

rights review

NEWS & COMMENT ON SOCIAL SECURITY ISSUES

welfare legislation - unfair, unbalanced and inconsistent

The changes set out in the *Employment and Workplace Relations Legislation Amendment (Welfare to Work and other Measures) Bill 2005* represent the most significant downgrading of income support provisions in the Social Security system since the Social Security Act was introduced in 1947. This is the conclusion reached by the National Welfare Rights Network (NWRN) on examination of the Bill when it was tabled in mid-November. The NWRN analysis was set out in a comprehensive submission to the three day Senate Community Affairs Committee inquiry into the proposed legislation.

Detailed analysis of the Bill revealed that the package was even worse than expected, particularly in relation to the dramatic narrowing of future Disability Support Pension qualification provisions. Many of the key problems with the "Welfare to Work" package had already been exposed over the months between the Budget "welfare reform" announcements and the tabling of the legislation. These included:

- ♦ the cuts in payments of \$29 a week for parents and \$46 a week for people with disabilities who claim Newstart Allowance (NSA) after 1 July 2006, and
- ♦ the punishingly high effective marginal tax rates of up to 75% which illogically reduce the financial rewards of work.

shift in direction

When the legislation was tabled, it also became clear just how far the package represents a major shift "from democracy to bureaucracy", or from the Parliament, to government departments. Much of the detail that should be set out in the legislation is in fact missing. The Department of Employment and Workplace Relations (DEWR), which is responsible for the Bill, told the Senate Inquiry that this would be set out in policy guidelines to be determined later. Rights and entitlements, obligations and responsibilities which have previously been set out in legislation and determined by Parliament are now to be shifted to bureaucrats to determine – and re-determine on a regular basis whenever it suits them.

The Bill not only extends activity requirements and penalties to vulnerable groups such as parents and people with disabilities, but it also



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Welfare Rights Centre

Welfare Rights Centre is a community legal Centre which specialises in Social Security law, providing advice and representation on all Social Security matters, including appeals. The Centre also provides education and training, and is active in community development, law reform and lobbying.

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welfare legislation - unfair, unbalanced and inconsistent

erodes many important protections and removes a number of the safeguards that are in the current Act. The Bill adopts a "one size fits all approach" by imposing the conditions of payment and activity requirements of Newstart Allowance (NSA) for unemployed people on to parents with young children, people with disabilities who have a partial capacity to work and mature age unemployed people.

inconsistencies

The Bill also contains a series of complexities and inconsistencies in relation to the application of, and exemptions from, NSA activity requirements. Some exemptions are automatic, while others are at the discretion of Centrelink officers. Exempt groups who are home educators, distance educators and approved foster carers will receive a payment "top-up" to the higher Parenting Payment rate, but parents of children with significant disabilities or with large families (defined as more than four school age children) will only be paid at the lower NSA rate and may or may not be exempt from activity requirements. A single parent of a child with a significant disability who is granted two 52 week exemptions from the activity test will be \$3,016 worse off than a

person who is a foster carer. Where is the fairness and logic in this?

deeply flawed

Many of the provisions in the Bill, like the payment cuts, harsh income tests and severe eight week no payment penalties, are likely to cause significant hardship rather than provide real assistance. Many of the provisions are also wide ranging and very complex. However, despite this, Parliament and the community were given just one week to digest the detail of the proposed legislation before the three day Senate Inquiry took evidence in Canberra. Given this, and the demands of the equally complex and controversial Industrial Relations legislation also before Parliament, it is hard to see how Senators could properly scrutinise this legislation and how, therefore, they could possibly discharge their onerous responsibilities to the Australian people in their legislative review role. Under the circumstances, the vast majority of Senators could have no real idea of what they are doing or they would not be able to pass such a deeply flawed piece of legislation into law. ▲

senate committee finalises review

The Senate's Community Affairs Legislation Committee has handed down its report on the *Employment and Workplace Relations Legislation Amendment (Welfare to Work and other Measures) Bill 2005*. The Committee received 62 public submissions and two confidential submissions. Despite many concerns about the proposed legislation (as highlighted in this edition of "rights review") only minor changes to the legislation were recommended by the Committee.

These changes include that parents with four or more dependent children be automatically exempt from participation requirements and that the Department of Employment and Workplace Relations table in Parliament, on an annual basis, key data on the implementation of the Welfare to Work package. The Australian Labour Party, Australian Democrats, Australian Greens and Family First Party all made dissenting reports. ▲

new requirements for parents

The Government's "Welfare to Work" legislation is set to radically change the lives of many thousands of sole parents with the new laws requiring thousands of parents to satisfy certain activity requirements or have their payments suspended for up to eight weeks.

The new provisions significantly restrict eligibility for Parenting Payment (PP). Currently, both sole and partnered parents are eligible for PP until their youngest child turns 16.

Under the new rules:

- ✦ sole parents claiming PP after 1 July 2006 can only qualify for the payment while their youngest child is under eight;
- ✦ partnered parents claiming PP after 1 July 2006 can only qualify for the payment while their youngest child is under six.

Where a person does not qualify for PP because their child is above the allowable age, they will qualify for Newstart Allowance (NSA) and be subject to activity test requirements with penalties to apply should they not satisfy the activity test. In some circumstances, an eight week non-payment period will be imposed.

People on Newstart Allowance (NSA) with children will have a significantly lower rate of payment than the rate of PP. The National Welfare Rights Network (NWRN) and various community groups, including church leaders, have previously highlighted the harsh impacts this will have on families. This mean-spirited measure to reduce parents' rate of payment is not required nor indeed justifiable to achieve welfare reform or the



Government's stated objective to "increase workforce participation by those receiving workforce age income support".

