IMP has been applied mostly to the allowance income support payments, that is:

- NSA,
- PP – Partnered and Single,
- Partner Allowance,
- Widow Allowance,
- Youth Allowance,
- Austudy Payment,

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- Mature Age Allowance, and
- Sickness Allowance

Origins and purpose of the IMP

The IMP was introduced with the passage of the *Social Security Legislation (Budget and Other Measures) Act 1996*. The current IMP refers to leave payments paid out on termination of employment, for example annual leave, long-service leave and sick leave. Where a person has a leave payment paid out to them on termination their income support payments may be deferred for the equivalent number of weeks. For example, where a person had 4 weeks annual leave, 3 weeks sickness leave and 16 weeks long-service leave paid out on termination of employment, this 23 week leave period is counted as an IMP and needs to be served before payment of income support can commence. The IMP period is counted from the date last worked and the leave is treated as income at the rate of normal wages paid when working.

Savings

The 2005-06 Budget papers anticipate the extension of the broadened IMP (and the expansion of the SWPP) provisions to most of the current income support payments for persons of working age, will save \$43.0 million in 2006-07, \$62.1 million in 2007-08 and \$63.8 million in 2008-09.⁸² These savings of \$176.1 million over four years are for all the payments for which the IMP and the SWPP will apply.

Comment

The amendments proposed in this Bill will extend the application of the IMP to DSP and expand the coverage of the IMP to also count redundancy payments as leave for the calculation of the IMP.

Schedule 8 – Employment Entry Payment (EEP)

Background

This proposed expansion of access to the EEP was announced by the Minister for Employment Services, the Hon. Mr Peter Dutton, MP in a media release [‘Welfare To Work \\$554.6 Million To Help People With Disabilities Into Work’](#) issued on 10 May 2005.⁸³

Current EEP payments

Recipients of income support payments for those of working age paid under the SSA may qualify for an EEP if they are commencing employment or if their income from

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employment rises above a threshold amount. The qualification rules depend on the type of payment being received. EEP is designed to assist with the on-off extra costs of starting a job, like transport, a uniform etc. An EEP payment is only payable once in every 12 months and EEP is paid as a lump-sum. Currently recipients of the following payments may qualify for an EEP:

- NSA
- partner allowance
- mature age allowance
- widow allowance
- [PP](#) -Single
- DSP
- carer payment, and
- [Special benefit](#) - if the recipient is a sole parent and not residentially qualified for PP.

Current rate of EEP

The DSP EEP rate is \$312.00 whereas for all other payment recipients the EEP rate is \$104.00, both paid only once in a 12 month period.

Current qualification for EEP

For the allowance payments (NSA, partner allowance, mature age allowance, widow allowance) the job needs to be for 4 weeks or more and precludes any payment under the income test for 4 successive weeks. For the pension payments (DSP, carer payment and PP – Single), the job needs to be for 4 weeks or more and precludes any payment at the equivalent of the adult single rate of NSA.

Proposed new EEP payments

The amendments in Schedule 8 would expand access to the EEP in the following ways:

- Pay EEP to PP – Partnered recipients,
- Pay to EEP to NSA and YA recipients who have a partial capacity for work or who are ‘principal carers’ – EEP to be paid where earnings exceed a threshold amount for four successive weeks,
- Pay EEP to income support recipients (NSA, YA, PP – Single, PP – Partnered) with a partial capacity for work or who are a ‘principal carer’ even though their income does not rise above the EEP threshold amount and the work is at least 15 hours a week for 4 weeks or more,

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- Pay EEP to PP – Single and PP – Partnered recipients who do not have a work requirements but commence work, or increase work to, 15 hours a week,
- The EEP payment rate for NSA/YA jobseekers with a partial capacity for work will be \$312.00, and
- The EEP payment rate for NSA, YA, PP – Single, PP – Partnered recipients who are a ‘principal carer’ will be \$104.00.

Schedule 9 – Sickness allowance

The Bill proposes to apply the revised SWPP to Sickness Allowance from 20 September 2006. See the separate discussion of the revised SWPP above.

Schedule 10 – Special benefit

There are some Special Benefit categories that require a person of working age to look for work and actively seek suitable employment. The same activity test requirements as apply to NSA/YA jobseekers are applied here (see the separate discussion of the revised participation requirements above). These are mainly persons who would otherwise qualify for NSA/YA, but do not meet the residence qualification requirements. The Bill proposes to apply the same amended participation and compliance requirements to these categories of Special Benefit recipients, as is proposed for NSA/YA jobseekers.

Schedule 11 – Mobility Allowance (MA)

The government announced an increase in the rate of MA in the 2005-06 Budget.⁸⁴

Current MA qualification requirements and payment rate

The current qualification requirements for MA are the person:

- is 16 or over, and
- has a disability that prevents the person from using public transport without substantial help for the next 12 months or longer (there does not need to be public transport in the area to qualify), and
 - are undertaking vocational training, voluntary work, paid work, independent living/life skills training, or a combination of these for at least 32 hours every four weeks on a continuing basis, or
 - have an agreement to look for work through the Job Network, or

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- are undertaking jobsearch activities under the Competitive Employment, Training and Placement (CETP) program administered by Family and Community Services (CETP Services are also known as Open Employment Services), or
- are getting Newstart Allowance, Youth Allowance or Austudy and are required to satisfy the Activity Test, and
- need to travel to and from home as part of work, training or job seeking, and
- are an Australian resident, in Australia and not subject to the two year newly arrived residents waiting period.

The current rate of MA is \$67.90 per fortnight.

Proposed higher rate of MA

This Bill would, from 1 July 2006, provide for a new higher rate of MA of \$100 a fortnight for DSP, NSA or YA recipients undertaking certain activities. The activities are:

- Looking for work of at least 15 hours a week at award wages or more under an agreement with a Job Network provider, or
- Working at least 15 hours a week at award wages or above.

