

Submission to the Community Affairs Committee

Inquiry into Employment and Workplace Relations Legislation Amendment (Welfare to Work and other Measures) Bill 2005 and Family and Community Services Legislation Amendment (Welfare to Work) Bill 2005

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I am a former Director of Disability Policy and Director of Sole Parent and Family Policy in the Department of Family and Community Services. I was the author of a FaCS policy discussion paper on a single payment structure for people of workforce age¹, taken up by the McClure Committee and spent some years working on a detailed plan to simplify and standardise the whole range of income support payments, resulting in a large number of legislative changes. I am also the author of an OECD report comparing Government policies and the labour force participation of sole and partnered mothers in eight countries². Since leaving the Commonwealth Public Service, I wrote a report for the NSW Ministerial Advisory Committee on Ageing on public policy and the labour force circumstances of mature aged people³. I am working with the National Foundation of Australian Women on the current welfare to work proposals and have published three papers on their website⁴ as well as an article in the Sydney Morning Herald on Thursday 10 November 2005 on this topic.

I submit the following comments on the Employment and Workplace Relations Legislation Amendment (Welfare to Work and other Measures) Bill 2005:

A People with Disabilities

A(1) The Welfare Trap

Under the proposed legislation, new claimants from July 2006 who can work 15 to 29 hours a week (at the time of claim or within 2 years, with education, training or rehabilitation) will be ineligible for Disability Support Pension (DSP) and will qualify for Newstart under a modified activity test requirement.

The single adult rate of Newstart is \$84.40 a fortnight lower than the pension rate, has much more severe income and assets tests than pension, is subject to breaches and penalties and is a less secure payment than DSP. A recent report by Natsem has

¹ A Common Payment? Simplifying Income Support for People of Workforce Age, Social Security Policy Discussion Paper No 7, 1995

² Breadwinners or Childrearsers: The Dilemma for Lone Mothers, OECD Labour Market and Social Policy Occasional Paper No 12, 1993

³ Too Young to Go, Report prepared for the NSW Committee on Ageing, 2002

⁴ http://www.nfaw.org/news_m_releases.htm 2005 Income Security & Industrial Relations Project - Brief on Disability Support Pension - dated 25/8/05; 2005 Income Security & Industrial Relations Project - Brief on Changes Proposed for Sole Parents by Government's Welfare-to-Work Policy - dated 25/8/05; forthcoming What Women Want: Legislative Review Workshop, A Workshop to Examine the Legislation to Enact the Federal Government's Proposal for Reform of Industrial Relations and its Welfare-to-Work Strategy, 11 November 2005, Canberra, Record Of Proceedings

examined the effects of these⁵It is worth noting that many people have significant costs associated with disability and likely to be in a far more precarious financial position than those without disability. This creates a strong ‘perverse incentive’ for people to qualify for DSP.

Experience with Invalid Pension, the pre-cursor of DSP, leaves little doubt that restrictive work capacity criteria for the pension creates a ‘Welfare trap’ where pensioners have a strong reason not to risk testing their capacity to work in case they lose entitlement.

That is, if you try to work 15 hours or more, you risk losing the pension, with unaffordable consequences. If you find you cannot manage that level of work, you are left on Newstart. If you refuse to take a job, or leave ‘voluntarily’ and are unable to prove objectively that the job would have aggravated your disability or that you could not have performed it because of your disability, you will incur an 8 week non-payment period, equivalent to a \$1600 penalty.

The replacement of Invalid Pension with DSP, which covered people unable to work full-time, was intended to overcome this problem. Initially it was planned to apply part-time activity test requirements to those with some capacity to work, in addition to the expansion of disability employment services and support. The activity testing was not brought in at that time because of the poor labour market conditions. Further provisions to overcome work barriers included the right to return to the pension within 12 months if the employment ceased and a period of retention of the pensioner concession card.

Under this plan, there was far less incentive to be risk averse in assessing your work capacity and the financial consequences of the activity test would have been minimal.

The current proposal which, instead of applying the activity test to DSP pensioners, moves them onto Newstart will inevitably re-create the ‘welfare trap’ and strong disincentives to work.

