

rights review

NEWS & COMMENT ON SOCIAL SECURITY ISSUES

budget of wrong choices gives people on welfare few choices

"No government should rest while ever there are Australians failing to share in the bounty that this country has to offer," Prime Minister Howard, May 2005.

The 2005-2006 Budget sets out the Government's priorities and choices for the next few years. Unfortunately, the tenth Budget brought down by the Coalition Government was, yet again, a Budget full of wrong choices.

In making its assessment on Budget night the National Welfare Rights Network (NWRN) said that "Faced with an embarrassment of riches the Government has made a series of wrong choices in this Budget:

- the choice of risky and irresponsible tax cuts for the wealthy, over substantial welfare reform for the most disadvantaged, leaving some 500,000 with no assistance or opportunity;
- the choice of unnecessary and harmful changes to Disability Support Pension eligibility that will cut payments to some 70,000;
- the choice of slashing pensions through lower payment rates on the new "disability and parent dole";
- the choice of new complexity instead of much needed simplification.

"As a result, hundreds of thousands of people on welfare through a lack of training, experience and employment opportunity will miss out yet again.

The scope of the welfare reform is narrow, mean and misdirected. Too few people get any extra assistance, payments and conditions have been cut and the Government has taken the wrong direction with the all important disability reform.

"The Prime Minister said last week 'reform (should not be about) punishing welfare recipients or cutting the budget'. However, the reality of the Budget is that much of the Government's 'reform' is being paid for by people with significant disabilities and parents whose youngest child turns six – who will get around \$30 per week less



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Contact details for Welfare Rights

The contact details of the Welfare Rights Centres involved in the publication of the "rights review" are contained below. For contact details of all member organisations of the National Welfare Rights Network please refer to the website www.welfarerights.org.au

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budget of wrong choices gives people on welfare few choices

on the new 'disability and parent dole'. This reform fails the Prime Minister's own test of fairness.

"The Prime Minister also recently said to the Menzies Research Centre that 'no government should rest while ever there are Australians failing to share in the bounty that this country has to offer'. Clearly, the Government should not rest as there is still much to be done. The Budget has failed to share the bounty to provide opportunity to people with disabilities, unemployed parents and long term unemployed people.

"The Budget does contain a number of choices which the NWRN

welcomes: 80,000 additional child care places; cuts to income tests for some recipients; additional Job Network places for those shunted to the new 'disability and parents dole'; retention of suspension and breaching powers with Centrelink rather than the Job Network. These are good choices for disadvantaged people but these are truly modest measures in the light of what is needed.

"The Government has had its welfare reform plan since the McClure Report in 2000. It has had the Budget surpluses to implement it, but so far it has been very half-hearted. This Budget continues that pattern." ▼

self-incrimination issues

Centrelink was currently investigating whether Fred, in 2003, had failed to advise it of his income when he was in receipt of Newstart Allowance (NSA) and allegedly working for cash. Centrelink warned that if he did not answer the questions asked, his NSA would be cancelled.

The Welfare Rights Centre advised Fred to explain to Centrelink that while he would be pleased to answer any questions relating to his current entitlement, he had the right not to incriminate himself and could remain silent about the past. Even though Centrelink did not question that Fred was currently entitled to NSA, it suspended his payment on the basis that he failed to answer questions about a previous period.

When Centrelink suspended Fred's payment a note was placed on his computer record stating that the payment was "not to be restored".

The Welfare Rights Centre then began advocating on Fred's behalf. It took two weeks to get his payment restored. We argued that a person has a right not to

incriminate himself, and that there was no legislative basis for the suspension. Centrelink accepted in this case that Fred had a current entitlement to NSA, however, the wider issue of whether the Social Security Act provides Centrelink with the power to suspend a person's payment where the person refuses to divulge information about a previous period remains unresolved.

This case illustrates a common, and we believe mistaken, perception amongst Centrelink officers that the Social Security Act provides the power to suspend current payments in situations where Centrelink is investigating a person's previous entitlement. ▼

is the “welfare to work” agenda up to the job?

Now that much of the dust has settled on the 2005- 2006 Budget and we have the chance to examine the few details available on how the “vision” will be put into practice, one is left with a sinking feeling that the grand plan for “welfare to work” has quite a few holes in it.

“rights review” explores what you were not told on Budget night

First, the really bad news. Parents and people with disabilities on the new “enhanced Newstart Allowance” will have their payments cut – by between \$40 and \$77 a fortnight – even more if a person has additional earnings, compared with what they would have received under present eligibility conditions.

job network cuts

The Department of Human Services will take control of assessments for the Disability Support Pension and the new “disability dole”, and these assessments are to be contracted out to private and non-government contractors. Under the new Comprehensive Work Capacity Assessment, worth \$316 million, contractors are likely to be under pressure to provide cheap and quick assessments, when what is needed is a comprehensive medical and social assessment, that requires input from a range of specialists, including psychologists, psychiatrists and occupational therapists.

A staggering \$457.4 million in funding is to be cut from the Job Network. Access to Centrelink Personal Advisers, who provide extra help to the severely disadvantaged, such as mature age unemployed people, young people at risk and released prisoners, will also be “refocused”, saving \$18.6m over four years.

The Government intends to change the Job Seeker Classification Instrument, which will result in reduced Job Network support for disadvantaged jobseekers. Clearly, the Government believes that the best way to assist disadvantaged jobseekers is to change the



measure of disadvantage – and bingo – the problem magically shrinks!

further barriers

The reduction in funds for the Job Network flies in the face of accepted wisdom – even though unemployment is considered to be low it is concentrated among people who face considerable and multiple barriers to entering the workforce. Bringing in parents and people with disabilities, who also need extra support to enter the workforce, requires more money – not less. Contrary to the Government’s argument, it will be harder, not easier, to place these groups into employment!