The person will need to have a disability that prevents the person from using public transport without substantial help for the next 12 months or longer.

The current provisions for the lower rate of MA remain.

In some cases, where the person ceases to receive DSP due to employment income, the higher rate of MA may still continue to be paid while they are employed.

Expenditure

The increased rate of MA is anticipated to cost an extra \$11.6 million in 2006-07, \$14.2 million in 2007-08 and \$16.8 million in 2008-09, total of \$42.5 million over three years.⁸⁵

Schedule 12 – Advance payment of PP – Partnered

This measure aligns PP-Partnered with other like income support payment that provide access to advance payments. Advances of lump-sum amounts of income support entitlements were first introduced with the passage of the *Social Security (Budget and White Paper) Amendment Act 1994*. See [Bills Digest](#) No. 146 1994.⁸⁶

Advances on payments are available under most other income support payments, so these amendments to the SSA is bringing PP-Partnered into alignment with other like payments.

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Schedule 13 - PES

Certain groups of people who had been receiving PES prior to moving onto NSA or YA will be able to retain the PES until they complete their present course of study. Former DSP recipients who claimed their pension between 11 May 2005 and 1 July 2006 will be eligible, as will former PP -Single recipients who move to an allowance because their youngest child reaches the age of eight years.

Other people who would formerly have qualified for DSP or PP - Single will not have access to the PES if they enter full-time study. This change will significantly lower the amount of assistance provided to many sole parents and people with disabilities who undertake study as a way out of welfare dependence. The Australian Council of Social Service (ACOSS) claimed in its July response that:

...people with disabilities and sole parents who study full time to improve their future job prospects are the worst affected group. Many of those who go onto Austudy Payment instead of a pension in future would be over \$100 per week worse off.⁸⁷

Estimates of reductions in outlays on PES were provided in an answer to a question on notice (No. W156-06) asked by Senator Penny Wong at Senate Employment, Workplace Relations and Education Legislation Committee estimates hearings for the 2005-2006 Budget.⁸⁸

Schedule 19 Part 3- Pharmaceutical Allowance, Schedule 15 - Pensioner Concession Card and Schedule 14 - Telephone Allowance

Eligibility for a Pharmaceutical Allowance, Pensioner Concession Card and for Telephone Allowance will be extended to Newstart and Youth Allowees (NSA and YA) who have a 'partial capacity to work' or are single 'principal carers'. They will also be able to retain the Pensioner Concession Card for a period after they cease to qualify for NSA or YA. These changes preserve some entitlements that would have been available to these people if they had still been able to access DSP and PP.

Schedules 17, 18, 19, and 20 – The Youth Allowance, Austudy Payment, Benefit and Parenting Payment Partnered Income Test thresholds and taper rates

The present income test structure was introduced as part of the 1994 Working Nation Statement.⁸⁹ It replaced a test which withdrew assistance above a certain income on a dollar for dollar basis. This 100 per cent taper rate⁹⁰ was reduced to 70 per cent to encourage the take up of casual and part-time work by people receiving unemployment payments.

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Taper rates⁹¹ and income thresholds for NSA, YA, Austudy Payment, Sickness Allowance, Partner Allowance, Widow Allowance, Mature Age Allowance and PP - Partnered will now be reduced from 70 per cent to 60 per cent. The income threshold from which this taper rate applies will be increased from \$142 per fortnight to \$250 per fortnight except for payments to full-time students who already enjoy more generous thresholds. These changes are designed to improve the returns from work for all these payments and reduce effective marginal tax rates.

However, the income tests are still considerably less generous than the pension income test which has a single taper rate of only 40 per cent and single income test free threshold of \$124 per fortnight (for a single person).

The difference between the pension income test and the new allowance income test is explored in the NATSEM research discussed earlier.⁹² The implications, in terms of effective marginal tax rates (EMTR) and changes in disposable income for people, who will have access to an allowance rather than a pension after the measures in this Bill are implemented, are examined in the NATSEM paper. The paper found that persons on allowance payments face higher EMTR than those on pension rate payments.

Schedules 17 and 19 – A new maximum rate of Youth Allowance and Newstart Allowance for certain groups

Sole parents who receive NSA or YA and are foster carers, distance educators or home educators will be paid a new rate of payment equivalent to the PP Single rate. Sole parents in these categories will be exempt from the requirement to satisfy the activity test. However there are other sole parents who are also exempt from that requirement but do not qualify for the higher rate of payment. Those who have recently experienced domestic violence and those caring for a child with a disability will not qualify for this higher rate of payment. The reason for this difference in treatment is unclear.

Schedule 21 - 10% recovery fee on earnings related debts

Background

Current penalties

Currently, where a person incorrectly declares their income or fails to declare their income two sanctions apply. Firstly, any overpayment of income support is recovered. Secondly, where the person is a jobseeker on an allowance payment, (NSA, YA and Austudy payment) they may also incur an administrative breach penalty; that is the jobseeker's rate of payment is reduced by 16 per cent of their maximum benefit rate for a period of 13 weeks. Where the person is on a pension payment like PP – partnered or PP – Single, all that occurs is the debt is recovered. The matter may be referred to the Department of

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Public Prosecutions for consideration of charges being laid under the SSA or the Crimes Act but that is rare and only for large amounts of debt.

New 10 per cent of debt penalty

This measure provides for a 10 per cent recovery fee to be applied (additional to the debt amount), where a working age person receiving a benefit (such as NSA or YA, or PP - Partnered) or certain pensions (DSP, Wife, Widow B Pensions or PP - Single) incurs a debt due to **knowingly incorrectly** declaring or refusing to declare their earnings.