A2 Assessment

Assessment of impairment and work capacity is always imprecise. Disability can be hard to measure objectively and is often intermittent. Impairment ranges in type, severity and combination. The interaction of different individual impairment and the requirements of jobs and travel to work is extremely varied and complex. One person with a particular condition might be able to achieve a fair amount of activity, while another suffers debilitating pain. A person may be quite able to perform work at one period but then needs to stop working when the condition recurs. Thus the decision on whether to grant DSP is often contested and is a major source of appeal to the Social Security Appeals Tribunal (DSP makes up 38% of appeals to the SSAT).

The current tender document for Comprehensive Work Capacity Assessment (CWCA) providers sums up nicely the assessments required by the current and proposed legislative requirements:

⁵ Ann Harding, Quoc Ngu Vu, and Richard Percival, The Distributional Impact of the Welfare-to-Work Reforms Upon Australians with Disabilities, NATSEM, Report to the National Foundation for Australian Women, 13 September 2005

- Assessment of the client's current work capacity in hour bandwidths (0-7, 8-14, 15-22, 23-29, 30+) per week.
- Assessment of the client's future work capacity, with and without interventions, in hour bandwidths (0-7, 8-14, 15-22, 23-29, 30+) per week within the next two years.

This is patently absurd. As a general rule, no responsible medical expert can confidently estimate a person's condition with such fine distinction, still less predict the future course (improvement, deterioration, stability, effect of treatment), let alone determine work capacity in relation to any possible job 'that exists in Australia, even if not within the person's locally accessible labour market'.

To have any resemblance to reality, the person's subjective assessment of the effect of his or her disability and his or her work capacity must be taken into account in the CWCA. A system in which that person will pay dearly for understating the level of impairment will affect that assessment.

A3 Newstart incapacitated

Under the present regime, a person whose impairment does not meet the 2 year criterion is eligible for Newstart, but can be exempt from the activity test if they are unable to work 8 hours or more ('Newstart incapacitated').

Although the minimum criteria for employees under the proposed IR changes allows for 2 weeks sick leave, there is no sick leave on Newstart, unless the person could not work even 8 hours a week (and, under the new legislation, even a person unable to work at all on a temporary or short-term basis, such a person could be required to enter a new Newstart agreement).

If the two year criterion is met, the floor level of participation is 15 hours, and a person able to work that amount might be required to take a job up to 25 hours. These people are eligible for pensioner concession cards.

It is clearly harsh, arbitrary and inequitable to have these two minimum work capacity rules. Even more lenience should be shown to the short-term incapacitated to enable them to recover from sickness. What employer would wish to take on a sick person for 8 hours a week, knowing that when they recover, they will be required to look for a full-time job?

If the current proposals are to be implemented in relation to Disability Support Pension, and treatment of those with partial capacity on Newstart, then equity requires that requirements of those with short-term incapacity be brought at least into line with the long-term incapacity group. That is, people with incapacity expected to last less than two years should be exempt from job search requirements while they cannot work 15 hours a week.

A4 Education

There is some confusion over provision for people with partial capacity to engage in education.

At present DSP recipients can engage in full or part-time education and receive pensioner education supplement and an annual education entry payment, in addition to their pension, to meet the costs of education.

Normally Newstart is not available to a person in full-time education, and if that person was not a pensioner, he or she would normally claim Austudy. However Austudy does not allow for a principal carer or person with partial capacity to take part-time study.

Although I do not have precise figures, I understand that the DSP population has a high proportion of people who did not complete Year 12 or do not have any post-school education. This is a disadvantage in the labour market, particularly for those who are incapacitated for manual work. The labour market is suffering from skills shortages and requires higher education levels among the potential workforce.

The proposed definition for partial capacity to work (new S16B) includes whether a person could undertake 'training activity' and whether that would enable the person to work independently within 2 years. Training activity includes 'one or more of the following activities, whether or not the activity is designed specifically for people with physical, intellectual or psychiatric impairments:

- (a) education;
- (b) pre-vocational training;
- (c) vocational training; 27;
- (d) vocational rehabilitation;
- (e) work-related training (including on-the-job training).' (new S94(5))

Although S601(2) of the Act at present allows a person to be required to

- A) undertake a course of vocational training; or
- (B) participate in a labour market program; or
- (BA) participate in a rehabilitation program; or
- (C) participate in another course;

approved by the Employment Secretary which is likely to:

- (D) improve the person's prospects of obtaining suitable paid work; or
- (E) assist the person in seeking suitable paid work'

this provision will be repealed under the Bill.