Some people who are receiving PP before 1 July 2006 will be able to remain on PP until their youngest child turns 16. However, in order to remain on the payment they must continue to have "transitional status". In order to retain transitional status a person must not change their relationship status for more than 12 weeks. If they do, they will be transferred to the new (post July 2006) payment rules.

participation requirements

Where a person is in receipt of PP or NSA, and their youngest

child turns six, they will be required to enter into an Activity Agreement. Failure to do so, or failure to comply with the terms of the Agreement, can eventually lead to a non-payment period of up to eight weeks. The NWRN has a number of concerns about these Agreements (see article page 13):

recommendations

The NWRN submission to the Senate Inquiry in the "Welfare to Work" legislation made a number of recommendations to minimise the adverse impact the legislation will have on families with children. These recommendations include:

- ✦ that PP be retained for parents caring for children less than 13 years. This would not preclude the application of participation requirements once the youngest child turns six, and
- ✦ that the "transitional arrangements" be amended to ensure that they provide ongoing entitlement to PP for people in receipt of PP prior to 1 July 2006, despite a change in their relationship status after 1 July 2006 for less than two years.▲

case study

Mary is a member of a couple on 1 July 2006, and her youngest child is nine. She therefore continues to receive Parenting Payment while she remains a member of a couple. If Mary becomes a sole parent in October 2006 then she will no longer be eligible for Parenting Payment and will only be entitled to the lower Newstart Allowance payments. ▲

major changes to DSP

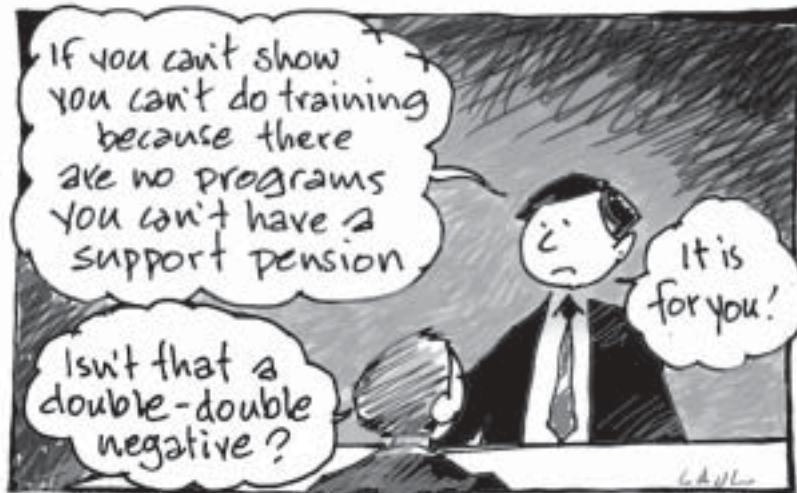
From 1 July 2006, the qualification criteria for Disability Support Pension (DSP) will be drastically changed, forcing many people with disabilities onto Newstart Allowance (NSA) where they will be required to satisfy the activity test or be subject to penalties including a non-payment period of up to eight weeks.

The most straightforward change to DSP relates to the number of hours a person is able to work in order to qualify for the payment. Under current rules, where a person is unable to work for 30 hours per week, they may qualify for DSP. From July 2006, the 30 hour per week rule will be replaced, so that where a person is potentially capable of 15 hours work per week within two years they will not qualify for DSP. This is a radical change to qualification criteria and will result in thousands of people being forced onto NSA which, for a single person is \$77 per fortnight less than DSP.

other changes

The Employment and Workplace Relations (Welfare to Work) Bill also introduces a number of other significant changes to the qualification criteria for DSP. Under current rules a person may qualify for DSP where their impairment prevents them from undertaking "educational or vocational training or on-the-job training" during the next two years. Training specifically designed for people with a disability is specifically excluded from the definition of "educational or vocational training or on-the-job training". The definition of training is to be broadened, with the words "educational or vocational training or on-the-job training" replaced with "training activity". This means that to qualify for DSP, a person's impairment must prevent them from undertaking a "training activity" that would enable them to do any work of 15 hours a week or more, independently of a program of support, within two years.

The effect of this change, in conjunction with the change in the work test from 30 to 15 hours per week, will be significant. **Given that the majority of people with a disability, including a severe**



disability, would be capable of undertaking a "training activity" if such training were available and locally accessible, this provision could conceivably preclude most people from getting DSP, including many claimants with a severe disability. This is contrary to the Minister's assurances that people with a severe disability will still qualify for DSP under the amended legislation.

recommendation

People from rural, regional and remote areas where there are limited or no "training activity" opportunities may never qualify for Disability Support Pension - purely because of the unavailability of programs. The proposed change would mean that a person who is unable to work 15 hours a week, would nevertheless be ineligible for DSP if their impairment would not prevent them from undertaking a "training activity" that would lead to a capacity to work at least 15 hours a week within two years, even if the "training activity" was not available.

In deciding whether a person is

capable of undertaking a "training activity", the legislation does not require Centrelink to take into account the availability of the training in the person's local area.

The proposed changes mean that without such services available in regional, rural and remote areas, many people with severe disabilities may be placed indefinitely on NSA, as it could be decided that with the support of a program (even if no program is available in their area) the person could work for more than 15 hours per week.

The National Welfare Rights Network highlighted concerns about these changes to DSP in its submission to the Senate Inquiry into the welfare to work legislation. The National Welfare Rights Network recommended that the legislation be amended to require Centrelink to take into account training activity "available in the person's locally accessible area" to ensure that a person is not refused DSP solely because they can't access a training activity.

However, the Government majority in the Senate Inquiry chose to ignore this obvious and serious flaw in their legislation. ▲

denied newstart allowance

Dominic claimed Newstart Allowance (NSA) as he was unemployed and looking for work. Centrelink rejected the claim on the basis that he had a taxi licence and even though he was unemployed, a fact not disputed by Centrelink, it was decided that he did not qualify for NSA as taxi driving positions were available in Sydney!