The Bill would change the current breaching regime and remove existing penalties for false reporting of earnings. The new recovery fee is milder than the measures it will replace but will apply penalties for the first time to groups of income support recipients who are not presently covered - DSP, Wife, Widow B Pensions, PP – Single and PP - Partnered.

Schedule 4 – Part 2, Schedule 5 – Part 3, Schedule 6 – Part 1, Schedule 7 - Part 3,
Schedule 10 – Part 2 and Schedule 22 – Part 4 - Compliance

Introduction

The Government announced proposed changes to the compliance regime for income support payment for the working aged⁹³ in the 2005-06 Budget.⁹⁴ The main change is the suspension of payments (that is a non-payment period) rather than the current 6 month payment rate reduction periods. The proposed compliance regime is anticipated to save \$21.1 million in 2005-06, \$65.0 million in 2006-07, \$78.9 million in 2007-08 and \$76.2 million in 2008-09.⁹⁵

Current compliance regime

Currently there are two types of breaches – ‘activity test’ breaches and ‘administrative breaches’. This Bill does not propose to alter the penalties for administrative breaches.

Activity test breaches

An activity test breach is mainly a breach involved in not taking the right or sufficient steps in looking for or preparing for work. Common examples of activity test breaches are when a jobseeker:

- refuses or fails to attend a job interview without sufficient reason,
- fails to complete a labour market program (LMP) without sufficient reason,
- is dismissed from a LMP for misconduct,
- refuses to declare, or fails to correctly declare earnings from employment,

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- becomes unemployed voluntarily without sufficient reason,
- becomes unemployed due to misconduct,
- fails to accept suitable job offers without sufficient reason, or
- has not applied for a particular number of job vacancies.

Activity test breach penalties

The current regime of activity test breaches is set out in the table below.

If it is	Then
the first activity test breach within a 2 year period	the jobseeker's basic rate of payment is reduced by 18% for a period of 26 weeks
a second activity test breach within a 2 year period	the jobseeker's basic rate of payment is reduced by 24% for a period of 26 weeks
a third or subsequent activity test breach within a 2 year period	a non-payment period applies for 8 weeks

Administrative breaches

Administrative breaches refer to actions where the jobseeker has failed to comply with a requirement in the SSA. For example a jobseeker fails, without sufficient reason to:

- attend an office of Centrelink when asked to do so,
- notify Centrelink of changes to their circumstances,
- reply to letters from Centrelink, or
- provide a required tax file number.

Administrative breach penalties

The current regime for administrative breaches is:

- the jobseeker's rate of payment is reduced by 16 per cent of their maximum benefit rate for a period of 13 weeks, or
- the jobseeker's can instead choose a non-payment period of 2 weeks.

Unlike activity test breaches, subsequent administrative breach penalties do not incur an increased penalty. Instead another 13 week 16 per cent payment rate reduction period is imposed, for any subsequent administrative breaches.

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This Bill does not propose to alter the current regime for administrative breaches.

Proposed activity test breach regime – non-payment periods

The Bill provides for changes to the activity test compliance rules for several working age payments. The payments are PP (Single and Partnered), NSA, YA, Austudy and Special Benefit. Special Benefit is included as some of the Special Benefit payment categories have the same activity test requirements as NSA and YA, that is, a jobseeker is required to look for work and accept suitable work.

Set out below are the main points about the new proposed activity testing compliance regime:

- Three successive non-payment periods in 12 months will see an 8-week non-payment period.
- The amendments proposed to the SSA specifically state there is not to be a non-payment period imposed where ‘the Secretary is satisfied the jobseeker has a reasonable excuse for the failure’. What might constitute a reasonable excuse is not set out in the amendments in the Bill, so presumably this will be a matter to be set out in the Secretary’s guidelines.
- The activity test compliance requirements and potential for non-payment penalties is not to apply during the RapidConnect new claim processes – see Schedule 5 Part 1, Schedule 7 – Part 1 and Schedule 22 – Part 1 – RapidConnect above.
- Apart from the 3rd activity test non-compliance breach in 12 months that will result in an 8-week non-payment period, there are several other specified events that will automatically and immediately, that is with a single breach, result in a 8-week non-payment of assistance. These are:
 - The jobseeker is voluntarily unemployed,
 - The jobseeker is unemployed due to their own misconduct as a worker,
 - The jobseeker refuse a suitable job offer, or
 - The jobseeker fails to commence, participate or complete a program of work or comply with the conditions of a program.

Again the Secretary has the power not to impose the 8-week non-payment period where the ‘Secretary is satisfied the jobseeker has a reasonable excuse for the failure’. What might constitute a reasonable excuse is not defined in the Bill, so again presumably this will be a matter for the Secretary’s guidelines.

- Non-payment periods are to run concurrent with any preceding and on-going non-payment period or payment reduction period.

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- The counting of events that might immediately result in an 8-week non-payment period (see above) is not retrospective; the counting only starts from when this Part of the Bill takes effect, being 1 July 2006.
- The provisions are to only apply to jobseekers aged 60 or under.

How long will the non-payment periods be?

The Bill does not specify any prescribed number of days or weeks for non-payment periods, that is apart from the 3rd breach in 12 months and the other prescribed breach actions that are to result in the mandatory 8 week non-payment period (see above). Rather the non-payment periods for the 1st and 2nd breaches in a 12 month period is equal to the period during which the jobseeker fails to comply with an activity requirement. Some examples might be:

- Where a jobseeker initially fails to attend an interview with a potential employer and then attends the interview with the same employer two days later, then the non-payment period would be two days. (That is conditional on the jobseeker not having an excuse that is acceptable as reasonable by the Secretary).
- Where a jobseeker fails to sign up to a NSA Activity Agreement then signs the agreement three days later, the non-payment period would be for three days. (That is conditional on the jobseeker not having an excuse that is acceptable as reasonable by the Secretary).
- Where a jobseeker fails to attend a program of work and returns to work four days later, then the non-payment period would be for four days. (That is conditional on the jobseeker not having an excuse that is acceptable as reasonable by the Secretary).

