

rights review

NEWS & COMMENT ON SOCIAL SECURITY ISSUES

eight week penalties surge and few get bills paid

In the first five months of the new compliance regime, over 4,500 people have been subjected to an eight week no payment period. This represents a massive 160 percent increase in the number of Centrelink clients losing their payment for eight weeks relative to the first three months of the new compliance system which came into force from 1 July 2006. In contrast in the whole of 2005-06, a total of 3,801 people had an eight week non-payment period imposed.

Most eight week no payment penalties are “first strike participation failures” for what the Government calls “serious” offences, such as refusing a suitable job offer, voluntarily leaving work or being dismissed for misconduct (see Practitioner’s Guide page 10).

Welfare Rights understands that since the latest figures were released about the number of eight week no payment periods, there has been a further surge in the number of people who have been subjected to an eight week no payment period.

few getting essential expenses paid

To make matters worse, only six percent of people subjected to an eight week penalty were considered eligible for Financial Case Management. This figure refutes the Government’s claims that one in every four of those whose payments were cut for eight weeks would be eligible for Financial Case Management.

Financial Case Management is a system where Centrelink pays a person’s “essential expenses”, provided that they meet strict eligibility criteria. A person has to have “a vulnerable dependent” (that is, a dependent child under 18), or to be classed as “exceptionally vulnerable” by having a disability that requires medication that cannot be paid for. By December 2006, only 288 people were found to be eligible under these strict criteria.



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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.

www.welfarerights.org.au

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eight week penalties surge and few get bills paid

The entire system of Financial Case Management is shrouded in secrecy and lacks transparency. In addition, the rules are so bizarre that a person who is homeless is not seen as "vulnerable" and a person who is pregnant is not eligible to have their essential bills paid. Welfare Rights has called on the Minister for Workforce Participation, Dr Sharman Stone, to review the rules for the scheme.

Centrelink's role

Centrelink has set up a special unit, the National Participations Solutions Team, located at Parramatta in Sydney, whose job it is to examine whether a recommended eight week no payment penalty should actually be imposed. Welfare Rights has met

with this team to obtain a better understanding of how decisions are made and to discuss a range of problems, including:

- ◆ application of vulnerability flags for people deemed "at risk";
- ◆ the quality of decisions;
- ◆ rejection of Centrelink social workers' recommendations to not impose penalties;
- ◆ difficulties contacting local participation solutions team and the lack of call back facilities; and
- ◆ information for clients about appeal rights, continuation of payment pending the outcome of a review and challenging decisions about eligibility for Financial Case Management.▲

most debts due to error not fraud

As many community workers will be aware, it is common for the media to portray Social Security fraud as being a crime. In the experience of Welfare Rights Centres, nothing could be further from the truth. The complexity of the Social Security system, plus administrative errors by Centrelink are, in our view, the common factors which contribute to Social Security debts, and very few debts are attributable to fraud, as is demonstrated by the following case.

Sophie receives Family Tax Benefit (FTB) and Parenting Payment (PP) partnered. Her husband is self employed. She provided Centrelink with an estimate of the family's income in June 2005. In response to this, Centrelink adjusted her rate of FTB but critically, not her PP rate. A few months later, after having another child, she lodged a claim for FTB and again accurately advised of her husband's income. Again Centrelink adjusted her FTB rate but not her rate of PP. Centrelink continued to overpay Sophie's PP for one year.

At this time, Centrelink raised a debt of more than \$7,000. An appeal was lodged to the Social Security Appeals Tribunal (SSAT). The appeal was successful with the debt being waived on the grounds that administrative error was the sole cause of the debt as Sophie had kept Centrelink up to date with income changes and had received the payments in "good faith". Centrelink agreed with the decision of the SSAT as it did not exercise its right to appeal to the Administrative Appeals Tribunal.▲

welfare to work and mental illness – a risky combination

After just seven months of the new provisions being in place, Welfare to Work is emerging as a very risky business for people with mental illness. A number of cases that have already been dealt with by members of the National Welfare Rights Network (NWRN) indicate that Centrelink and Job Capacity Assessors, driven by the harsh and inappropriate “work first”, compliance focused policies of the Department of Employment and Workplace Relations (DEWR), are putting at least some people with serious mental illness at great risk.

Some of the cases also indicate that these agencies are also putting the Government at great risk. In many cases, the Government is arguably in breach of its duty of care by requiring job search and other **activities** that are not only inappropriate but which are positively harmful to the mental health of many of the people on whom they are imposed. Under these circumstances, legal action and appropriate compensation could well be an appropriate remedy.