Under new S606(1) a Newstart Activity Agreement can 'require the person to undertake one or more activities that the Secretary regards as suitable for the person'. It is not clear that that can include part-time education in lieu of job search.

This leaves no income support provision for a person assessed as able to work within two years after a 'training activity' and no scope for education. That person is ineligible for Disability Support Pension, cannot claim Austudy unless they have the

capacity to take on full-time education and must rely on Centrelink's/Job Network's permission to undertake education on Newstart.

B Parents

While this submission is primarily concerned with people with disabilities, I wish to raise some points about the changes for parents.

B1 Education

My OECD work showed that, across the countries in the study, the most important determinant of sole parents' employment was education level. A recent report by Harding et al⁶ found that 80% of jobless parenting payment recipients had no post-school qualifications. Many would not have completed Year 12. My comments above in relation to the desirability of education apply.

Although the Bill allows sole parents receiving Pensioner Education Supplement when their child turns 8 to continue receiving it until they complete their course, it is not clear how sole parents undertaking part-time study will be accommodated in the income support system.

B2 Financial considerations

Under the Bill, sole parents will be cut off Parenting Payment and expected to claim Newstart when their child reaches 8. This will involve an income loss of \$51.30 a fortnight (at current rates) and far more severe falls in income if they are already in paid work and part-pension.

It is worth noting that living standards and equivalence research consistently find that Australian social security rates for sole parent families are already less adequate than pension rates for couples and childless people.

This is not aligned with any reduction in living costs nor additional income. (Under the present regime, the end of Parenting Payment Single co-incides with the child's eligibility for Youth Allowance). It is extremely poor policy to impose this cut arbitrarily.

B3 Costs and feasibility of work, travel and child care

Although there are separate provisions in the Bill taking into account 'access to appropriate care and supervision for the children at the times when the person would be required to undertake the work', and jobs where 'commuting between the person's home and the place of work would be unreasonably difficult' there is no recognition that the combined costs of work and child care could be greater than the net increase in income from working, ie that the person could spend more on work related costs than they earned after tax and the Newstart income test.

Nor is there recognition that a parent may have to travel via school or child care on the way to and from work, and that this may be unreasonable.

⁶ Ann Harding, Quoc Ngu Vu, Richard Percival & Gillian Beer Agenda, Welfare-to-Work Reforms: Impact on Sole Parents, Volume 12, Number 3, 2005, p 205

B4 Combinations of caring and disability

There is no provision for relief from the activity tests for a person who is both a principal carer and has partial capacity to work. For such people the combination is likely to constitute a complete barrier to taking on paid work. I understand that many current parenting payment recipients have some level of disability.

Similarly, there is no provision for people who combine partial incapacity or the primary carer role with caring for other adults. Again I understand this is not uncommon. The other caring roils might not be sufficient to qualify the person for Carer Payment but, in combination, could preclude work.

B3 Marital status

Savings provisions will be nullified if a parent's marital status changes. This does not apply to other payments and should not apply to parents. In particular it is a strong disincentive to re-partnering for those affected.

B4 Domestic violence and re-location.

There is a provision in the Bill for a 26 week activity test exemption for a principal carer leaving a relationship in which he or she was subject to domestic violence.

There is no provision in the case of a child being the subject of violence or sexual abuse. In such cases, the child is likely to be traumatised and need particular care from the carer. The family may also have to re-locate to escape from the perpetrator, which involves finding new accommodation, schools and so on.

Furthermore, if a family on separation needs to find new accommodation, their choice may need to include moving to be near family support or moving to an area of affordable accommodation. If they move to an area of lower employment they incur a Newstart non-payment period.

C Mature Aged Unemployed

I note that a large number of concessions for mature aged unemployed people will be removed under this Bill. Mature Age Allowance has recently been phased out.

The remarkably increased employment rate of mature aged people in general in the labour force over recent years is very welcome. However my research indicates that much of that is a reversal of the trend to early retirement, that is fewer mature aged people are leaving jobs. People who find themselves out of work in mature age still face considerable barriers to re-entry.

These measures are likely to lead to hardship for this vulnerable group.

Conclusion

The list of comments above is not comprehensive. The short time available did not allow that.

I would appreciate the opportunity to appear before the Senate Community Affairs Committee inquiry into the current Bill to elaborate on any or all of these points.