People with disabilities and parents on the new “enhanced Newstart Allowance” will not be eligible for the Pensioner Education Supplement, worth \$31.20 a week, to help with the costs of studying. People in receipt of “enhanced Newstart Allowance” will not qualify for the payment if they study full-time, and will be required to test their eligibility for Austudy Payment, which is paid at a lower rate and which does not attract Rent Assistance. As well, from September 2005, income support payments shall be withheld

until an unemployed person has registered with the Job Network.

A preliminary analysis by ACOSS concluded that the increased investment in childcare, wage subsidies and employment assistance for people with disabilities – totalling approximately \$1.5 billion – is almost paid for by the cuts to payments and employment assistance of \$1.4 billion.

wait in the queue

The other sobering news that came out a week after the Budget was that the Australian Bureau of Statistics (ABS) reported that there were 545,800 unemployed Australians actively looking for work in April, and 388,000 of those were looking for full-time work. Even though the unemployment rate is at a 29-year low, on average, an unemployed person spent 37 weeks looking for work. In addition, previous ABS data revealed that there were 613,000 workers wanting to work extra hours.

So, we guess that the 190,000 additional people that the “welfare to work” measures aim to get into the workforce, will just have to get in the queue and wait their turn. ▼

new second rate “disability dole”

One of the main announcements in the recent Budget was the Government’s intention to legislate for the establishment of a new, lower rate, tougher conditions “disability dole” instead of Disability Support Pension (DSP) for some 70,000 people over the first three years of its operation.

Under the “disability dole” a single person with no casual work will receive about 15% less than a person on DSP while a single person with about 15 hours of work each week will receive around 20% less income than under current arrangements.

Currently, a person with a disability may be eligible for DSP if Centrelink considers that they

- a) have a significant level of impairment under the Impairment Tables in the Act, and
- b) cannot work or study for 30 hours a week or more due to their disability for at least two years.

If passed by Parliament, and given that the Government assumes control of the Senate in July, this is most likely, the proposed legislative amendments would mean that from 1 July 2006:

- the 30 hour work test would be replaced with a 15 hour test;
- people who are assessed as having a significant level of impairment (eg 20 points as currently for DSP) but are assessed as nevertheless being able to work 15 hours or more will be eligible for the new “disability and parent dole” to be called “enhanced Newstart Allowance”;
- “enhanced Newstart Allowance” will be payable to people with a disability whose disability limits their work or study capacity to between 15 and 29 hours per week for at least two years (and to parents whose youngest child has turned six – see separate article);
- the definition of “work” when assessing capacity to work for DSP or “enhanced Newstart

Allowance” will continue to be work at award wages in the open labour market;

- “enhanced Newstart Allowance” will be paid at the ordinary Newstart Allowance rate and will be subject to the allowance income and assets tests;
- “enhanced Newstart Allowance” recipients will have part-time mutual obligation requirements and will be required to undertake job search activities, which may include part-time employment, education or “Work for the Dole”. Recipients over 55 will be able to satisfy requirements with voluntary work;
- “enhanced Newstart Allowance” recipients will be eligible for a Pensioner Concession Card, Pharmaceutical Allowance, Telephone Allowance, and Employment Entry Payment. If eligible for Mobility Allowance, recipients will be entitled to a higher rate of Mobility Allowance of \$100 pf.

who will be affected

All claims for DSP lodged from 1 July 2006 will be assessed under the 15 hour work test.

People who claim DSP after 11 May 2005 (Budget night), but before 1 July 2006 will be assessed under the 30 hour test. However, any medical eligibility reviews after 1 July 2006 for anyone in this group will be under the 15 hour rule.

The Government has announced that people in receipt of DSP at 1 July 2006 who have received pension continuously since prior to Budget night (11 May 2005), will be

unaffected by these changes. For these recipients, medical reviews conducted after 1 July 2006 will continue to assess capacity to work under the 30 hour test and this group will have no participation or activity requirements. If a person in this group has their pension cancelled at any time, assessment of a new claim would be under the 15 hours test.

suspension of payment

Currently, DSP may be suspended for up to two years (rather than cancelled) if a person starts working 30 hours a week or more, or if their earnings preclude their entitlement under the income test. This provision has been exposed as having a number of flaws however. In the Budget, the Government indicated that after 1 July 2006, not only will this suspension policy continue for DSP recipients, but it will be strengthened to cover ceasing work for any reason within the two year period.

new income and assets tests

From July 2006, around 20,000 new applicants for DSP each year would be diverted from DSP to the lower “disability dole”. Compared with the status quo, they would lose:

- \$38 per week, if they are single and have little or no private income (\$19 per week if they have a partner) – around 10% to 15% of their total income.
- \$93 per week if they are single and working 15 hours a week (the minimum hours of work they must seek under the new rules) at the minimum wage – around 20% of their total income;

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government announces new “parent dole”

One of the major policy changes announced in the 2005-2006 Budget concerned the Government's intention to introduce a new “disability and parent dole” at lower rates and with more harsh income tests than for either the current Parenting Payment or Disability Support Pension.

Under the proposals, which, given the Government's looming control of the Senate are likely to be passed with little or no amendment, parents receiving Parenting Payment prior to 1 July 2006 will remain eligible for this payment, until their youngest child turns 16 (as is currently the case). There will be no changes to the income test for this group but there will be changes to the participation requirements.

After 1 July 2006 these parents will have one year to seek voluntary work or from when their youngest child turns six, whichever is the later. After that, they will have to look for work of at least 15 hours a week.

these changes will apply to both single and partnered parents receiving Parenting Payment

Parents claiming Parenting

Payment on or after 1 July 2006 will receive Parenting Payment while their youngest child is less than six. When their youngest child turns six they will be transferred to “enhanced Newstart Allowance” and will have to seek part-time work of at least 15 hours a week. Single parents on “enhanced Newstart Allowance” where the youngest child is between six and 15, will be eligible for the Pensioner Concession Card and the Pharmaceutical Allowance.