Comment

Payment rate reduction periods versus non-payment periods

The current single rate of NSA is \$404.50 per fortnight, this is \$40.50 per day (10 day fortnight). The current activity test sanction of 18 per cent rate reduction for 26 weeks is the equivalent of \$946.53 (if paid at the current single rate of NSA at \$404.50 per fortnight). So the sanction of \$946.53 over 6 months is the equivalent of losing 123 days of payment. However there are likely to be very few jobseekers with non-payment periods of this magnitude under the proposed compliance regime presented in this Bill. Most non-payment periods will probably be for one to five days.

The 18 per cent rate reduction for 26 weeks has been criticised as being a very harsh penalty for the first or any activity test breach and the 24 per cent rate reduction (or a total of \$1 262.04) for the 2nd breach in 2 years is even harsher.⁹⁶ However, for many, the non-payment of income support for 1, 2 or 3 days under the new compliance regime will be far less than the current 16 per cent payment rate reduction period for 6 months.

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Projected savings

In the out years, this new compliance regime is anticipated to save close to \$75 million a year. There are several reasons why this figure is probably quite conservative. Firstly, the proposed non-payment period would apply to a greater number of jobseekers, that is jobseekers who fail to qualify to DSP due to the stricter 15 hour a week test and also the jobseekers on PP with a youngest child aged 8 years or more. In addition, jobseekers on NSA, YA, Austudy payment and Special Benefit have not been exposed to an immediate non-payment period sanction before. Furthermore while in many cases the current 18 per cent payment rate reduction for 26 weeks realises a bigger financial penalty than short non-payment periods of 3 or 4 days, this new regime of short non-payment periods will be easier to impose and will probably result in a greater number of breaches imposed.

Many jobseekers just have difficulty at first in complying with all the rules and red-tape involved in claiming and receiving a payment from Centrelink, in attending all the interviews and maintaining contact with a Job Network provider, in completing jobseeker diaries, in signing up to an activity test agreement, in completing and lodging fortnightly continuation forms etc. There are many opportunities for a jobseeker to just 'slip up' mainly due to ignorance of the rules and requirements and then incur a non-payment period.⁹⁷ This especially applies to young jobseekers.⁹⁸ It is not clear (as the guidelines are not available yet), whether ignorance and naiveté will be 'an excuse acceptable as reasonable by the Secretary'.

Activation of a penalty – which is easier – a non-payment period or a payment rate reduction period

Up until 1997 the first and only breach that could be imposed on a jobseeker was a two week non-payment period.⁹⁹ However, it was not often imposed as a two week non-payment was considered a very harsh penalty especially for what in many cases were minor breaches. In 1997 a new penalty regime was introduced with the passage of the *Social Security Legislation Amendment (Activity Test Penalty Periods) Act 1997*.¹⁰⁰ This legislation introduced the 6 month payment rate reduction periods.

Partly because payment reduction rate periods are easier to impose than a 2 week non-payment period, and also because the range of actions that are now subject to a penalty is far larger than in 1997, there has been an increase in the number of penalties imposed.¹⁰¹ Payment rate reduction periods are easier to impose than a non-payment period (especially a minimum 2 week non-payment period), as the recipient is still left with some, albeit reduced, level of support.

While the impact of a 6 month rate reduction period is spread out and not immediate, the impact of a non-payment period is immediate and so the pressure on the jobseeker to comply is also far more immediate. A non-payment period of two days (\$81.00) is also far easier to impose as it is less harsh than a two week non-payment period (\$404.50) or a 16 per cent rate reduction for 6 months (\$946.53).

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It is likely that this proposed compliance regime of non-payment for short periods (one, two or three days) will therefore see more breaches imposed.

Parenting payment – compliance requirements

Background

As outlined in **Schedule 4 – Participation** above, this Bill would cease qualification to PP where the youngest child turns age 8 (single recipients) or age 6 (partnered recipients). Once PP is no longer payable to these parents, they are to be provided with ‘enhanced’ NSA and subject to the new NSA/YA jobseeker participation requirements and compliance regimes, including non-payment for non-compliance, as provided for in this Bill.

PP recipients with participation requirements

Some PP recipients will be subject to some participation requirements and the associated compliance regime will also apply. These will be:

- PP – Single recipients granted payment of PP from on or after 1 July 2006 and where the youngest child is aged 6 to 7, and
- PP – Single and Partnered recipients granted payment of PP from before 1 July 2006 will have participation requirements (and the attached compliance regime) from 1 July 2007, or when youngest child turns age 7, whichever is the latter. These are the PP recipients who can continue to qualify for PP until the youngest child turns age 16.

The participation requirements for these two categories of PP recipients will be the same as for ‘principal carers’ on NSA/YA – see **New categories for exemptions from the requirement to participate in a program of work – domestic violence, caring for disabled child, foster carer, home educator, distance educator above**. Essentially, ‘principal carers’ will be required to seek and/or undertake part-time work of at least 15 hours per week. PP recipients with participation requirements will also not be required to provide jobseeker diaries or employer contact certificates as part of their participation requirements.

Austudy payment – compliance requirements

Background

Austudy payment is provided to full-time students undertaking undergraduate tertiary study aged 25 or more. Their activity test requirement is essentially that they are continuing to undertake the requisite study. They are not subject to the same activity test requirements as NSA/YA jobseekers, like the look for suitable work, accept suitable paid work requirements, as they are studying full-time. If at any time they discontinue studying full-time, then they are no longer qualified for Austudy payment.

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Austudy payment compliance regime

The Austudy compliance regime as presented in this Bill is the same as that for NSA/YA jobseekers, that is non-payment periods for non-compliance. For example, a non-payment period could be imposed on an Austudy payment recipient where they fail to attend an interview with Centrelink when requested.