Failure to comply with activity requirements has resulted in 5,000 eight week no payment penalties (equal to a \$1,840 fine) in the first seven months of these new Welfare to Work provisions. In a number of cases, these **penalties** are exacerbating the very mental illness that caused the “participation failure” in the first place.

Already it is clear that the Welfare to Work regime is in serious need of major reform, especially as it affects the large number of people with a clinically diagnosable common mental disorder who are caught up in the increasingly inappropriate Social Security system.

Job Capacity Assessments breach duty of care

One of the key areas of reform relates to the way the new Job Capacity Assessments (JCA) can have an adverse impact on people with mental illness to the point of being thoroughly detrimental. One



of our clients claimed NSA (incapacitated) soon after her release from involuntary in-patient treatment at a psychiatric hospital for schizophrenia. She provided a medical certificate to Centrelink attesting to the diagnosis of schizophrenia, and a treating doctor's report which explained her history, the diagnosis and the ongoing treatment – all of which made her vulnerable mental state patently clear.

Notwithstanding this, Centrelink still required her to go for a Job Capacity Assessment. She got a friend to ring Centrelink to advise that she was too ill to attend and that she urgently needed income support. The friend was told that until our

client attended the JCA, no payment could be made. Thankfully the Centre was able to intervene but many people with schizophrenia in particular, and mental illness in general (see separate article, p 15) are isolated, alone and unable to call on such assistance.

duty of care

Centrelink, on behalf of the Government, has a very special duty of care which it must exercise in relation to all its customers, especially those who it knows to be vulnerable through mental illness. Welfare Rights cases and the practices of Centrelink and the JCAs demonstrate clear breaches of that duty of care which place both people on income support, and the Government itself, at great risk.▲

government risks throwing out services with CDEP

The Federal Government risks throwing many more Aboriginal people into poverty and wiping out a range of essential services in Aboriginal communities if it goes ahead with its current plans to end the Community Development Employment Program (CDEP).

The Government risks throwing out the baby with the bath-water if it cuts off the CDEP and places Aboriginal people into Social Security and Job Network systems in an attempt to find what the Government calls “real jobs”.

While not everything about CDEP is good and some projects have problems, there are at least three major concerns with the Government’s proposals.

1. exposure to penalties

The Social Security system contains a very harsh and counter-productive eight week no payment penalty for job seekers who are guilty of “participation failures”. Taking Aboriginal people out of CDEP work schemes and putting them into job seeking on Social Security will result in many of them inevitably incurring these penalties. The penalties don’t work for non-Indigenous job seekers, so it is hardly progress extending them to unemployed Aboriginal people. This will simply create further poverty for individuals and their families and will achieve nothing positive.

2. loss of essential services

Many Aboriginal people have been exploited for years whilst providing invaluable and essential services to their communities under CDEP “work for the dole” schemes which the Government insisted on some years ago. Now that the Government has a new idea, many of those critical services will no longer be funded. Services such as rubbish and sanitation, alcohol and substance abuse counselling, age and child care services, which are real jobs and should be paid as such, are often only provided

through CDEP projects and many will be wiped out if CDEP is abolished.

3. CDEP as community hub

In many communities, the CDEP project is the hub around which many other services and functions are built – for example automatic bill payment and budgeting services. The loss of CDEP staff and programs will result in the demise of these important functions in the community as well.

Loss of this community infrastructure will further undermine the viability of these communities now and into the future.

For these reasons, the National Welfare Rights Network has called on the Commonwealth Government to rethink its hasty plans. At the very least it must ensure that Aboriginal people are not subjected to eight week no payment penalties, and that guarantees are given that former CDEP services will be fully funded at proper wage rates. ▲

quick to cancel Carer Allowance, slow to restore

Alex and his partner both suffer from bi-polar disorder. Alex receives Carer Allowance as he cares for his partner.

In January 2006, Alex and his partner had a disagreement. He contacted Centrelink directly after the disagreement and said that he had separated from his partner. On that day Centrelink cancelled his Carer Allowance. The next day Alex and his partner reconciled. He contacted Centrelink and advised of the reconciliation. He also asked for his Carer Allowance to be restored.

A month later he was still waiting for this to happen. It had not been restored as Centrelink thought he should reclaim Carer Allowance rather than just have it restored.

Welfare Rights contacted Centrelink’s Customer Relations Unit on Alex’s behalf and

suggested that bureaucracy was getting in the way of commonsense. Centrelink agreed and advised that his payment would be restored. One week later Alex was still waiting and it was only restored after we again contacted Centrelink.

This Carer Allowance case highlights an issue that is unfortunately too common with Centrelink’s approach to the administration of Social Security law. It wastes no time in making an adverse or payment cut decision about a person’s Social Security payment but when it comes to restoring a person’s payment it often takes days, if not weeks, to do so. ▲

government's hardline stance fails

For people working in the community sector field, each week is filled with stories about the Government's hardline approach to unemployed people. The following case study, in our view, pretty much tops the cake.