The income test for “enhanced Newstart Allowance” will be the same income test as for Newstart Allowance (NSA), which is to change from 1 July 2006. Compared with the current income test, the NSA free area will be the same (at just \$62 per fortnight) but recipients will be able to earn more at the 50c in the dollar reduction rate before the higher withdrawal rate of 60c (currently 70c) in the dollar cuts in at \$250 (currently

\$140). This represents an improved income test for current NSA recipients, but a harsher income test for parents.

\$92 worse off

Many parents who go onto “enhanced Newstart Allowance” will be financially worse off compared with those who remain on Parenting Payment. This is because of two factors. First, there is a difference between the Newstart Allowance (with child) rate, and the Parenting Payment, equal to about \$40 a fortnight. Second, under Parenting Payment, a person can earn \$122 a fortnight before their pension is reduced, however, under NSA, a person can only earn \$62 a fortnight before their allowance is reduced under the income test.

This means that from 1 July 2006, a parent on “enhanced Newstart Allowance” with one child, earning \$200 a fortnight, would receive \$92 a fortnight less than what they would receive under current payment rules for Parenting Payment. The Government has so far provided no explanation as to why this cut is either necessary or desirable.

The Government has announced however, that an additional 84,000 out of school hours childcare places are to be funded, though critics argue that they will not meet the demand. The Government has not explained whether work obligations will still apply if a parent is unable to find suitable and affordable childcare.

A suspension provision will apply from 1 July 2006, whereby payments could be suspended for eight weeks at a time, if a person fails to meet their obligations (see page 6 for more information) ▼

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new second rate “disability dole”

- up to \$155 per week if they are studying full-time (e.g. in TAFE) for over six months and are renting privately (\$113 per week if they have a partner) – around 40% to 50% of their total income.

These cuts to payments are harsh and unnecessary and should be reconsidered. It is not necessary to cut people's payments to encourage them into employment or into employment programs.

People with disabilities who study full time to improve their job prospects are the worst affected. They would receive Austudy Payment, which is \$75 pw less than DSP and has no Rent Assistance (an extra loss of \$49pw for those with high private rents). Further, they will miss out on the Pensioner Education Supplement of \$31 pw. A total loss of \$155 per week. ▼

suspensions to replace breaches

After years of campaigning for relief from the harsh and counterproductive penalties in the Social Security system, we should be celebrating at the Government's Budget announcement to cease the breaches and penalties system from 1 July 2006.

However, the system is to be replaced with a very risky, dangerous and untested system of payment suspensions that will enable the immediate and total cessation of payment until a person finds out and contacts Centrelink.

details of new provisions

The Minister for Workforce Participation, Peter Dutton, has described the proposed compliance provisions in the following terms:

- instead of incurring a breach, if a job seeker does not comply with their participation requirements, their income support payments will be suspended by Centrelink until they do comply;
- after suspension, Centrelink will attempt to contact the job seeker and arrange an interview with their provider;
- if the interview is arranged within 48 hours, the job seeker must attend before the suspension is lifted;
- payment will be restored with the back payment to the date of contact with Centrelink;
- if the job seeker has an acceptable reason for their non-compliance, as determined by Centrelink, their payment is restored in full;
- the role of the Job Network is to report non-compliance after making at least two attempts to contact the job seeker; and
- to provide a deterrent to more serious failures, an eight week non-payment period will apply to those who, without good reason, fail to comply with their participation requirements three or more times within a 12 month

period, refuse a job offer, leave a job voluntarily or, fail to participate in full-time "Work for the Dole", in the case of very long-term unemployed people.

problems obvious

There are a number of serious problems with this proposal, which despite the Minister's claim, is not at all consistent with the recommendations of the Breaching Review Taskforce. In fact, the Taskforce considered just such a suspension model in detail, but rejected it because of the real risks and difficulties it presented.

The first of these is that loss of payment is total and immediate. The first thing an unemployed person, sole parent or person on the new "disability dole" may know about the suspension of their payment is when they turn up at the ATM to withdraw some money to buy the groceries. Even if they have sufficient money left to contact Centrelink immediately, it could be up to 13 days since their payment was suspended. If Centrelink does not accept their reason for non-compliance (eg episodic mental illness), they will only have their payment restored from the date of contact with Centrelink (ie a loss of 13 days payment – or \$370) and this may not occur for a further 48 hours until they have attended the new appointment with their Job Network agency.

The second immediate problem is that there will no longer be any distinction between administrative and activity test breaches. At present, administrative penalties are less harsh than activity test penalties and the eight week loss

of payment only applies to third and subsequent activity test breaches. However, under the proposed regime all "offences" will be treated the same. It is likely therefore that many more people will reach the full eight week total loss of payment penalty for three offences in one year much more often.

paternalism elevated to new heights

Welfare advocates and parent organisations have raised other concerns over the impact that suspending a parent's payments could have on their children.

The Minister for Workplace Relations, Peter Dutton, recently explained that Centrelink would "case manage" parents with children whose payments were suspended for eight weeks. In a move that would appear to take the "new paternalism" movement to new heights, Centrelink would pay the rent and food and other bills of single parents, so that "children are not affected by their parent's actions". Heaven only knows how such a system might be implemented!

Apparently, Centrelink will also compile a register of "at risk" clients who should not be subject to the eight week suspension rule – for instance, people with mental health problems and those recently widowed, separated or divorced. Exactly how it is planned to establish this register and what the criteria will be for inclusion are unknown, but these issues certainly should be the subject of widespread community consultation.