Dominic contacted the Welfare Rights Centre (WRC) seeking advice about his legal rights. We contacted the local Centrelink office which had rejected his claim for NSA and we were advised that they were under instructions "not to grant taxi drivers" as there is "plenty of work for them in Sydney". The Centrelink employee advised us that the instruction was issued by Centrelink's central office.

We contacted the section in Centrelink that issued the instruction and we were advised that Centrelink "has taken the opinion that taxi drivers are not unemployed but they are underemployed by choice". We were told that Centrelink has a

policy to reject a person's claim for NSA where they reside in Sydney and are qualified to drive taxis.

The Centre put the view to Centrelink that section 593 of the Social Security Act provides that where a person is unemployed they may, if otherwise qualified, receive NSA. The legislation does not provide Centrelink with the discretion to reject an NSA claim where Centrelink is of the opinion that there is available work for a person.

Dominic was eventually granted NSA from date of claim after the Centre lodged a written appeal on his behalf. This case raises a number of concerns about Centrelink policy and the fact that the application of this policy may lead to potential NSA recipients being wrongfully denied payment. ▲

new mobility allowance

In recognition of the fact that many people with disabilities will no longer qualify for Disability Support Pension (DSP) from 1 July 2006 and that they will be required to satisfy activities in order to receive Newstart Allowance (NSA) or Youth Allowance (YA), a new higher rate of Mobility Allowance is to be introduced from 1 July 2006.

At present Mobility Allowance is paid at the rate of \$69.70 per fortnight and to qualify a person must be over 16, have a disability, not be able to use public transport without substantial assistance and must be undertaking 32 hours of voluntary work or vocational training over a four week period.

The new Mobility Allowance will be paid at the rate of \$100 per fortnight and to qualify a person

must be receiving NSA, YA, or DSP and in addition to not being able to use public transport without substantial assistance, they must be undertaking certain activities. These activities are looking for work or working at least 15 hours per week at award wages.

Should a person not qualify for the higher rate of Mobility Allowance they may still qualify for the lower rate. ▲

waiting periods extended

In a further cost cutting measure found in the recent "welfare to work" legislation, the Federal Government is to extend the Seasonal Work Preclusion Period (SWPP) and the Income Maintenance Period (IMP) to a wider range of Social Security payments.

At present, a person is subject to a SWPP where they earn higher than average wages from seasonal work. From 20 September 2006, the SWPP will be extended to Carer Payment, Disability Support Pension (DSP), Sickness Allowance, Parenting Payment Single and Austudy Payment. Contract and intermittent workers will also be subject to the SWPP, which is currently not the case.

From 20 September 2006, the IMP will be extended to people claiming DSP. In addition, redundancy payments, which are currently not taken into account when working out a person's IMP, will be included in the calculation of an IMP.

The Government's explanation for these changes is "to ensure that income support is targeted to those most in need". If that is the case, how come the Government allows millionaire families to receive a lump sum Maternity Allowance payment of \$3,000 and regular fortnightly Family Tax Benefit B payments? ▲

the new compliance regime

The National Welfare Rights Network has estimated that up to 16,000 people a year will face an immediate eight week non-payment period under the Federal Government's new Social Security compliance regime.

The new compliance regime, to be introduced from 1 July 2006, abolishes the current breach system of rate reduction penalties for the first two breaches. It is to be replaced by a system of payment suspensions in the event of a "participation failure" with a new emphasis on early compliance.

Under the new regime there will effectively be two groups of breaches, which lead to different penalties. It will apply to all those on activity tested payments, including parents where their youngest child turns six and people with disabilities who are deemed to be capable of working between 15 and 29 hours a week.

new system

Under the proposed system, a "more serious" offence will lead to an immediate non-payment period of eight weeks. This penalty will be imposed where a person:

- ✦ is unemployed due, either directly or indirectly, to a voluntary act;
- ✦ is unemployed due to misconduct;
- ✦ has refused, or failed, without a reasonable excuse, to accept a suitable job offer;
- ✦ fails to commence, complete or participate in an "approved program of work"; or
- ✦ fails to comply with the conditions of the "approved program of work".

For a "less serious" offence, (such as failing the activity test or failing to attend an interview with Centrelink) where this offence is the first or second "participation failure" in a one year period, payment will be suspended until the person complies with the

requirement they failed to undertake or complies with another activity imposed by the Secretary. The suspension of payment will not be immediate, but will commence from the beginning of the next payment fortnight. If a person complies with the re-set activity in the time set, payment will be restored, generally without any loss or payment deduction. Where a person fails to comply with the re-set activity, payment remains suspended until they do. Subsequent failures will also count as "participation failures". Three failures in a 12 month period will result in an eight week non-payment period.

Activity test breaches incurred in the 12 months prior to 1 July 2006 will carry over into the new system. The National Welfare Rights Network estimates that 40,000 people could enter the new compliance regime from 1 July 2006 with at least one "strike" already against their name.

impact on welfare agencies

As a result of changes to the eligibility criteria for Parenting Payment (PP) and Disability Support Pension (DSP), thousands of people who are currently not subject to the breach penalty system will face the possibility of an immediate eight week non-payment period for a first offence. For example, a person with an acquired brain injury who Centrelink accepts cannot currently work 15 hours per week will be placed on Newstart Allowance and will be subject to the activity test (see Brendan's story page 7).

The imposition of an immediate eight week non-payment period will unquestionably cause a substantial impact not only on the penalised

individuals themselves, but also on their families and the community welfare sector services and charities that are called on to provide assistance to these people. Many people subject to an eight week non-payment period won't be able to meet rent requirements and will be forced into homelessness. Many will be unable to purchase the basic necessities of life as they will be denied income support for eight weeks.

Charities, including those that provide Job Network services, are likely to see their emergency relief agencies stretched even further with a significant increase in demand for their services.