Claire is 58 years old and lives with her husband. Her husband has had several strokes and heart attacks in the past five years and requires her help around the house and to do things like dressing him.

In the middle of last year, the take-away shop where Claire had been working part-time on the Central Coast of NSW closed down. Claire and her husband made a decision to move to Port Macquarie on the Mid-North Coast of NSW in order to live closer to her sister and elderly parents, who had recently moved up there.

Claire applied for Newstart Allowance (NSA) after she moved to Port Macquarie but Centrelink decided to impose a six month no payment penalty on her for "reducing her employment prospects by moving". Centrelink decided that, since the unemployment rate in Port Macquarie was more than two per cent higher than the unemployment rate on the Central Coast, she had

reduced her employment prospects by moving there.

Centrelink decided to treat the Central Coast as being in the Sydney Metropolitan workforce area, with a labour force size of over 2.2 million. Centrelink pointed out that the Port Macquarie labour force was just 16,037.

No consideration was given as to whether Claire's caring responsibilities would have permitted her to travel to Sydney for job, or whether she would have had better chances of finding a job in Port Macquarie despite its smaller population.

the test is personal not general

Claire was successful at the Social Security Appeals Tribunal in arguing that the penalty should not have been imposed. However, the Department of Employment and Workplace Relations appealed to the Administrative Appeals Tribunal (AAT).

The Welfare Rights Centre represented Claire before the AAT. We argued that Centrelink had not properly assessed whether Claire had actually reduced **her** employment prospects by moving to Port Macquarie. General unemployment statistics may be a relevant consideration, but they cannot in themselves determine whether an individual has better or worse employment prospects in a place. The AAT accepted our arguments that Centrelink had failed to show that a person of Claire's age, with her limited skills, and caring responsibilities for her husband, had worse employment prospects in Port Macquarie than on the Central Coast.

Understandably, Claire felt vindicated by the result. What we cannot understand is the Department's continuing propensity to appeal an ever-increasing number of such cases to the AAT. ▲

new kids on the block

As a Federal election looms later this year, both the Government and the Opposition have made significant changes in those responsible for Social Security policy, Centrelink and employment and workplace participation portfolios.

Joe Hockey MP, formerly the Minister for Human Services, becomes the Minister for Employment and Workplace Relations, with particular responsibility for industrial relations matters, and goes into Cabinet. The new Community Services Minister is Nigel Scullion. Senator Ian Campbell from Western Australia, the former Environment Minister, was to be the new

Minister for Human Services, however he recently resigned. The new Minister for that portfolio is Senator Chris Ellison.

In the Labor camp, Tanya Plibersek, MP for the seat of Sydney, takes on the Human Services shadow portfolio, with additional responsibilities for housing, youth and women. Julia Gillard, MP from Victoria, has taken on industrial relations and

Senator Penny Wong from South Australia continues in the shadow Workforce Participation portfolio.

Jenny Macklin, also a Victorian MP, takes on the role of spokesperson for Family and Community Services, Indigenous Affairs and Reconciliation, against the current Minister Mal Brough MP from Queensland. ▲

recovery fee? debt penalty? - whatever its name, it's unfair

Since 1 July 2007, Centrelink has been able to add a 10% penalty (or in Centrelink terms, a "recovery fee") to certain Social Security debts caused by non-assessment or under-assessment of earnings from employment. The penalty may be imposed for overpayments of most payments - but not for Age Pension, Carer Payment or Family Tax Benefit debts.

When the Government first proposed introducing this penalty, Welfare Rights expressed concern that interviews designed to assess whether to apply the penalty may expose people to self-incrimination and criminal prosecution. Centrelink procedures for interviewing people to assess referral for criminal prosecution are generally conducted very carefully – necessarily so. They are conducted by specialist staff, who are obliged to follow strict guidelines. The person must be cautioned regarding the fact that whatever they say (which is generally taped), may be used against them in any criminal proceedings related to how the debt was incurred. The person must be offered the opportunity to seek legal advice.

problems

The big problem with the introduction of this penalty is that deciding whether it should be imposed involves the same subtle considerations that are relevant to a prosecution referral. This is because the penalty can only be applied if the person has a debt which wholly or partly arose because:

- ♦ they were required to provide Centrelink with information relating to their earnings and they refused or failed to do so; or
- ♦ they provided false or misleading information about earnings from employment, and they did so "knowingly" or "recklessly".