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surcharge to be added to some debts

In an unnecessarily harsh move, announced in the 2005-2006 Budget, the Government proposes to introduce a 10% surcharge on some Centrelink debts arising as a result of a person "knowingly" providing incorrect income details to Centrelink.

Whether or not a person "knowingly" fails to provide information or provides incorrect information is a very difficult concept to establish. Many people who have provided Centrelink with incorrect details about their income do not do so "knowingly", but rather for a myriad of reasons, including the complexity of the system, poor and confusing Centrelink notices, confusion between net and gross income, as well as illiteracy. It is also common for people to erroneously believe that they

satisfy their Centrelink notification obligations by providing the information to the Australian Taxation Office with the belief that this information will be passed on (in fact the belief is correct but the information is passed on for the purpose of identifying debts, not for adjusting payment levels).

The casual and temporary nature of employment and the fact that in many cases a person's work payday and their Centrelink payday do not coincide may result in a person "estimating" their income

for the previous fortnight, often at the request of Centrelink officers. An incorrect estimate is often regarded by Centrelink as an attempt by the person to "knowingly" obtain money to which they were not entitled.

inequitable policy

Where Centrelink raises a debt and feels a person has knowingly or intentionally failed to provide information about their income, it is open to Centrelink to refer the matter to the Director of Public Prosecutions for consideration for criminal prosecution. As this option remains open to Centrelink there is no reason to punish a person twice by adding a surcharge to their debt. Further, the criminal justice system is the most appropriate forum to make determinations as to whether Social Security recipients have committed fraud, not Centrelink.

This new measure only applies to people on workforce age Social Security payments, which adds an additional element of unfairness. Why should a person receiving Newstart Allowance who "knowingly" fails to declare income have a 10% surcharge while a person receiving Age Pension who also "knowingly" fails to declare income does not? This difference highlights concerns raised by the National Welfare Rights Network that splitting the responsibilities for workforce age and non-workforce age payments between the Department of Family and Community Services and the Department of Employment and Workplace Relations would lead to inequitable policy and outcomes for different groups of Social Security recipients. ▼

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suspensions to replace breaches

many unknowns to be sorted

The transitional arrangements from the current system to any new "suspension" system are also unknown at this point. However, in view of the Government's apparent acceptance that the current regime comprises too much punishment and does not facilitate client re-engagement, it would seem sensible to revoke or "clean slate" any person who has a breach penalty rate reduction in progress at the time any new system begins. It is also unclear whether or not a person will still be able to do "Work for the Dole" to have any eight week suspension of payment removed.

Welfare Rights Centre action

Clearly there is still a lot to be done at this stage just to find out what

the Government has in mind. It is likely that although Department of Employment and Workplace Relations (DEWR) has been pushing such a potentially harsh system for some time, it may not have any clear idea as to how it should be implemented. It will be necessary to analyse the proposals, expose any flaws, and to work with the Government and DEWR to shape the legislation and the accompanying administrative guidelines as best as possible. This function will no longer be able to be undertaken by the Senate. Our aim must be to make sure that any new system is in fact better than the current harsh and counter-productive breaches regime and that there is safety and protection for all those on Newstart Allowance and all those soon to be placed on the new "disability and parents dole". ▼

budget changes at a glance

The following list outlines the major announcements affecting Social Security and Family Assistance legislation in the recent Commonwealth Budget along with the proposed dates of effect.

Parents

For people who claim after 1 July 2006, Parenting Payment will only be payable in respect of children under six. People whose youngest child is six or over will be eligible for Newstart Allowance "enhanced" (see p.5 for details).

Date of effect: 1 July 2006

People with a disability

The "work test" for Disability Support Pension eligibility will change from 30 hours to 15 hours for people who claim after 1 July 2006. People with a disability who are assessed as capable of working between 15 and 29 hours per week will be eligible for Newstart Allowance "enhanced" (see p.4 for details).

Date of effect: 1 July 2006

People receiving "enhanced Newstart Allowance" due to a disability should be eligible for Mobility Allowance (at a higher rate of \$100 pf) if they are unable to use public transport to undertake job search activities or if they are required to seek work of at least 15 hours per week.

People who lose entitlement to income support due to earnings from employment

will continue to be eligible for Mobility Allowance.

Date of effect: 1 July 2006

Carers

One-off lump sum payments to be made to carers. \$1,000 to be paid to Carer Payment recipients and \$600 to Carer Allowance recipients (\$600 in respect of each person receiving care).

Date of effect: June 2005

Period for which Carer Allowance claims can be back-dated to be

reduced to a standard 12 weeks prior to date of claim.

Date of effect: 1 July 2006

List of recognised disabilities attracting Carer Allowance (child) to be expanded

Date of effect: 1 July 2005

Waiting periods

The Income Maintenance Period is to be extended to Disability Support Pension claimants. The calculation of the Income Maintenance Period is to be altered to include redundancy payouts for all working age payments except Carer Payment.

The Seasonal Work Preclusion Period is to apply to all working age payments, including Disability Support Pension, Carer Payment and Parenting Payment (single). The calculation is to be altered to include earnings from contract and intermittent work.

Date of effect: 20 September 2006

Age Pension debt prevention

Data-matching to be enhanced to detect and prevent overpayments due to receipt of dual payments from Centrelink and the Department of Veterans' Affairs, and to prevent overpayments to Age Pensioners receiving pensions from Italy, Germany, Malta, The Netherlands, Ireland and Spain.

Date of effect: 1 July 2005

Allowance income test

The income test for Newstart, Sickness, Partner, Widow, and Mature Age Allowancees and Parenting Payment (partnered) is to change.