A recent report by the Social Policy Research Centre, *The Impact of Breaching on Income Support Recipients* that was commissioned by the Department of Family and Community Services, highlights the negative impacts of breaching policies on individuals, their families, and communities.

The report found that people affected by an eight week non-payment penalty under the current regime were forced to rely on family and friends to survive. Between 10% and 20% of those breached were found to lose their accommodation or had to move into cheaper housing. Breaching placed household relationships under stress and 17% of those studied had to cut down on the medication they needed as a result of being breached. More extreme impacts, such as homelessness and serious criminal and risk-taking behaviours, though small, were also reported. The study concluded: "For some, the impact of loss of income at current level can be severe and may be long lasting, especially if they lack networks of support".

the new compliance regime...cont

contradictory

The stated intention of the Government's "welfare to work" changes is to "encourage increased workforce participation". How is this achieved by imposing an eight week non-payment period on a person? For example, where a person has a third "participation failure" for not attending a Centrelink interview and has an eight week non-payment period imposed, even if they are willing to attend another interview **immediately**, the non-payment period is still imposed, unless the Secretary is "satisfied" that it should not be imposed. In this situation even though a person is willing to participate and undertake the activity, the result is that they may be excluded from the support required to obtain employment.

An eight week non-payment penalty, a loss of about \$2,000 is not consistent with the "Welfare to Work" aim of encouraging jobseeker engagement and compliance with the system. Rather, it is a hang-over from the current punishment oriented system.

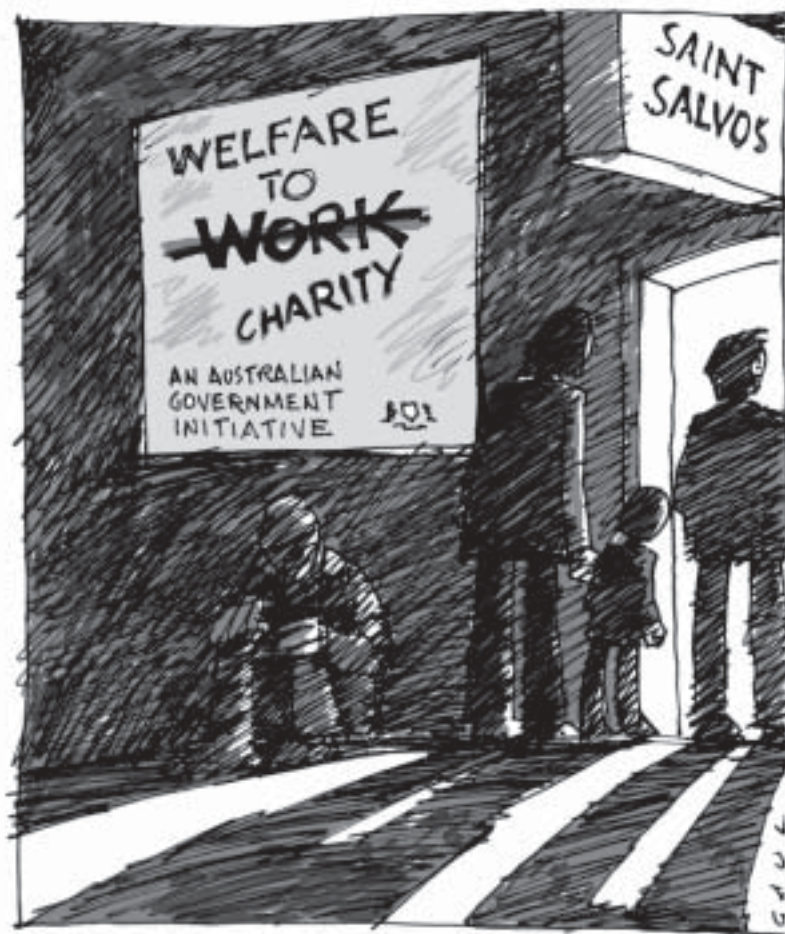
Cutting a person's payment totally for eight weeks is likely to be counterproductive as it will lead to the total disengagement of jobseekers for eight weeks.

changes required

Unless the new compliance regime is significantly modified before 1 July 2006, it poses extreme risks for individuals and families and will see thousands of vulnerable Australians knocking on the doors of already over-stretched charities and emergency relief agencies.

Any compliance regime that seeks to be effective must be fair, reasonable and encourage re-engagement, as opposed to offering only punishment. The Government's current proposals fail to meet all of these benchmarks.

The National Welfare Rights Network has recommended to the Government that the following



amendments be implemented to the proposed regime to make it fairer:

- ✦ that the maximum non-payment period be reduced from eight to two weeks;
- ✦ that a non-payment period penalty be lifted once the original requirement is complied with; and
- ✦ that activity test penalties imposed between 1 July 2005 and 1 July 2006 not count towards the "three strikes" policy.

Brendan's case

The case study of Brendan is detailed in the Government's Explanatory Memorandum to the Employment and Workplace

Relations (Welfare to Work) Legislation which sets out the new compliance regime.

Brendan has an acquired brain injury. It is accepted that he is not able to work more than 15 hours per week. However, it is decided that with the assistance of a Disability Open Employment Service, within two years Brendan will be able to work for more than 15 hours per week. Therefore he does not qualify for Disability Support Pension and will receive Newstart Allowance, which requires that he satisfy the activity test. From 1 July 2006, Brendan and people in similar circumstances, will be subject to the new suspension provisions with the possibility of an eight week non-payment period very much a reality. ▲

WELFARE TO WORK CHANGES

social security changes

what's happening when

This edition of What's Happening When lists the major proposals of the Employment and Workplace Relations Legislation Amendment (*Welfare to Work and Other Measures*) Bill 2005 and the Family and Community Services Legislation Amendment (*Welfare to Work*) Bill 2005. This list is not exhaustive and the proposed changes may be amended or rejected by Parliament.