The penalty cannot be imposed if:

- ♦ the person had a "reasonable excuse" for refusing or failing to provide the information about their earnings; and/or
- ♦ they were not notified of the requirement to provide the information.

"The only solution is for the penalty legislation to be revoked"

self-incrimination

Given these criteria, how can Centrelink possibly establish whether a debt penalty should be imposed without conducting what effectively constitutes the same type of interview as a prosecution interview? We have seen letters sent to clients as part of the process to establish whether to apply the penalty, and several issues arise. Among other things, one letter asks:

- "1. Did you tell Centrelink you were receiving this income ... ?
2. If yes, how and when did you provide this information?
3. If not, why didn't you tell us about your income?"

The letter goes on to state that "If you do not contact us before (date), your (payment type) will stop. Your payments will not start again until you have contacted us about this letter."

This letter raises several concerns. The person is being asked to potentially incriminate themselves, with a threat of withdrawal of income support if they refuse to respond to the letter. Apart from the self-incrimination risk, answers to these questions may reveal grounds to waive recovery of the debt, yet the letter contains no information about appeal rights. Appealing against recovery of the debt to the Authorised Review Officer (ARO) may be the most appropriate first step for the person to take – particularly given that identifying evidence that a debt's accrual was wholly or partly Centrelink's fault may require extensive investigation by an expert officer such as an ARO.

the solution

We can appreciate Centrelink's dilemma, in that it cannot apply the penalty unless it satisfies itself that the person acted "knowingly", "recklessly" or without "reasonable excuse". However, our predictions that this new penalty would create an administrative nightmare for Centrelink, and represent a denial of natural justice for clients, is proving to be accurate.

The only solution is for the penalty legislation to be revoked. ▲

centrelink maladministration leads to debts

In the experience of Welfare Rights Centres it is common for Centrelink error to be a significant factor in the cause of Social Security debts. This is particularly the case where a person is in receipt of Family Tax Benefit (FTB) and another Social Security payment, such as Parenting Payment.

The income test for FTB is different to the income tests for other Social Security payments, as are the reporting requirements. Generally, at the end of each financial year, an FTB recipient is required to advise Centrelink of an estimate of their income for the upcoming financial year. That estimate is used to calculate the person's rate of FTB in the relevant financial year.

In the case of Parenting Payment (PP) the law requires a person to notify Centrelink each fortnight of their income.

This leads to the ludicrous situation that a person is required to notify Centrelink of their income for FTB purposes and again to notify it of their income for their other Social Security payment (eg PP). Failure to do so often leads to a debt, despite the fact that Centrelink is aware of the person's income.

telling Centrelink once should be enough

For example, a person may advise Centrelink that they estimate their taxable income to be \$30,000 for the upcoming financial year. Centrelink then uses this information to work out their rate of FTB. However, Centrelink does not use this information to work out the person's rate of Parenting Payment. Nor does it tell people that that estimate will not be used to calculate their payment rate for other Social Security payments. Unless the person advises Centrelink each fortnight of their earnings, they can incur a debt with respect to their other Social Security payment.

This process is very confusing for many people, as they rightly form the view that Centrelink is aware of their income and should have

adjusted their payment rates accordingly. This is particularly the case where the person is in receipt of PP and FTB, as a person can only be paid these payments if they have dependent children and it is common for a person to see these payments as one. Most people are in a state of shock when they receive a debt letter from Centrelink stating they have a Parenting Payment debt, given that Centrelink was aware of their income.

Welfare Rights has raised this issue with Centrelink over a number of years and despite assurances that the problem has been fixed we still assist many people who incur PP debts even though Centrelink was aware of their income. We intend to raise the issue with Centrelink again to ensure that its maladministration does not cause such debts and stress to its clients. ▲

DSP under threat - again!

Disability Support Pension (DSP) recipients are being scared off trying to improve their future job prospects by accessing employment services such as Disability Employment Network, Vocational Rehabilitation or Job Network because if they do so they face the prospect of having their pension cancelled. This follows changes introduced as part of the Welfare to Work policy.

Before accessing employment services a person must first obtain a Job Capacity Assessment. This assessment is conducted by a Job Capacity Assessor who examines the person's ability to work, including the type of jobs and the number of hours per week they are capable of working. This leads to problems for DSP recipients because if it is determined by the Job Capacity Assessor that they can work 30 hours per week they become ineligible for DSP.

As a consequence, people in receipt of DSP are reluctant to access employment services as they risk losing the pension and being placed on the lower paying

Newstart Allowance.

disincentive needs to be removed

Feedback to Welfare Rights and other community organisations indicates that the possibility of losing the pension is a major disincentive for voluntary participation in employment assistance for many DSP recipients.