The current income test free area of \$62 a fortnight will continue but the formula for rate reductions will change to 50 cents in the dollar meaning a reduction of income

between \$62 and \$250 (currently \$142) a fortnight. Income over \$250 a fortnight will reduce payment by 60 cents (currently 70 cents) in the dollar.

Students in receipt of Youth Allowance or Austudy Payment will continue to be subject to an income test free area of \$236 a fortnight, with a 50 cent in the dollar reduction for income between \$236 and \$316 a fortnight. Income above \$316 a fortnight will reduce payment by 60 cents in the dollar (currently 70 cents). The partner income test rate reduction will also change to 60 cents in the dollar (from 70 cents).

Date of effect: 1 July 2006

Employment Preparation

Employment Preparation, a new employment service provided through the Job Network, will replace the Transition to Work Programme. The service will be available for parents, carers and people over 50 who receive an income support payment, with timing of access dependent on whether the person has recent work force experience.

Date of effect: 1 July 2006

Introduction of "RapidConnect", a process whereby job seekers will generally be referred to a Job Network member before Newstart or Youth Allowance (unemployed) payments commence.

Date of effect: September 2005

Job seekers on Newstart Allowance for long periods

Job seekers who are still unemployed after 36 months in the Job Network, and who are considered to be "making a genuine effort to find work", to be assessed for:

- Wage Assist (a wage subsidy payable for between 13 and 26 weeks); or

budget changes at a glance

- ongoing Job Network assistance; or
- an annual mutual obligation requirement.

The Wage Assist subsidy will be equivalent to the average rate of Newstart Allowance (currently \$350 per fortnight), and will be paid to employers by Job Network members through the Job Seeker Account.

Job seekers under 60 "with a pattern of work avoidance" will be referred to full-time "Work for the Dole" for 25 hours a week, ten months a year. Payment will be suspended, and an eight-week non-payment penalty will apply for non-participation unless the person has an acceptable reason for not complying.

Date of effect: 1 July 2006

Changes to breach and penalty regime

Job seekers who fail to comply with participation requirements will generally be subject to suspension of payment rather than having a breach penalty immediately imposed (see p.6 for details).

Date of effect: 1 July 2006

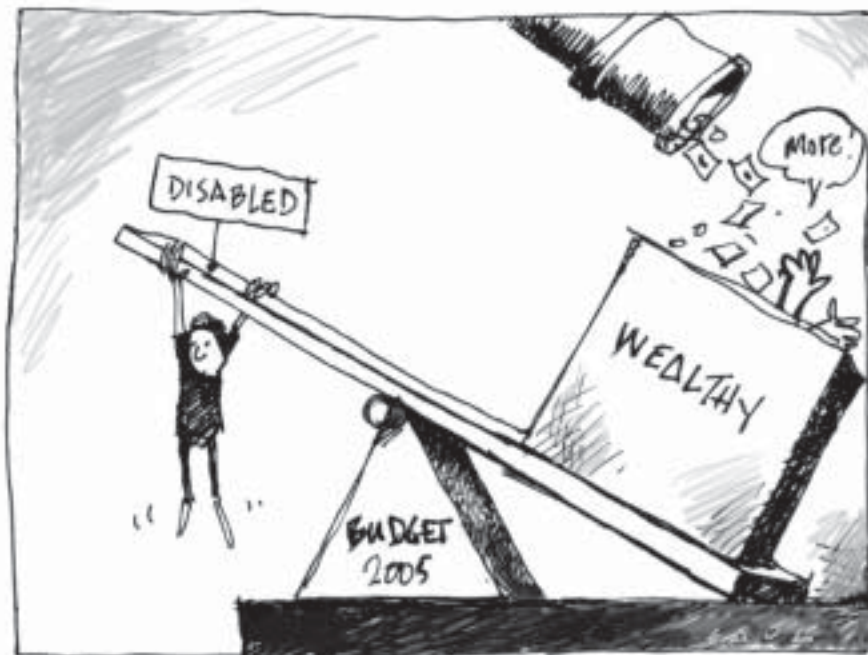
Mature age job seekers

Newstart Allowees generally to have the same range of possible activity test requirements up to age 55, with "Work for the Dole" being the default "mutual obligation" activity for people between 40 and 49.

Newstart Allowees who are 55 or over may be able to satisfy the activity test by undertaking at least 15 hours per week voluntary work, part-time work or a combination of the two.

Mature age people not in receipt of income support will be able to access the New Enterprise Incentive Scheme.

Date of effect: 1 July 2006



Interest on debts

Debts due to false declaration or non-declaration of earnings to be subject to a one-off 10% recovery fee if the debtor is workforce age (excluding carers). This will replace the breach rate reduction penalty that currently applies in respect of debts due to the recipient "knowingly" or "recklessly" failing to correctly advise Centrelink of income.

Date of effect: 1 July 2006

Family Tax Benefit changes

Family Tax Benefit A income test threshold is to increase to \$37,500.

People whose Family Tax Benefit entitlement has been based on an estimate will be advised at the end of each tax year of a default estimate for the following tax year. The default estimate will reflect movements in average weekly earnings and will be used to calculate entitlement unless the recipient provides an alternative estimate.

Family Tax Benefit recipients are to be encouraged to adjust fortnightly

payment rates so as to minimise end of year Family Tax Benefit overpayments.

Date of effect: 1 July 2006

Recipients who have difficulty estimating income will also be offered assistance with income estimating.

Date of effect: 1 July 2005

Family Tax Benefit recipients will be able to access their unused *maintenance income test* free area from previous years to offset late child support payments.

Date of effect: 1 July 2006

Family Tax Benefit top-ups and income tax refunds are to be used to offset family assistance overpayments from previous tax years.

Date of effect: 1 July 2006

For adoptions from 1 July 2004, Maternity Payment to be payable to people who adopt a child who is under two years, and to people adopting a child from overseas if the child is under two years at the time they enter Australia.