Schedule 22 - administration

Schedule 22 of the Bill proposes consequential amendments to the Social Security (Administration) Act 1999 (SSAA) arising from the proposed main amendments to the SSA in the Bill.

Part 2 – Disability support pension

Items 12 and 14 insert suspension provisions into the SSAA to allow the suspension of DSP (not cancellation) for up to 2 years where a DSP recipient obtains paid employment and the income precludes payment. This is a pre-existing DSP entitlement; that is to temporarily suspend DSP for up to 2 years where the recipient attempts to work. The two year suspension means the recipient can come back on to DSP without re-claiming and without having to reprove qualification. It is designed to provide an incentive for DSP recipients to attempt employment opportunities.

Schedule 23 – Other amendments

This Schedule proposes to amend other Acts to bring them into line with the provisions in this Bill.

The main amendment proposed is to section 20(1) of the *Disability Services Act 1986* (DSA):

Provision of rehabilitation programs

20(1) Subject to section 21, if the Secretary is satisfied that the provision of a rehabilitation program for a person in the target group would:

- (a) result in the person having a substantially increased capacity to:
- (b) (i) obtain or retain paid employment (whether or not the employment would be unsupported); or
- (c) (ii) live independently; and

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- (d) (b) comply with guidelines (if any) formulated under section 5 that relate to this section;

the Secretary may, on the Commonwealth's behalf, approve the provision of the rehabilitation program for the person, together with any follow-up program that the Secretary considers necessary or desirable.

This proposed new wording for section 20(1) of the DSA is a far more open and liberal application of appropriate rehabilitation than the current section 20(1) of the DSA, that requires rehabilitation to produce a vocational result.¹⁰² Rehabilitation will be able to be provided against guidelines prescribed by the Secretary (of the Department of Health).

Current approval of rehabilitation

The Commonwealth Rehabilitation Services (CRS) has for a long time used the current prescriptive direction in section 20(1) of the DSA to determine the allocation of rehabilitation assistance. This assistance has been targeted at individuals who will realise a vocational outcome by way of rehabilitation, that is the results comply with subparagraph 20(1)(a)(i) of the DSA.¹⁰³ However, this interpretation by the CRS has been quite literal, often providing rehabilitation only where it is assessed that the person would realise a job outcome from rehabilitation alone. This may be very appropriate in cases where the person has a job to return to, or has very current labour market skills and needs rehabilitation assistance alone to return to work. However, many/most of the income support recipients on DSP (and other income support payments), with the potential to benefit from rehabilitation, do not have a job to return to or current marketable labour market skills.

So while the CRS was not providing these persons with rehabilitation, the vocational skills enhancement processes under various government jobseeker assistance programs, like Working Nation and today the Job Network, was not being provided either. This was because these persons required rehabilitation before vocational assistance could benefit them. So many persons with a medical condition affecting their work capacity on income support payments (DSP and other payments) who could benefit from rehabilitation and vocational training fell through the cracks and were left behind.

The proposed amendments to section 20(1) of the DSA are long overdue, that is allowing a broader application of the provision of rehabilitation. However, the amendments refer to empowering the Secretary to prescribe guidelines for the targeting of rehabilitation assistance but as these guidelines are not available in this Bill it is difficult to be definitive about what the new rehabilitation assistance priorities will be, apart from the background provided in the Explanatory Memorandum.

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Main Provisions

Item 2 sets out the commencement dates for the various Schedules and Parts in the Bill.

Schedule 1 – Definitions and other interpretive provisions

Part 1 sets out new definitions for the SSA that commence from 1 July 2006. **Item 3** sets out the new definition of ‘principal carer’. **Item 4** inserts a new definition of ‘registered and active foster carer’, ‘home educator’ and ‘distance carers’. **Item 6** provides a definition of partial capacity to work and what 30 hours work a week means. **Item 16** inserts new definitions of ‘participation failure instalment period’. **Item 21** inserts a new definition of ‘subject to participation requirements’.

Part 2 sets out amended definitions in the SSA to take effect from 1 July 2006 and they are in **Schedule 2**. **Item 2** amends subsection 94(2) of the SSA to provide a new definition of continuing inability to work for DSP qualification. **Item 37 Schedule 1** inserts a definition of ‘Australian Fair Pay and Conditions Standard’ to be that as provided for in the *Workplace Relations Act 1996* (WRA)

Schedule 2 – Disability support pension

Part 1 – Participation

Item 2 provides for a new definition of ‘continuing inability to work’ for DSP qualification. **Item 5** provides a new definition of ‘independently of a program of support’. **Item 8** provides a new definition of ‘training activity’, replacing the previous definition of on the job training. **Item 9** and **Item 12** replaces the number 30 with 15 in sub-section 94(5) and 1061ZD(2)(b) changing the number of hours a week a claimant must be unable to work for to qualify for DSP from 30 hours a week down to 15 hours.

Item 10 provides for new automatic qualification criteria for some income support recipients assessed as being unable to work for 15 hours a week and have been on an income support payment for two years or more.

Part 2 – Seasonal work preclusion period (SWPP)

Item 14 inserts the SWPP provisions into the DSP qualification sections in the SSA.

Part 3 – Approved program of work supplement

Item 16 inserts new provisions setting out the qualification for and the rate of approved program of work supplement for DSP recipients

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Schedule 3 – Carer payment

Item 1 inserts the SWPP provisions into the carer payment qualification sections in the SSA.

Schedule 4 - Parenting payment

Part 1 – Participation

Item 2 inserts new provisions setting out the participation requirements in the new section 500A (see **Item 4**) are to apply to PP recipients where the youngest child is aged 6 or more.

Item 4 inserts the new section 500A setting out the new PP participation requirements. **Item 6** sets out the PP participation requirements transitional arrangements. **Item 7** sets out the PP activity agreement requirements.