Welfare Rights and other community organisations have written to the Minister for Workforce Participation, Dr Sharman Stone with options to change the present rules to encourage DSP recipients to

volunteer for employment assistance. One possible solution is to amend Social Security legislation so that the eligibility of existing DSP recipients is not affected by the outcome of any assessment triggered by their request to participate in employment assistance. This provides a safety net for people while they test the labour market. Another option is to separate the processes of assessment for income support and assessment for employment assistance. This may require changes to the eligibility criteria for some employment services, and amendments to the Social Security Act. ▲

social security changes

what's happening when

new exemption from the activity test

A person receiving Newstart Allowance, Youth Allowance, Parenting Payment or Special Benefit is to be exempt from the activity test for up to 12 months where a child is living with them in accordance with a Parenting Order made under the Family Law Act 1975. The exemption will apply where:

- the person is a "relative" (but not a "parent") of the child; and
- the person is the "principal carer" of the child or any other child; and
- the person is complying with the Parenting Order; and
- the Parenting Order requires that the child live with the person.

A "relative" includes anyone related by blood, adoption or marriage and may include a person related according to Aboriginal or other community kinship rules. A "parent" means a natural parent, adoptive parent or step-parent.

Date of effect: 13 February 2007
(except Special Benefit which commences 17 February 2007)

time to take "reasonable action" to obtain child maintenance extended to 13 weeks

To be paid more than the minimum rate of Family Tax Benefit part A, a separated person must take "reasonable action" to obtain maintenance from the other parent of their child. Prior to 1 January 2007, a person only had 28 days to take action to obtain maintenance before having their payment reduced to the minimum rate. Since 1 January 2007, action must be taken within 13 weeks (91 days). The time to take action

begins from the later of:

- the date of birth of the "FTB child"; or
- the date of separation of the resident parent and non-resident parent; or
- where there has been a change of care arrangements, the date that the child came into the resident parent's care.

"Reasonable action" is defined in Centrelink's Guidelines and is unchanged.

Date of effect: 1 January 2007

new access card

A Bill before Parliament proposes to create a new Access Card to replace a number of existing Federal Government cards such as those currently issued by Government agencies like Medicare, Centrelink and the Child Support Agency. It is proposed that registration for the card will commence in early 2008 and that the first cards will be issued shortly after. The Government has announced that it intends to introduce later legislation to make it mandatory from 2010 to be registered and have an Access Card in order to claim Commonwealth benefits (except in exceptional circumstances and to protect vulnerable groups).

The Access Card will contain a microchip which will contain details such as name, address, date of birth, citizenship or residency status, Indigenous status, sex, digitized photo, signature, card number, expiry date, concession status and a PIN. Cards can be customized to include other information such as next of kin details, drug allergies and organ donor status.

Proposed date of effect: On or within 18 months of Royal Assent, subject to the passage of legislation

proposed raising and recovery of "Financial Case Management" debts

Currently, a person who is faced with an eight week non-payment period may receive some financial assistance under the Financial Case Management Scheme if they are assessed either as being "exceptionally vulnerable" or as having "vulnerable dependants". The amount of financial assistance cannot be more than the person would have received if their Social Security payment had not been suspended. The money is not given directly to the person, rather it takes the form of payments for "essential expenses" made directly to third parties on behalf of the person, for example to their landlord or utility company.

There is a Bill before Parliament which, if passed, will allow Centrelink to use the Social Security Act to recover money which was paid to a person under the Financial Case Management Scheme where Centrelink considers that the payment "should not have been made". It is proposed that, for ongoing Social Security recipients, the debts will be recovered by fortnightly withholdings from their Social Security payment once they recommence after the eight week non-payment period ends.

Proposed date of effect: Royal Assent, subject to the passage of legislation

certain "transitional" DSP recipients to lose access to the pensioner education supplement

A "transitional" Disability Support Pension (DSP) recipient is a person who became qualified for DSP between 10 May 2005 and 30 June 2006. Their continued

qualification for DSP can be reviewed under the new DSP rules which commenced on 1 July 2006. Transitional DSP recipients who are reviewed and found not to qualify under the post 1 July 2006 rules can be transferred to Newstart Allowance (NSA) or Youth Allowance (YA).

The law currently says that if a "transitional" DSP recipient is also receiving the Pensioner Education Supplement (PES) and is transferred to NSA or YA because they have a "partial capacity to work" he or she can continue to receive PES until they complete their course of study.

There is a Bill before Parliament which, if passed, will mean that a "transitional" DSP transferee to NSA or YA will only be able to keep PES if they are transferred after their first review after 1 July 2006. This means that if the person is not transferred until after their second or subsequent review since 1 July 2006, they will lose their eligibility for PES, even if they are only part way through their course.