Date of effect: 1 July 2005 ▼

social security changes

what's happening when

For proposed changes announced in the 2005 - 2006 Federal Budget, see "Budget changes at a glance" (p.8).

family tax benefit (B) supplement

Introduction of a new Family Tax Benefit supplement of \$302.95 for recipients of Family Tax Benefit part B, with proportional rates payable for shared care of a child or children. The supplement will be added to the standard rate of Family Tax Benefit (B).

First payments to be made in July 2005

"one off" lump sums for carers

Proposed "one-off" lump sum payments of \$1,000 to people who were receiving Carer Payment on 10 May 2005, and \$600 to people who were receiving Carer Allowance (multiple lump sums can be paid if the person receives Carer Allowance for more than one person).

First payments to be made in June 2005

accommodation bonds - assets and income test exemptions

Accommodation bond payments for aged care accommodation are to be exempt from assessment under the assets test. Also, if the bond is to be paid by periodic payments, any rent from the former principal home is exempt from the income test and the principal home is disregarded as an asset.

Date of effect: 1 July 2005

extension of austudy and youth allowance to new apprentices

Qualification for Youth Allowance and Austudy Payment will be extended to people registered under the "New Apprentices" scheme. Health Care Cards will

not automatically be issued, though a person may still qualify for a Low Income Health Care Card, and there will be access to the "student income bank" of up to \$1,000 (any existing working credits will be transferable).

Date of proposed effect: 1 July 2005▼

preclusion period reduced

Anthony has a Social Security compensation preclusion period which expires in September 2007. Anthony had injured his back and shoulder in a work accident and was awarded a lump sum payment of about \$260,000. Due to his injuries he was unable to undertake the heavy labouring work that he previously did.

When he received the lump sum payment Anthony was married. Shortly after the receipt of the lump sum payment he separated from his wife. As a result of the separation Anthony had to pay a substantial amount of money to his ex-wife as well as transfer his interest in the family home and car to her. Anthony was also faced with the expense of renting his own accommodation, purchasing furniture for the unit and buying another used car.

When Anthony contacted the Welfare Rights Centre he was being financially supported by his parents and various charities. We lodged a review on his behalf, stating that his separation from his wife and the costs associated with the separation constituted "special circumstances", which warranted a reduction to the

compensation preclusion period. Centrelink was provided with evidence to support the expenditure of the lump sum money since the separation, plus the fact that he had to transfer assets to his ex-wife. We submitted that had he not separated from his ex-wife, Anthony would still be residing in the family home, would not have had to give her a substantial lump sum payment and would not have had to lease his own unit or purchase furniture. Further, he would also have access to a constant source of income through either his ex-wife's Social Security payment or any wages she may have earned from employment.

Centrelink agreed with our submission and reduced the preclusion period, allowing Anthony to be granted Newstart Allowance (NSA).▼

debt waived, payment restored

Karen had a Parenting Payment (single) debt of \$12,000 raised against her as Centrelink alleged that she was a member of a couple and therefore not qualified for the payment. Karen, however, was adamant that she was separated from her ex-husband and appealed the decision.

Karen's basic argument was that she and her ex-husband, Ron, had three children who all resided with Karen, and that her ex-husband had the right to visit them as often as possible. She maintained that the involvement of Ron in the children's life was a positive influence on the children (a view supported by research) and that she would not prevent it.

Ron was actively involved in his children's life. He had not lived with Karen since their separation in the mid-1990s and had only stayed at her place a few times, sleeping on the lounge. However, he visited his children as often as possible and supported them where possible. For example he attended the children's sporting events, school nights and assisted his eldest daughter to purchase a car. He also provided care for the children when Karen went into hospital. He also paid maintenance for the children and when Karen's Parenting Payment was cancelled he provided the family with financial support.

The Centrelink officer investigating the case decided that Karen and Ron were not living "separately and apart" and in addition to cancelling her Parenting Payment, raised a debt of \$12,000. An appeal was lodged to an Authorised Review Officer (ARO) who, though in two minds about the case, upheld the original decision.

As Karen strongly disagreed with Centrelink's decision she lodged an appeal to the Social Security Appeals Tribunal (SSAT). The SSAT interviewed both Karen and Ron at length. Evidence from Karen's neighbour and other independent sources was provided to the SSAT, all supporting Karen's view that she



was estranged from her husband. In examining whether Karen and Ron were "living separately and apart" the SSAT referred to the Social Security Act which requires the decision maker in such cases to take into account five factors when determining whether a person is a "member of a couple". These factors are:

- the financial aspects of the relationship;
- the nature of the household;
- the social aspects of the relationship;
- the sexual relationship between the people; and
- the nature of the people's commitment to each other.

The SSAT noted that some aspects of the relationship, notably the financial aspects, indicated that a marriage-like relationship had continued. But when taking into account the other factors, such as the lack of a sexual relationship or any social activities shared by the two, and that Karen and Ron did not reside together or have any real commitment to each other, it was decided that they had not been a member of a couple since the commencement of the debt.

As Centrelink did not appeal the SSAT decision to the Administrative Appeals Tribunal (AAT), Karen's Parenting Payment was restored and all monies she had repaid towards the debt were refunded to her. ▼

mental health senate inquiry

The Senate has appointed a Senate Select Committee to inquire into mental health service provision.

Because many of the people that the Welfare Rights Centre (WRC) assist have a mental illness and/or a psychiatric disability, the Centre provided a submission to the Inquiry as well as appearing before it.

The main points of the submission are as follows:

Mental illness can be a huge barrier to dealing with Centrelink and to maintaining stable income support. People with a mental illness can also face issues in dealing with community agencies - including agencies like the WRC.