Part 2 - Compliance

Item 9 sets out the participation failure events that may result in a non-payment period and the duration of non-payment periods.

Part 3 – Seasonal work preclusion period

Part 3 removes PP – Single as an exempt payment for the application of the SWPP.

Schedule 5 – Youth allowance

Part 1 – RapidConnect

Item 2 inserts new provisions for the requirements for a YA jobseeker claimant to attend an interview with a Job Network provider as part of the YA claim process.

Part 2 – Participation

Item 3 sets out the activity test requirements for a YA claimant with a medical condition restricting their work capacity. **Item 7** inserts provisions detailing principal carers are exempt for the participation requirements. **Item 8** inserts provisions detailing the paid work requirements. **Item 15** repeals references to work remunerated at minimum award conditions and replaces it with referrals to work under the Australian Fair Pay and Conditions Standard. **Item 25** inserts new provisions for the exemption from the activity test requirements in domestic violence and caring for disabled child/ren situations. **Item 35** details that a YA activity agreement meets the participation requirements. **Item 40**

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empowers the Secretary to revoke the requirement to undertake an approved program of work. **Item 41** sets out the approved program of work is up to 15 hours a week for ‘principal carers’ and for persons with a partial capacity for work.

Part 3 – Compliance

Item 46 inserts provisions detailing participation failures and consequential non-payment periods.

Schedule 6 – Austudy payment

Part 1 – Compliance

Item 2 sets out the Austudy payment participation requirement, failures and the non-payment periods for non-compliance.

Part 2 – Seasonal workers preclusion period

Item 10 inserts the SWPP provisions into the Austudy payment provisions.

Schedule 7 – Newstart allowance

Part 1 – RapidConnect

Item 2 sets out the requirements for a NSA jobseeker claimant to attend an interview with a Job Network provider as part of the NSA claim process.

Part 2 – Participation

Item 8 inserts new provisions for the activity test requirements. **Item 15** inserts provisions empowering the Secretary to consider a person as unemployed even though they are working to the maximum of their capacity. **Item 23** empowers the Secretary to require a person to undertake an approved program of work and the number of hours required may differ from the numbers of hours a week required to undertake jobsearch activities. **Item 28** repeals references to work remunerated at minimum award conditions and replaces it with referrals to work under the AFPACS. **Item 41** inserts new provisions for the exemption from the activity test requirements in domestic violence and caring for disabled child/ren situations. **Item 56** sets out the relief from the activity test requirements for principal carers and person with a partial capacity for work. **Item 57** details that the exemption for these categories of person can be lapsed under prescribed conditions. **Item 68** inserts sections about activity agreements for ‘principal carers’, persons with a partial capacity for work, requirements to participate in an approved program of work.

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Part 3 – Compliance

Item 73 inserts provisions about NSA participation failures and consequential non-payment periods.

Schedule 8 – Employment entry payment

Item 2 contains provisions for the payment of the higher rate of EEP to some YA and NSA recipients and the expanded access to EEP. **Item 3** contains provisions for the expanded access to EEP for PP – Partnered recipients.

Schedule 9 – Sickness allowance

Item 1 inserts the SWPP provisions to apply to sickness allowance.

Schedule 10 – Special benefit

Part 1 – Participation

Items 4 to 42 in Part 1 of this Schedule insert the same new activity test provisions as have been proposed to be inserted for NSA and YA in this Bill. These provisions are to only apply to those special benefit payment categories that are subject to the work search activity test participation requirements. When granting Special benefit for an individual case, the Secretary selects which category of Special benefit is to apply and this category sets the payment rate and the requirements for the continuation of payment.

Part 2 – Compliance

Items 43 to 53 in Part 2 of this Schedule insert the same new participation compliance provisions as have been proposed to be inserted for NSA and YA in this Bill. These compliance provisions are to only apply to those special benefit payment categories that are subject to the work search activity test participation requirements.

Schedule 11 – Mobility allowance

Item 2 inserts new qualification provisions for Mobility Allowance at the higher special rate. **Item 5** inserts the provision to set the higher rate of Mobility allowance at \$100 per fortnight. **Item 8** provides for the continuance of Mobility Allowance for 8 weeks after a person ceases to be qualified as they have stopped work – this is in line with current Mobility Allowance payment legislation.

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Schedule 12 – Advance payment of PP – Partnered

Items 1, 2 and 3 insert the provisions to allow the lump-sum advance payment of PP – Partnered.

Schedule 13 – Pensioner education supplement

Item 3 provides for the payment of PES to certain YA and NSA recipients being those who were formerly in receipt of PP – Single or DSP and were receiving PES when transferred to NSA/YA and continue with the requisite qualifying study.

Schedule 14 – Telephone allowance

Item 2 in **Part 1** inserts provisions to provide for clarification of the continued payment of telephone allowance to pension and allowance recipients (for example DSP, PP – Single, NSA and YA paid to ‘principal carers’ or persons with a partial capacity for work), where their income support payment ceases due to employment income.

Part 2 amendments provide for the continued payment of Telephone Allowance for NSA and YA recipients who have a ‘partial capacity to work’ or are single ‘principal carers’. The extension of payment is 12 months for former DSP recipients on NSA or YA and persons with a partial capacity for work and 6 months for other payments.

Schedule 15 – Concession cards

Eligibility for the Pensioner Concession Card (PCC) is to be extended to those on NSA and YA who have a ‘partial capacity to work’ or are single ‘principal carers’. Also, these persons are to be allowed to retain their PCC for 12 months after payment ceases due to employment income. **Item 1** inserts provisions into the SSA to provide for some YA recipients to have access to a PCC being those who have a ‘partial capacity to work’ or are single ‘principal carers’. **Item 11** inserts provisions to provide for PCC qualification for persons with a partial capacity for work.