Proposed date of effect: Royal Assent, subject to the passage of legislation

crisis payment extended to more victims of violence

Previously, a person could only qualify for Crisis Payment where they had been forced from their home due to an "extreme" circumstance such as domestic violence, or when they are released from prison or psychiatric confinement. Since 8 December 2006, Crisis Payment can be paid to a person who remains in the home after a family member leaves or is removed because of domestic violence. The person who remained at home and is claiming Crisis Payment must have been living with the family member who left or was removed, must have been subjected to the violence, and must continue to live in the home. Claimants must also qualify for another Social Security payment and be in "severe financial hardship". Claims must be lodged within seven days of the family member leaving or being

removed from the home.

Date of effect: 8 December 2006

assets test – pensioners on farms and rural residential blocks

Generally, the maximum amount of land adjacent to a person's principal home that is exempt from assessment under the assets test is currently two hectares, unless the hardship provisions apply. However, since 1 January 2007, the two hectare limit does not apply to certain Age Pensioners and Carer Pensioners of Age Pension age living on a farm or large rural block to which they have a more than 20 year attachment. The home and the land must all be on one title. Any of the land which has commercial value must be being used efficiently (for example, being worked by children or a share-farmer).

It is possible for a person who qualifies for the exemption to be back paid to 1 January 2007 as long as the person contacts Centrelink between 1 January 2007 and 31 March 2007 to seek assessment under the new rules. An extension to this time limit may apply only in special circumstances to people who seek assessment between 1 April 2007 and 30 June 2007. Backdating to January 2007 will not be possible for a person who seeks assessment after 30 June.

Date of effect: 1 January 2007

assets test – all pensioners

Currently, a person who sells their principal home and intends to acquire a new home can have some or all of the proceeds of the sale of their home exempt from the assets test for up to 12 months while their new home is being acquired (eg while being bought or built). A Bill before Parliament proposes to give Centrelink the power to extend that exemption beyond 12 months where the person is unable to acquire a new home. The reason for the delay must be beyond the control of the person and it must be likely that

within 24 months the person will use some or all of the proceeds to acquire a new home.

Proposed date of effect: Royal Assent, subject to the passage of legislation

extended qualification criteria for exceptional circumstances drought relief

On 26 October 2006, the Government announced a number of new Exceptional Circumstances (EC) drought relief measures including;

- extension of current EC declared areas until 2008;
- reintroduction of assistance for certain previously EC declared areas;
- increase in the maximum amount of EC Interest Rate Subsidies to \$500,000 over five years and removal of the requirement to have operated independently of government assistance for at least two of the past five years;
- new grants of up to \$5,000 for professional business and financial advice for farmers in areas that have been EC declared for more than three years;
- increase in the cap for farm management Deposits Scheme to \$400,000 and the non-primary production income test to \$65,000; and
- increased funding for Rural Financial Counselling Services, the Family Relationships Services Programme (social and emotional counselling) and the Country Women's Association (emergency family and community aid grants).

The Government has also announced that Exceptional Circumstances (EC) drought relief assistance (including Exceptional Circumstances Relief Payment and Interest Rate Subsidies) is to be extended to include small businesses in and around EC declared areas which derive at least 70% of their income directly from agriculture.

Date of effect: Varied. For details, contact the Department of Agriculture, Fisheries and Forestry. ▲

"participation failures" under welfare to work

Since 1 July 2006, under the new Welfare to Work regime, a new system of penalties can apply to a person receiving Newstart Allowance, Youth Allowance, Austudy Payment, Parenting Payment or Special Benefit. A person receiving one of these payments may be required to enter into an "Activity Agreement" with Centrelink and to look for work and/or undertake other activities. Failure to satisfy these requirements can result in a "participation failure" being recorded and a penalty being imposed.

what is a "participation failure"?

A "participation failure" is a failure to undertake an activity required of a person by Centrelink. A failure to undertake a required activity should only be a "participation failure" if the person did not have a reasonable excuse for the failure.

penalties

Where a person commits a "participation failure," a "participation penalty" can be imposed. The penalty can be a suspension of payment or a no payment period of eight weeks.

Where a "participation failure" is incurred for failure to undertake certain activities a person will be given an opportunity to avoid any penalty by "re-engaging". For example, if a "participation failure" is incurred due to failure to attend an interview with a Job Network member (and the person did not have a reasonable excuse for failing to attend the interview) Centrelink will reschedule the interview and where this subsequent interview is attended (or there is a reasonable excuse for non attendance) no suspension of payment will apply.

Where a person fails to attend any rescheduled interview and does not have a reasonable excuse for doing so, payment can be suspended until the person does attend the interview. This means that when the next payment is due it will be reduced by the number of days it took for the person to comply.