It is rare for clients with a mental illness seeking WRC assistance to have a community advocate. This means that we must obtain information directly from clients with severe mental illnesses, including information regarding their mental illness.

We ask clients who seem to be depressed, anxious or delusional whether they have discussed the "stress" they are under with their doctor - this being an innocuous way of broaching the subject of mental illness. Unless the person is suicidal or delusional, resource constraints of community health services mean that assistance can be ad hoc or non-existent. It is often impossible for us to link the client with a service.

We may succeed in solving the immediate Centrelink issue, but such clients generally remain at risk of further Centrelink problems, with consequential

risks in maintaining secure housing.

prosecutions

People with a mental illness are vulnerable to incurring Social Security debts, and to inappropriate criminal prosecution and/or sentences for offences relating to these debts.

Centrelink generally gives scant regard to the fact that a debtor may be known to have a severe disability such as schizophrenia. We see cases referred to the Director of Public Prosecutions where a person has "admitted" fault - when they were mentally ill at the time and incapable of complying with obligations.

When a person with psychiatric disability or mental illness appeals against recovery of a debt, certain issues may never be raised. For instance:

- their mental health problems may be relevant to whether recovery of the debt should be waived, or
- their mental state during the period the debt accrued may have been such that they could not be said to have "knowingly" been overpaid.
- mental health issues are generally not adequately considered in Centrelink reviews of debts. Many of our clients may have good grounds for waiver of debts, but we can do nothing - because they have already been convicted of a criminal offence regarding the debt and the fact of their mental illness was never raised.

The WRC and criminal solicitors are constrained in these cases by the speed with which Centrelink can move in referring cases to DPP.

Community mental health services are not adequately resourced to readily prepare background reports for people with Social Security debts.

"activity tests"

Many of our clients who have a mental illness may present to Centrelink (and our service) as eccentric, aggressive, neurotic or paranoid. But without psychiatric evidence many clients with severe psychiatric disabilities face a future of unstable income support due to problems satisfying Social Security activity tests and obligations regarding notifying Centrelink of changed circumstances. Such clients face endless interruptions to payments.

Many homeless people who are mentally ill end up without income support for long periods merely because they have been struggling, unsuccessfully, to comply with activity tests and have not been able to claim Disability Support Pension.

The fact that mental illness severely impacts on a person's ability to comply with "mutual obligation" activities and that treatment options are limited, are factors which must be understood when considering labour force barriers - particularly given the ramifications of the 2005-2006 Federal Budget proposals. ▼

independent Social Security handbook

The Welfare Rights Centre (WRC) is offering community workers the opportunity to purchase the 5th edition of the "The Independent Social Security Handbook" for the special price of \$15 (covering postage and handling costs only).

The 5th edition was printed in March 2004 and since its publication there have been a number of changes to Social Security law and its administration. These changes mean that some sections of the printed edition of the Handbook are out of date, but general sections such as information on appeals and general Social Security rights are still accurate. The Centre only has a limited number of copies remaining so if you are interested in purchasing a copy please send a cheque to:

Welfare Rights Centre
Level 5, 414 Elizabeth St
SURRY HILLS NSW 2010.

online edition

Since the publication of the 5th edition, the **ONLINE EDITION** of the Handbook has been updated every quarter to take into account changes to Social Security law and its administration.

All community workers and state government employees in NSW can access the **ONLINE EDITION** of the Handbook "free", due to the Centre entering into a partnership with the NSW State Government and its Better Service Delivery Program.

Community workers and State Government employees in Tasmania, South Australia and Western Australia also can access the **ONLINE EDITION** "free" due to the Centre and the respective Governments in those states entering into

arrangements to ensure that this vital resource is available to those who need it.


For information about how to

access the **ONLINE EDITION** of the Handbook visit the National Welfare Rights Network website www.welfarerights.org.au ▼

Social Security and Family Assistance Law 2nd edn

Peter Sutherland with Allan Anforth

RRP \$90.00, *Direct Price \$85.00
PB, 1056pp
ISBN 1862875006
Publishing June 2005



This 2nd edition comprehensively annotates the social security and family assistance law of Australia, as amended to February 2005. It is the 11th volume in a book series which first saw the light of day in 1984. Social security practitioners will find that it maintains its 20 years of reputation as an indispensable reference for all those engaged in social security and family assistance decision-making whether as a lawyer, a Tribunal member, a Department or Centrelink officer, or a community advocate.

Special features of this new book include:

- Comprehensive annotations, on a section-by-section basis, covering decisions of the Administrative Appeals Tribunal, the Federal Court and the High Court to February 2005;
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DSP safeguards need to be entrenched

In the lead up to the recent Budget, the National Welfare Rights Network (NWRN) publicly exposed the flaws in the Government's claimed "guarantee" of suspension of DSP for two years for people on DSP who are successful in gaining full-time work. On Budget night, the Government at least partially addressed these flaws and offered a more comprehensive guarantee. However, it appears that a major loophole will still exist, and in the meantime, it is still risky for people to test their work capacity if they are hoping to fall back on DSP if the attempt does not work out.

Section 96 of the Social Security (Administration) Act 1999 currently provides a **discretion** for Centrelink to suspend, rather than cancel, a person's DSP for up to two years where they commence work which is either over 30 hours per week or their DSP is reduced to nil due to income earned.

This discretion has been cited as the safeguard which provides security to people who take steps to increase their participation in the workforce.