Disability Support Pension (DSP)

New DSP claimants

From July 2006, to qualify for DSP a person must be unable to work for 15 hours per week (reduced from 30 hours) at award wages within two years. The term "continuing inability to work" is to be amended so that a person's impairment must either prevent them from undertaking a "training activity" during the next two years, or, where the person is capable of undertaking a "training activity", the activity must be unlikely to enable the person to do any work independently of a supported program in the next two years. "Training activity" is to include programs designed specifically for people with disabilities. This requirement is to apply *regardless of the availability* of "training activities" in the person's local area.

Proposed date of effect: 1 July 2006

Existing DSP recipients

People who were receiving DSP on 10 May 2005 will not be affected by the changes and may continue to qualify under the current rules. People who qualified for DSP between 11 May 2005 and 30 June 2006 are to be assessed under the new rules at their first review after 1 July 2006.

Proposed date of effect: 1 July 2006

Parenting Payment

Parenting Payment

Parents who claim Parenting Payment after 1 July 2006 are to qualify only if their youngest child is under eight (single parents) or under six (partnered parents). New activity requirements for parents are explained below.

Proposed date of effect: 1 July 2006

Existing Parenting Payment recipients

People who were receiving or had been granted Parenting Payment as at 30 June 2005 are to retain qualification until their youngest child turns 16, as long as they continue to have "transitional status" (i.e. a person must not change their relationship status or have their payment cancelled for more than 12 weeks).

Proposed date of effect: 1 July 2006

Allowances

Parents

Parents who do not qualify for Parenting Payment may qualify for Newstart Allowance (NSA) or Youth Allowance (YA). Single parents on NSA or YA who are the "principal carer" of at least one child may also qualify for a Pensioner Concession Card.

Proposed date of effect: 1 July 2006

People with disabilities

A person who does not qualify for

the DSP under the new rules, but who has a "partial capacity for work", may qualify for NSA and receive a Pensioner Concession Card. A person will have a "partial capacity for work" if, because of a physical, intellectual or psychiatric impairment, they are unable within two years to work 30 hours of work per week independently of a program of support. The person's incapacity must be such that there is no "training activity" which is likely to increase the person's capacity to undertake 30 hours of work in the next two years.

Proposed date of effect: 1 July 2006

Activity requirements

Parents receiving Parenting Payment

Sole parents with children between six and eight and partnered parents whose youngest child has turned seven (or who are covered by transitional arrangements after July 2007) are to be required to meet "participation requirements", unless an exemption applies. There are to be some exemptions from participation requirements for people in limited circumstances for restricted periods of time.

Proposed date of effect: 1 July 2006

Parents and people with disabilities

Parents who are "principal carers" and people with a "partial capacity for work" due to disability are to be required to seek part-time work that Centrelink regards as

WELFARE TO WORK CHANGES...CONT

"suitable". The Bill does not contain an upper limit of hours which the Secretary can require a person to look for work (but the Explanatory Memorandum says that 25 hours will be the maximum).

Proposed date of effect: 1 July 2006

RapidConnect

As soon as a person who is likely to be subject to participation requirements lodges a claim or contacts Centrelink about a claim they are to be required to attend an interview with a specified person or organisation at a specified time and place and/or be required to enter into an activity agreement. The person's allowance will not be payable until the person has attended the interview and/or entered into the activity agreement as required. Some exemptions may apply.

Proposed date of effect: Royal Assent

Activity testing

The current list of terms which may be included in an activity agreement is to be removed. Instead, Centrelink will impose activities it considers "suitable". Activities will generally relate to jobseeking.

Centrelink will be able to impose "suitable" activities even where a "temporary incapacity" exemption from the activity test has been granted. Failure to undertake the activity may result in the exemption being revoked.

Long term unemployed people who are considered not "genuine" in their job search efforts are to undertake full-time "Work for the Dole" equal to 50 hours per fortnight for 10 months of the year, as well as job search activities.

Proposed date of effect: 1 July 2006

Compliance

The existing breaching and

penalty regime is to be revoked. The new regime is to apply to all the payments that the old regime applied to and is also to apply to those parents with activity requirements under the Bill (see above) and to people receiving Austudy Payment. The new compliance regime provides for suspension of payments until compliance, and non-payment periods of eight weeks for a third or subsequent "participation failure" in a 12 month period, and immediately for a number of defined "participation failures" such as refusal of a suitable job offer.

Proposed date of effect: 1 July 2006

Payment pending review

The provisions allowing for "automatic" payment pending the outcome of a review (which apply in certain situations where a person has delayed entering into an activity agreement or has sought a review of its terms) are to be removed.

Proposed date of effect: 1 July 2006

Written notice

To give practical effect to the new "RapidConnect" provisions, the requirement that a person be notified in writing of a requirement is to be removed. The consequences of this amendment will reach farther than the "RapidConnect" provisions because these sections govern most Social Security notices.

Proposed date of effect: Royal Assent

Waiting periods

The Income Maintenance Period which currently applies only to NSA, YA, Parenting Payment (partnered) and Sickness Allowance (SA) is to be extended to DSP, Carer Payment (CP), PP (single) and Austudy Payment and its calculation will now also include redundancy payments.

The Seasonal Work Preclusion Period, which currently applies to NSA, YA and PP (partnered), is to be extended to DSP, CP, PP (single), Austudy Payment and SA. The definition of "seasonal work" is to be broadened.

Proposed date of effect: 20 September 2006

Pensioner Concession Card

Qualification for a Pensioner Concession Card is to be extended to certain people receiving NSA and YA (except full-time students and "new apprentices"). A person will need to have a "partial capacity to work" or be the single (un-partnered) "principal carer" of at least one child. Should the person's allowance cease to be payable due to employment income the person may, in certain circumstances, retain qualification for up to 52 weeks (if the person has a "partial incapacity to work") or 12 weeks (if the person is a single "principal" carer of one or more children).