It is important to note that even where no penalty is imposed

because a person re-engages, a "participation failure" will still be recorded (where the person did not have a reasonable excuse for failing). Where three participation failures are recorded over a 12 month period, payment will be stopped for eight weeks.

serious participation failures

Where a person

- ♦ incurs three "participation failures" in 12 months;
- ♦ leaves a job voluntarily;
- ♦ becomes unemployed due to misconduct;
- ♦ fails to accept a suitable job offer; or
- ♦ fails to commence, participate in or complete full time "Work for the Dole" (there will be some people who are "long term unemployed" and deemed to be "work avoiders" who will be required to undertake full time "Work for the Dole");

an immediate eight week no payment period will be imposed. As for other "participation failures" where the person has a "reasonable excuse" for failing to undertake or complete any of the above activities, the eight week no payment period should not be imposed.

financial case management

Financial Case Management should be available to a person who has an eight week no payment penalty imposed and who is

deemed to be "exceptionally vulnerable" or who has "vulnerable dependants".

appeal rights

If a person disagrees with the decision made by Centrelink to impose a "participation failure" or a "serious participation failure" they can appeal against the decision.

Appeals can be made initially to an Authorised Review Officer (ARO) at Centrelink. If this is not successful an appeal can be made to the Social Security Appeals Tribunal (SSAT) and if not successful to the Administrative Appeals Tribunal (AAT). Appeals to the ARO and SSAT must be lodged within 13 weeks of the previous decision in order for arrears to be paid where the appeal is successful.

Where a person requests a review of an eight week no payment period it is possible to ask Centrelink to continue the payment while the review is being finalised. If the payment is continued and the appeal is ultimately unsuccessful the no payment period will still have to be served. ▲

age pension arrears paid after five years!

Five years after claiming Age Pension Linda is to finally receive her correct entitlement and to receive arrears for that five year period!

This saga started when Linda reached Age Pension age and claimed her entitlement to Age Pension. Centrelink granted it at a significantly reduced rate on the basis that her income from her superannuation pension meant that she could not receive the maximum rate of Age Pension.

About two months after her Age Pension was granted, Centrelink cancelled it on the basis that her superannuation income, which had increased slightly, exceeded the Social Security pension income cut-off level.

During the 13 weeks after her Age Pension was cancelled, Linda made a number of enquiries to Centrelink about the decision, including asking Centrelink about reclaiming the Age Pension. Centrelink advised her that the original decision was correct. None of Linda's enquiries were taken by Centrelink to be a request for a review of the original decision, even though her sole purpose in contacting Centrelink was to query the initial decision.

Over the next few years Linda contacted Centrelink at various times to enquire whether she was eligible for the Age Pension or the Commonwealth Seniors Health Care Card. In 2003 she was granted Age Pension again, only for it to be cancelled a few months after it was granted on the basis that her superannuation income again exceeded the pension income test cut-out threshold. Again Linda queried this decision, but again to no avail.

In 2006 Linda again claimed Age Pension and again it was granted, this time at a higher rate of payment. The reason for this was that, this time around, Centrelink applied the law correctly and



disregarded part of her superannuation income, which it should have done in the first place.

Feeling as though Centrelink had made an error in the first place, Linda again questioned Centrelink's decision. This time the matter was referred to an Authorised Review Officer (ARO). The ARO agreed that the original decision to take into account 100% of Linda's superannuation pension was incorrect, as was the decision to cancel her Age Pension five years ago. However, the ARO decided that arrears could not be paid as Linda had not lodged a request for an appeal within 13 weeks of being

notified of the original decision.

An appeal was lodged to the Social Security Appeals Tribunal (SSAT). The SSAT ruled in Linda's favour on the basis that she had contacted Centrelink within 13 weeks of the original decision and that contact was not an informal or casual query, but rather a direct enquiry about the cancellation of her Age Pension. The SSAT decision was accepted by Centrelink which did not appeal the decision to the AAT. Centrelink is now required to pay arrears to Linda for the Age Pension payments for the five years she missed out on. ▲

welfare to work – new contact model

In May 2006, Centrelink commenced a 12 week trial of a new “Welfare to Work contact model”. The new model was designed by DEWR and by November 2006, 51 Centrelink offices were using it. The “contact model” is now being rolled out to all Centrelink offices.

Under the “contact model” nearly all job seekers will be required to report to a Centrelink office once a fortnight to submit their fortnightly payment continuation form. They will also be required to complete a participation interview with a Centrelink Customer Service Officer. Most people will have a face-to-face “participation interview” on a fortnightly basis although it is estimated that this interview will take less than three minutes.