There are however, significant shortcomings in both the legislation and the policies in place covering the exercise of this discretion which undermine its effectiveness.

shortcomings

These shortcomings include:

- that the provision provides only a discretion to Centrelink to suspend a payment. It does not guarantee that suspension will occur;
- that suspension under section 96 is contingent on the person reporting the details of employment to the Secretary **within 14 days** of commencing employment. Considering the large number of issues that a person deals with when re-entering the workforce, often without recent work experience, and often with a psychiatric or intellectual disability or acquired brain injury, this requirement can be difficult to meet (where the person does not notify of their employment within 14 days their DSP is cancelled, not suspended);

- that there are inconsistencies in Centrelink policy. At numerous different places throughout the Guide to Social Security Law (which sets out the policies Centrelink must follow) there are statements that DSP can be suspended for two years, followed by contradictory or confusing statements that suggest DSP should be cancelled;
- that where a person indicates that they have obtained work for more than 30 hours per week, this triggers a medical review and this may be used as evidence of failure to continue to qualify for DSP. It is clear that this policy undermines the intended operation of Section 96, which aims to remove the need for a person to go through the scrutiny of a further medical qualification assessment by allowing suspension for a two year period; and
- that where a person has their DSP suspended, Centrelink policy is that it will only be restored in the next two years if they stop work because of their disability. This means that where a person is retrenched or the contract comes to an end or they get sick or their employment drops below 30 hours per week, their DSP would not be reinstated.

recommendations

To address these issues and provide a genuine guarantee that will address the genuine fear factor that the Government has acknowledged

in various speeches and addresses over the last few months, the NWRN has recommended in recent correspondence to the Minister:

- that the discretion to suspend be made mandatory by replacing "may" with "must" in s96(1) and (3);
- that the policy governing the implementation of this provision be clarified to ensure a person be suspended for up to two years with no medical review on re-entry to DSP within this time, regardless of the reason for ceasing to be employed for more than 30 hours per week; and
- that the 14-day notification requirement be replaced with a more realistic requirement.

suspension of DSP

In last month's Budget, the Government moved a fair way in the direction of these recommendations by announcing that where a person chooses to work and loses eligibility for DSP due to income or the 30 hour "work test", they will, after 1 July 2006, have an automatic right of return to DSP, no matter what the reason for ceasing to work, and without having to undergo a medical review. This is very positive. However, as yet, the Government has said nothing about the 14-day notice provision. This remains a major flaw that is yet to be addressed. ▼

what Centrelink knows but doesn't count

Mrs Mara and her husband were surprised, to say the least, when a Centrelink account payable letter arrived on their doorstep demanding payment of just over \$2,000 within 14 days for a Family Tax Benefit (FTB) part B debt. This was allegedly incurred during the 2002-2003 financial year.

The Maras only form of income during that year had been Centrelink payments, so initially they thought that Centrelink had made a mistake. However, even though Centrelink error was the main reason, if not the sole reason for the debt, the Maras, like many other people before them, were about to find out how complex the Social Security system is and how difficult it is to have a decision changed.

Centrelink was correct in deciding that a debt existed. The reason for the debt was that Mrs Mara's Parenting Payment (PP) is in fact "income" under the Act for FTB purposes. Mrs Mara had not declared the PP income on her FTB estimate form, on the basis that Centrelink knew that she was in receipt of the payment. As reasonable an assumption that may have been, the law still required Mrs Mara to declare all taxable income on the FTB estimate form (PP is a taxable Social Security payment and therefore is income for FTB purposes). As Centrelink simply coded the income declared on the form onto her record and did not take into account her PP income, a debt accrued.

An appeal was lodged to the Authorised Review Officer who upheld the original decision on the basis that Mrs Mara's estimate was inaccurate, notwithstanding the fact that Centrelink knew about her total family income as it was paying her the PP and paying her husband Newstart Allowance.

An appeal was then lodged to the Social Security Appeals Tribunal (SSAT). The SSAT agreed that a debt existed, however, it found that the debt could be waived under the "special circumstances" provision

of the Family Assistance Administration Act. The SSAT found that the "special circumstances" included "three very significant administrative errors" and that the Maras were in a "tight financial situation".

Centrelink did not appeal the decision to the Administrative Appeals Tribunal (AAT) and repaid Mrs Mara the money it had recovered from her in relation to the debt. ▼

debt waived

Ruth's partner worked casually and both she and her partner declared this income to Centrelink on the relevant forms as well as advising Centrelink's TeleService Centre. Despite this, Centrelink raised a debt of \$7,200 against Ruth, stating that she had not declared her partner's income.

An appeal was lodged to an Authorised Review Officer (ARO), and the Welfare Rights Centre (WRC) assisted Ruth with the appeal. We obtained her and her partner's files under Freedom of Information (FOI) and in a written submission to Centrelink listed the numerous times that they had both notified Centrelink of the income. Centrelink had even cancelled Ruth's partner's Newstart Allowance during the debt period due to the earnings he declared on his NSA form. We sought waiver of the debt on the grounds that administrative error was the cause of the debt, or in the alternative that Ruth had "special circumstances" which would warrant waiver of the debt. The ARO agreed that administrative error contributed to the debt and waived \$3,500 under the administrative error waiver provisions of the Social Security Act.

Ruth lodged a further appeal to the Social Security Appeals Tribunal (SSAT). The SSAT agreed that Centrelink made many errors which contributed to the debt, however, the SSAT agreed with the

ARO that the entire debt could not be waived under the administrative error waiver provisions of the Act on the grounds that the debt did not arise **solely** from administrative error. This was because Ruth had failed to notify Centrelink that the information it had recorded on the back of the notices it had sent to her about her income, and that of her partner, was incorrect.

The SSAT, however, waived the remainder of the debt on the grounds that Ruth had "special circumstances". The SSAT noted that the "special circumstances" included that "there had been significant and repeated Centrelink errors in this matter"; that throughout the period of the debt Ruth had suffered from a mental illness; that she had a very traumatic and tragic history prior to the debt and that she and her partner were in financial hardship.

Ruth was repaid all monies that Centrelink had recovered towards the debt. ▼

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