Proposed date of effect: 1 July 2006

10% interest penalty for debts

A 10% penalty is to be applied to Social Security debts caused by a person's refusal or failure to provide information in relation to income or knowingly or recklessly providing false or misleading information in relation to income. The only restriction is that the debt is to relate to "income from personal exertion" (generally, earnings). This penalty will not apply to Age Pension, Carer Payment or Family Assistance debts.

Proposed date of effect: 1 July 2006

Suspension of Disability Support Pension following return to work

The current requirement that a person notify Centrelink within 14

WELFARE TO WORK CHANGES...CONT

days of commencing work, in order to gain access to the provision which permits suspension (rather than cancellation) of DSP for up to two years, is to be extended to two years and 14 days in certain circumstances (although a person is still required to notify of a change to their circumstances within 14 days).

Proposed date of effect: 1 July 2006

Supplementary payments

A second, higher rate of Mobility Allowance is to be introduced. To obtain the higher rate of payment, recipients of DSP, NSA or YA (unemployed) must be looking for work or working for 15 hours or more per week.

Employment Entry Payment (EEP) of \$312 is to be payable to certain people with a "partial capacity to work" who were receiving NSA or YA immediately prior to obtaining work. Sole parents who are the "principal carer" of at least one child and receiving NSA or YA immediately prior to obtaining work may be able to qualify for EEP of \$104. Certain parents receiving PP (single) and PP (partnered) may also be able to qualify for EEP of \$104.

Qualification for Pharmaceutical Allowance and Telephone Allowance is to be extended to certain NSA and YA recipients who have a "partial capacity to work" or who are the single (un-partnered) "principal carer" of at least one child.

Proposed date of effect: 1 July 2006

Rates

The income test for NSA, YA, Austudy, and Parenting Payment is to change so that the rate at which a person's payment reduces due to

income will be slightly lower (60c rather than the current 70c). This lower rate of reduction will also apply to other payments which use the Benefit Rate Calculator such as Widow Allowance, Partner Allowance and Mature Age Allowance.

Proposed date of effect: 1 July 2006

Exchange of personal information

There is to be an easier exchange of information between Centrelink and its contracted agencies, such as Job Network members or services conducting Comprehensive Work Capacity Assessments.

Proposed date of effect: Royal Assent

Child Care Benefit (CCB)

The maximum number of hours of child care that a person can be paid CCB (without satisfying the "work test") is to increase from 20 to 24 hours per week.

The maximum number of hours of child care that a person can be paid CCB (if they satisfy the "work test") is to be 50 hours per week. To satisfy the CCB "work test" a person will need to undertake certain activities for at least 15 hours per week (although hours may be averaged over a fortnight if they amount to at least 30 hours).

Proposed date of effect: Royal Assent ▲

marriage-like relationships changes

Those of you keeping track of changes to the Department of Family and Community Services' Guidelines will have noticed quite extensive changes to the policy on deciding who is in a "marriage-like relationship".

The National Welfare Rights Network has been monitoring the changes and has welcomed many of them. For example, the Guidelines now instruct decision-makers to keep in mind that separated parents who still spend a lot of time together in order to share parenting responsibilities are not necessarily members of a couple. It also reminds decision-makers that many elderly people choose to reside together in order to provide care and companionship to one another

and to save on living costs, rather than to resume or start up a "marriage-like relationship". Such changes in the policy make common sense and reflect the reality of many people's living arrangements.

The Network, however, still has concerns that Centrelink's internal procedures have not been changed to mirror this policy. One of the Network's projects in the coming year will be to focus on Centrelink's administration of the new policy.▲

social security rights

The purpose of this practitioner's guide is to explain a person's basic Social Security rights

legal rights

The laws which govern Social Security payments are found in Commonwealth legislation. Social Security legislation provides a person with specific legal rights.

right to claim Social Security

A person is entitled to claim any payment for which they think they may be eligible. Centrelink cannot refuse to accept a claim form.

A claim for a payment must be made in writing. Payment is generally made from date of claim so it is best to claim as early as possible. If a person contacts Centrelink by telephone and tells Centrelink that they **intend to claim**, a payment can be backdated to the day the person contacted Centrelink, provided the claim is lodged within 14 days of the call.

freedom of information

Under the *Freedom of Information Act*, a person can access a copy of their Centrelink file, computer records and archived records, within 30 days of a written request.

right to written notice

A person has the right to receive a written decision containing the reasons for any Centrelink decision, the evidence considered, and the legislative basis for the decision.

centrelink interviews

In most cases, Centrelink has the right to ask a person to attend an interview so that it can assess their correct entitlement to a Social Security payment. A person also has rights with regard to these

interviews. A person has the right to request that questions be put in writing. The reply may also be in writing within either seven or 14 days. A person also has the right to have a friend or a relative at an interview if you wish.

prosecution interview

If a person has a Social Security debt, Centrelink may request that they attend a "prosecution interview". A prosecution interview is different to other Centrelink interviews as Centrelink provides the person with a warning that anything they say may be used against them in a court of law. The interview is also taped. A person has the right not to attend the prosecution interview, or if they do attend, to walk out of it when they want. No penalty can be imposed for not attending this interview, or for stopping the interview once it has commenced. Payments cannot be stopped due to not attending the prosecution interview.

centrelink field officer visits

Centrelink Field Assessors may call at a person's home. A person has the right to refuse entry to the Field Assessor. No penalty can be imposed by Centrelink for this refusal. Should a person refuse a Field Assessor entry to their home they should arrange to have the interview conducted at the Centrelink office.

independent advice

A person has the right to seek independent advice, such as from a Welfare Rights Centre about any Social Security matter at any time, even while being interviewed by Centrelink.

appeal rights

Centrelink decisions can be appealed. Appealing is easy and free. To appeal, a person should simply tell Centrelink that they are not happy with its decision and that they would like to appeal to an Authorised Review Officer (ARO). It is best to lodge an appeal in writing and to keep a copy of the appeal letter. An appeal can, however, be lodged over the telephone.