Schedule 16 – Pension rate calculators

Part 1 inserts the Income Maintenance Period (IMP) provisions into the pension rate calculators applying to DSP for persons aged 21 and over and not permanently blind. **Part 2** inserts the IMP provisions into the pension rate calculators for those on DSP aged less than 21 and not permanently blind.

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Schedule 17 – Youth allowance rate calculator

Part 1 – Income test

Item 1 changes the upper income level taper rate from 70 per cent down to 60 per cent. **Item 3** changes the range of income reduced at the rate of 50 cents in the dollar. Income between \$62 and \$250 per fortnight will reduce YA by 50 cents in the dollar, income above \$250 per fortnight will be reduced YA by 60 cents in the dollar.

Part 2 – Maximum benefit rate calculator

Item 5 inserts a new maximum YA rate, being the same as the higher PP – Single rate to apply to certain types of YA recipients being ‘active a registered foster carer’, ‘home educator’ and ‘distance educator’.

Part 3 – Pharmaceutical allowance (PhA)

Items 6 and 7 provide for the payment of PhA to YA recipients who are either a person with a partial capacity for work, or are a ‘principal carer’, or have a temporary incapacity exemption.

Part 4 – Youth disability supplement

Youth disability supplement is an additional amount of YA payable to DSP recipients aged less than 21 to make up to the full adult age 21 and over rate. **Item 10** provides for the payment of the youth disability supplement to a YA recipients under age 21 who also have a partial capacity for work.

Part 5 – Exemption from parental means test

Item 15 inserts provisions to exempt YA recipients aged less than 21 from the parental means test where they have a partial capacity for work. Normally on YA the parental means test applies to jobseekers aged 16 to 20.

Part 6 – Income maintenance period (IMP)

Item 29 inserts provisions to include redundancy payments in the calculation of the IMP for YA.

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Schedule 18 – Austudy payment rate calculator

Part 1 – income test

Part 1 changes the income test that applies to Austudy payment by reducing the taper rate from 70% to 60%.

The Austudy payment income test is different to the NSA/YA jobseeker income test, having a higher free area but a more severe taper, designed to encourage moderate part-time work but not substantive part-time work. This reflects that Austudy is a payment for full-time students and is the same income test for YA paid to full-time students.

Part 2 – Income maintenance period (IMP)

Item 17 inserts provisions to include redundancy payments in the calculation of the IMP for Austudy payment.

Schedule 19 – Benefit rate calculator

Part 1 – income test

The changes to the SSA in this Part for NSA mirror the changes to the YA rate calculator – see above (**Schedule 18 – Part 1**). **Item 1** changes the upper income level taper rate from 70 per cent down to 60 per cent. **Item 3** changes the range of income reduced at the rate of 50 cents in the dollar. Income between \$62 and \$250 per fortnight will reduce YA by 50 cents in the dollar, income above \$250 per fortnight will be reduced YA by 60 cents in the dollar.

Part 2 – Maximum benefit rate for certain newstart allowance recipients

The changes to the SSA in this Part for NSA mirror the changes to the YA rate calculator – see above (**Schedule 18 – Part 1**). **Item 7** inserts a new maximum NSA rate, being the same as the higher PP – Single rate to apply to certain types of NSA recipients being ‘active a registered foster carer’, ‘home educator’ and ‘distance educator’.

Part 3 – Pharmaceutical allowance (PhA)

The changes to the SSA in this Part for NSA mirror the changes to the YA rate calculator – see above (**Schedule 18 – Part 1**). **Item 9** provides for the payment of PhA to NSA recipients who are either a person with a partial capacity for work or are a ‘principal carer’.

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Part 4 – Income maintenance period (IMP)

Item 23 inserts provisions to include redundancy payments in the calculation of the IMP for NSA, Widow Allowance, Sickness Allowance, Partner Allowance and Mature Age Allowance.

Schedule 20– Parenting payment rate calculators

Part 1 – income test

The changes to the SSA in this Part for PP – Partnered mirror the changes to the YA and NSA rate calculators – see above (**Schedule 18 – Part 1**). **Item 1** changes the upper income level taper rate from 70 per cent down to 60 per cent. **Item 3** changes the range of income reduced at the rate of 50 cents in the dollar.

Part 2 – Income maintenance period (IMP)

Item 16 and **31** inserts provisions to include redundancy payments in the calculation of the IMP for PP (both PP – Partnered and PP – Single).

Schedule 21 – Overpayments and debt recovery

Item 2 inserts provisions to add 10 percent of the debt amount where the debt arose from the recipient knowingly provided incorrect earnings income information.

Schedule 22 – Administration

This Schedule makes consequential changes to the *Social Security (Administration) Act 1999* (SAA).

Part 1 – RapidConnect

Item 3 places references to the proposed RapidConnect claim processes for NSA and YA presented in this Bill in to the SSAA.

Part 2 – Disability support pension

Items 12 and 14 insert suspension provisions into the SSAA to allow the suspension of DSP (not cancellation) for up to 2 years where a DSP recipient obtains paid employment and the income precludes payment.

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Part 4 – Compliance

Item 24 and 34 updates the provisions in the SSAA stipulating that an income support payment recipient can be asked to attend an interview and failure to attend could result in a penalty.

Part 5 – Information exchange

Item 43 inserts provisions in the SSAA to allow for the exchange of information between Commonwealth departments and service providers, mainly Job Network providers.

Schedule 23 – Other amendments

Items 1 to 5 amend the *Disability Services Act 1986* (DSA) to amend the criteria under which rehabilitation can be provided.

Concluding Comments

This Bill is probably the most substantive piece of welfare legislation this Government has presented to the Parliament since it came to office in March 1996. The Bill also presents the most substantive package of ‘welfare reform’ this Government has presented to date.