An ARO is a senior officer in Centrelink who has the power to change the original decision. Many people are successful at this level.

If a person is not satisfied with an ARO decision they can appeal to the Social Security Appeals Tribunal (SSAT), which is independent of Centrelink.

appeal time limits

A person can appeal to an ARO or to the SSAT at any time. However, to receive back pay to the date of the original decision, they must appeal to an ARO within 13 weeks of receiving written notice of the original decision and then, if necessary, appeal to the SSAT within 13 weeks of receiving notice of the ARO decision (different rules apply for Family Tax Benefit). An appeal can be lodged 13 weeks after receiving the notice, however in this case, should the appeal be successful arrears are paid to the date the appeal was lodged.

Where a person is appealing to an ARO or to the SSAT about a debt, no time limits apply.

For more information about legal rights and Social Security, go the National Welfare Rights Network website www.welfarights.org.au which contains over 30 Factsheets about Social Security matters. ▲

10% debt fee to apply

Under current Social Security legislation, where a person “recklessly or knowingly” fails to correctly declare their earnings from employment, they are subject to a breach, which generally results in a rate reduction of 18% or 24% for 26 weeks. In 2004-2005, 4,714 activity test breaches were imposed for this offence.

From 1 July 2006, this offence will no longer incur a breach penalty. Instead, a one-off “recovery fee” of 10% of the amount of debt will apply where the person was receiving a workforce age payment, such as Newstart Allowance. Where a person fails to correctly declare their income, they will have to repay the money to Centrelink, plus an additional amount of 10%. In addition, some people may be prosecuted for Social Security fraud.

There is no sound reason to apply an additional 10% fee to a person receiving a workforce age payment for incorrectly declaring income. Where a debt occurs and the person does not get the debt waived, it is sufficient penalty for the debt to be repaid and, where appropriate, for the person to be prosecuted in cases of fraud. This is the case with non-workforce age payments such as Age Pension and the Government has provided no reason why this should be any different for workforce age payments. ▲

don't take PM's advice!

Prime Minister John Howard recently stated that workers coerced into giving up their penalty rates or forced to sign another contract when they wanted to stay on the award should “go to another employer who will pay them better”.

If it was only that easy .

Workers should be aware that should they resign from their job because they don't like the conditions and intend to look for work elsewhere, they will be regarded as “voluntarily unemployed” (either directly or indirectly) and subject to a Social Security eight week no payment penalty. Under current legislation if it is a first breach in two years, they will receive an 18% reduction to their Newstart Allowance or Youth Allowance

payment for 26 weeks. If it is a second breach in two years, their Social Security payment will be reduced by 24% for 26 weeks and if it is their third breach in two years they will be subject to an eight week non-payment period.

From 1 July 2006, the penalty for each such offence will be an immediate eight week non-payment period. It is clear from this that the “welfare reform” and “industrial relations reforms” are designed to work hand in hand. ▲

parenting payment restored

Meena's Parenting Payment single (PPS) was reduced to the married rate as Centrelink maintained that she was a member of a couple. Meena was in fact residing in the same home as her ex-husband which in Centrelink's eyes complicated the case. She provided ample evidence to Centrelink that she was no longer a member of a couple.

Meena was divorced from her ex-husband. She had recently taken out an Apprehended Violence Order against him. She had provided Centrelink with a report from a counsellor detailing the difficulties she was experiencing with her ex-husband and that the reason that she did not have her ex-husband removed from the property was that he threatened her with violence should she force him to leave.

She advised that her current relationship with her ex-husband was very different to what it was when they were a couple. Since the divorce they lived very separate lives, not sleeping or socialising together.

An appeal was lodged to an Authorised Review Officer (ARO) who overturned the original decision and granted Meena PPS. Full arrears were paid.▲

parenting payment activity agreements

From 1 July 2006, sole parents in receipt of Parenting Payment with children aged six or seven will generally be required to meet participation requirements and enter into a *Parenting Payment Activity Agreement* ("Agreement") to qualify for their payment. The new compliance regime will apply to any "participation failure" (see separate article).

An Agreement will set out the activities "the Secretary" (meaning the Job Network provider or Centrelink) considers suitable for a person to undertake in order to remain qualified to receive payment.

In considering whether to approve the terms of an Agreement, the Secretary is to have regard to the person's "capacity to comply" with it. An Agreement may require a person to look for part-time work and to participate in an approved program of work.

A person may be exempt from participation requirements in certain situations, such as when they have been subject to recent domestic violence, have a disabled child, or there are special circumstances.

concerns

The National Welfare Rights Network (NWRN) is concerned about a number of the provisions surrounding these Agreements, including:

- ♦ the removal of the requirement that the Secretary give *written* notice to a person of the requirement that they enter into an Agreement;
- ♦ the requirement that a person **must** comply with the terms of their Agreement. The current legislation states a person must take "reasonable steps to comply";
- ♦ the removal of the list of "approved activities" for Agreements in the current legislation. The list provides a legislative safeguard around what is regarded as appropriate for inclusion in Agreements;



- ♦ the provision that states that even if a person's Agreement with Centrelink requires them to look for 15 hours work per week, Centrelink can overrule this Agreement and require the person to take a job that is more than 15 hours per week;
- ♦ the provision that requires a person to undertake particular paid work, unless the Secretary is of the opinion that the paid work is unsuitable. However, the paid work will be considered suitable if Centrelink believes that there is appropriate child care available with an approved child care provider. Centrelink does not have to take into account the opinion of the parent of the child as to the suitability of the child care; and
- ♦ that the activity test exemptions are too limited.

recommendations

In its submission to the Senate Inquiry into the proposed legislation, the NWRN made the

following recommendations with regard to the Agreements:

- ♦ that the Secretary be required to give a person **written** notice (as is currently the case) of a requirement to enter into an Agreement;
- ♦ that a person should be held to be complying with their Agreement if they take "reasonable steps to comply";
- ♦ that the "approved activities list" be included in the legislation;
- ♦ that the legislation explicitly state that a primary carer cannot be **required** to look for, or accept, more than 15 hours work per week;
- ♦ that in determining whether child care is appropriate, the Secretary should be required to take into account the cost, and the opinion of the child's principal carer;
- ♦ that the legislation clearly state that large families with four or more children be exempt from activity requirements;
- ♦ that the domestic violence exemption of the participation requirements be reworded to extend to any victim of domestic violence, regardless of their relationship status and without reference to the violence occurring in a specific timeframe;
- ♦ that longer activity test exemptions be available for people with a disabled child, foster carers, home educators and distance educators; and
- ♦ that the pre and post-natal relief exemption from the activity test be extended to a least 13 weeks. ▲

eight weeks too risky

The Federal Government has indicated that it will compile a list of “at risk” individuals, who, because of their circumstances, should not face an immediate eight week suspension of their Social Security payment.

People who the Government considers to be “vulnerable” and who do have an eight week non-payment penalty imposed on them will be “case managed” by Centrelink. These people may access some of their Social Security payment during the non-payment period to pay bills, rent and to buy food, provided they turn up to fortnightly meetings with Centrelink.

As yet, details of the circumstances which might get a person on a list, and how the system of exemptions would be administered, are not known.

However, just in case the Government’s list is too exclusive, the National Welfare Rights Network recommends that people in the following circumstances should be considered to be “at risk” and that instead of being “case managed” by Centrelink during a non-payment period, they should not be subject to the non-payment provisions in the first place.

The NWRN list of “at risk people” include:

- ♦ a person with a diagnosed mental health condition;
- ♦ a person with a manifest disability which prevents them from claiming the Disability Support Pension;
- ♦ a person facing recent or ongoing domestic violence or post-separation violence;
- ♦ a person with an acquired brain injury;
- ♦ a person with an intellectual disability;
- ♦ a person who has recently experienced the death of a close friend, family member or partner;
- ♦ a person with a child who has had a recent crisis, illness or injury or who has an ongoing disability;

- ♦ a person with a temporary incapacity to work or who is eligible for the Personal Support Program;
- ♦ a person recently released from a gaol or a juvenile detention Centre;
- ♦ a recently arrived refugee;
- ♦ a person on a Temporary Protection Visa;
- ♦ a person with alcohol and/or drug dependency;
- ♦ a person who is a ward of the state;
- ♦ a young person on the “unreasonable to live at home” rate;
- ♦ a person who has received Crisis Payment within the last three months;
- ♦ a person who receives, or whose partner receives, Large Family Supplement;
- ♦ a person who is homeless, or at risk of becoming homeless; and
- ♦ a person with literacy problems which would limit their understanding of a suspension notice. ▲

\$19,000 debt waived

Frances had been receiving an Age Pension for almost two years when she was advised in 2002 that she might be eligible for a payment from the Department of Veterans’ Affairs (DVA). After almost six months, she was told that her DVA pension had been approved, and that Centrelink would be notified. Frances then received confirmation from Centrelink that it was aware of her DVA pension and that her Age Pension would be adjusted.

What Centrelink was meant to do at the time was to cancel her Age Pension altogether. However, Centrelink incorrectly coded the income from DVA and continued to pay Age Pension at a reduced rate. Centrelink did not pick up its mistake until almost two years later. This is the time when Frances, then aged 84 and in poor health, was hit with a debt notice stating that she owed Centrelink almost \$19,000. Frances had no idea that she was receiving money to which she had no entitlement and believed rightly that Centrelink was aware of her DVA pension all along.

Frances, through her adult granddaughter, contacted the Welfare Rights Centre. The Centre obtained a copy of her Centrelink file

and found ample evidence on that file that Centrelink had been fully informed in writing by the DVA not only of the fact that Frances was in receipt of a DVA pension, but also of the exact fortnightly amounts of that pension and when it commenced.

The Centre wrote a detailed submission to an Authorised Review Officer, seeking that the recovery of the debt be waived due to it being caused by the Commonwealth’s administrative error, and the payments being received by Frances in good faith. Much to Frances’ relief, recovery of the debt was waived. Unfortunately, this was not before Frances had already been through considerable anguish. ▲

“hitchhikers guide” to Social Security galaxy - available free

The Independent Social Security Handbook ONLINE is available free to community workers and most state government employees in NSW, Tasmania, South Australia and Western Australia. The Handbook ONLINE is available free in these states as the Centre has entered into partnerships with the relevant state government departments to provide this important resource to community workers and state government employees.

Should your job require you to help people with Social Security matters the Handbook ONLINE is the resource to use. The Handbook ONLINE contains 47 chapters, including information on the eligibility criteria for Social Security payments, income and assets tests plus detailed information about a person's appeal and legal rights. All for free!!!

The Handbook ONLINE is updated every quarter to take into account recent changes to a Social Security law and policy. It also includes self

help forms, such as a form to lodge an appeal to an Authorised Review Officer (ARO), which can be completed and lodged with Centrelink.

If you are in NSW you can access the Handbook ONLINE through the HSNET website (www.hsnet.nsw.gov.au)

If you are in South Australia, Western Australia or Tasmania you can access the Handbook ONLINE through registering at the National Welfare Rights Network's website (www.welfarerights.org.au). ▲

social security reporter

The first edition of the new, resurrected Social Security Reporter (SSR) is now available. The SSR is an essential resource for Social Security practitioners who need to know about Tribunal and Federal Court decisions in the area of Social Security law. The November 2005 SSR edition reported on a large number of important Social Security cases decided by the Administrative Appeals Tribunal and Federal Court over last 12 months.

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