The DSP reform involves reducing the ‘incapacity for work’ requirements from 30 hours a week down to 15 hours a week. This policy has been presented in legislation on previous occasions but was not passed by the Parliament. The Parenting Payment reforms flow on from the Australians Working Together package in the 2001-02 Budget. These changes would achieve a close to full application of the mutual obligation principle to all working age income support payments. This is the culmination of a process that began in the early 1990’s with the advent of ‘reciprocal obligation’ under Labor.

The feature of the Bill that has drawn the widest criticism is the shifting of substantial numbers of sole parents and people with disabilities from payments at the pension rate to payments paid at the lower allowance rate. The contribution this change will make to their ability to move into employment is yet to be seen. For those who seek to use study as a route to independence, the reduction in the level of income support provided is particularly marked. Austudy Payment without entitlement to rent assistance compares pretty unfavourably to DSP or PPS with the addition of PES.

There are measures in the Bill that partially cushion those making this transition. Access to pensioner concessions, telephone allowance and pharmaceutical allowance is retained and the allowance income test is eased. However, even with these measures the drop in

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income is likely to be substantial. The amendments to the allowance income test taper rates will see the benefit of lower EMTR.

There are new provisions setting out in detail, the requirements for recipients of income support payments. These requirements include activity test requirements, like look for work, attend a training program, undertake a program of work etc. Likewise there are new provisions setting out what the sanctions may be where a jobseeker fails to meet these requirements, especially non-payment periods. However, there are also proposed deletions of existing provisions in the SSA that set out jobseekers' rights in terms of reasonable compliance, which will be replaced by guidelines to be set out by the Secretary. Some of these guidelines are to be set out in a Legislative Instrument so there will be some opportunity for scrutiny by the Parliament. Some of the Secretary's guidelines will be empowered by the SSA and not subject to any Parliamentary scrutiny.

While there in this Bill a high level of prescription about activity test participation requirements, a different approach has been taken to the Secretary's powers to waive a sanction or take into account the reasonable excuse of a jobseeker who does not comply with the participation requirements. The Parliament may want to consider that the Secretary's power to exercise appropriate discretion in cases should remain in legislation, rather than being contained in guidelines. These guidelines the Parliament may or may not have the opportunity to examine.

The emphasis on jobseekers claiming NSA or YA to register with a Job Network provider before the claim for assistance can be progressed (under RapidConnect) is new and has the potential to be confusing for claimants, unless it is handled and delivered well. This change in emphasis is probably also another outcome associated with income support policy for the working aged now being the responsibility of DEWR.

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Out of the 70,000 grants a year for Disability Support Pension, how many fall between the 15-29 work capacity cohort?

Answer:

Approximately 14,200 of the 73,500 people granted DSP between 20/9/03 and 20/9/04 have an assessed work capacity of 15 to 29 hours per week

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16A.(2) The Secretary may determine in writing that a specified kind of work that is intermittent is seasonal work for the purposes of this Act. The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
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- 67 **601(1)** 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:

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(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.

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69 Section 601(1) of the SSA, *op. cit.*

70 **Activity test - General**

71 **Unsuitable paid work - What is unsuitable paid work**

541D.(1) Subject to subsections (1A) and (1B), for the purposes of section 541, particular paid work is unsuitable for a person if, and only if, in the Secretary's opinion:

(a) the person lacks the particular skills, experience or qualifications that are needed to perform the work and no training will be provided by the employer; or

(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; or

(c) performing the work in the conditions in which the work would be performed would constitute a risk to health or safety and would contravene a law of the Commonwealth, a State or a Territory relating to occupational health and safety; or

(d) the work would involve the person being self-employed; or

(e) the work would be covered by an industrial award but the employer would only employ the person if the person agreed to become a party to an agreement reducing or abolishing rights that the award confers on employees; or

(f) the work would not be covered by an industrial award and the remuneration for the work would be lower than the minimum applicable rate of remuneration for comparable work that is covered by an industrial award; or

(g) commuting between the person's home and the place of work would be unreasonably difficult; or

(ga) the place of work is not accessible by public transport services and the person does not have access to alternative transport facilities and could not reasonably be expected to travel to the place of work; or

(h) the work would require enlistment in the Defence Force or the Reserves; or

(ha) the work requires the person to move from a home in one place to a home in another place; or

(i) for any other reason, the work is unsuitable for the person

72 Workplace Relations Amendment (Work Choices) Bill 2005.
<http://parlinfoweb.parl.net/parlinfo/browse.aspx?NodeID=147>

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- 74 **541D.(3) Subsection (2)** does not limit the Secretary's discretion to form the opinion that, for the purposes of **paragraph (1)(g)**, commuting is not unreasonably difficult.
- 75 Explanatory Memorandum, p. 52.
- 76 SSA sections 542A to 542C.
- 77 SSE section 542B(1).
- 78 Bob Bennet, Legislative Instruments Bill 1996, *Bills Digest*, Parliamentary Library, Canberra, Australia, 14 October 1996. <http://www.aph.gov.au/library/pubs/bd/1996-97/97bd038.htm>
- 79 **Distance educators**
- A person is a **distance educator** of a child if the Secretary is satisfied that:
- (a) the child is enrolled to receive education by undertaking a distance education curriculum; and
- (b) the child is undertaking that curriculum; and
- (c) the person is suitably involved in assisting and supervising the child in relation to that curriculum.
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<http://www.sprc.unsw.edu.au/reports/index.htm>
- 97 T Eardley, J Brown, M Rawsthorne, K Norris, L Emrys, *The Impact of Breaching on Income Support Customers*, op. cit. pp. 58 – 60.
- 98 *ibid.*
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- 100 Chris Field, Social Security Legislation Amendment (Activity Test Penalty Periods) Bill 1997, *Bills Digest 150 1996-97*, Parliamentary Library, Canberra, Australia, 12 June 1997.
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