At each fortnightly interview it is expected that the Centrelink Customer Service Officer will discuss with the jobseeker such things as their efforts to find work and any up-coming appointments they have. Before the payment is processed the job seeker will also be asked if any of the circumstances that might affect their payment have changed.

When people move into the “contact model” system, their first interview is expected to last between 10 and 20 minutes. At this interview, the new “contact model” system will be explained to them and a “Participation Record” booklet will be provided to them. This booklet will act as both the jobseeker’s job search diary and their means of advising Centrelink of their income and any changes in their circumstances over a 12 week period.

Jobseekers who live more than 90 minutes away from a Centrelink office will still be able to lodge their fortnightly payment continuation forms with a Centrelink agent but will be required to attend a face-to-face interview every 12 weeks.

exemptions

Centrelink expects that at least 90% of all jobseekers will be subject to this “contact model” however, Centrelink has advised that people with the following

activity test exemptions will not be required to take part in the fortnightly interviews. This includes people who:

- ◆ are overseas;
- ◆ have caring responsibilities;
- ◆ have claimed Disability Support Pension;
- ◆ are expectant mothers;
- ◆ are on Jury Duty;
- ◆ are refugees in their first 13 weeks in Australia;
- ◆ are living in remote locations;
- ◆ have a “special family circumstances” exemption; and
- ◆ have a “partial capacity” to work of less than 15 hours.

It is also expected that people in the following categories *may* be exempt from taking part in the “contact model”. This will include:

- ◆ people taking part in vocational rehabilitation;
- ◆ people who have recently suffered domestic violence or a relationship breakdown; and
- ◆ people participating in the Personal Support Programme.

The “contact model” currently only

applies to jobseekers receiving Youth Allowance and Newstart Allowance however, from 1 July 2007, it will also apply to activity-tested parents in receipt of Parenting Payment.

uncertainties

A few things are still unclear about the “contact model”. The first is whether a parent who is already fulfilling all of their requirements by working 15 hours a week and caring for a dependent child will be required to take part. This would seem to us to be a waste of time for both Centrelink and the jobseeker. It is also unclear as to how the model works for jobseekers who have significant difficulties with spoken English. Will interpreters be available for them every fortnight? It is also worth noting that, at present, the Community and Public Sector Union is concerned about the added work this model is creating for Centrelink staff, and questioning whether enough new workers have been hired to cope with the added requirements. ▲

victory at last – appeal rights acknowledged!

Centrelink has finally conceded that a person has the legal right to appeal directly to an Authorised Review Officer (ARO) without first having the Original Decision Maker (ODM) re-examine the case. However, Centrelink has always insisted that any request for appeal against a Centrelink decision must first be examined by the ODM.

This new approach will mean a more streamlined review process as it provides for easier access to an ARO as the case should not be held up at the ODM level.

Centrelink’s website was recently updated to reflect this new approach, stating that a person does not have to go through an ODM but can go straight to an ARO. It also states that the ODM will first review the decision “unless you have asked for that not to happen in your case.” Whilst this is not yet perfect, the procedures are improving and anyone who is unhappy with a Centrelink decision can now be advised to insist on an ARO review. ▲

centrelink ignores the law

Generally, newly arrived residents to Australia are required to wait two years before they qualify for most Social Security payments (although a number of limited exceptions apply and so newly arrived residents should check with their local Welfare Rights service). Where a person has suffered a “substantial change” to their circumstances beyond their control, they may qualify for Special Benefit payments during this two year period.

The two year “Newly Arrived Residents Waiting Period” was introduced in March 1997 and since its introduction the relevant law with regard to what is meant by a “substantial change” to a person’s circumstances, and when that change may have occurred, has been considered by the Administrative Appeals Tribunal (AAT).

In the *Chelechkov* decision (1998) the AAT considered whether the law allowed the decision maker to take into account “substantial changes” that occurred prior to the person arriving in Australia as a permanent resident.

The AAT was emphatic that the mere fact that a change in a migrant’s circumstances takes place before they arrive in Australia does not of itself mean that they cannot be said to have had a “substantial change in circumstances” beyond their control.

In this case, the AAT determined that Chelechkov and Antipina were entitled to Special Benefit as, whilst the “substantial change” to their circumstances had occurred in their home country, it was after they were “irrevocably committed” to migrating to Australia.

guidelines restrictive

The Welfare Rights Centre is concerned that current Centrelink guidelines on this issue are too restrictive and do not reflect the law.

For unknown reasons Centrelink distinguishes between where a person has been granted a visa in Australia and where a person has been granted a visa outside Australia. Current Centrelink policy guidelines allow decision makers to take into account “substantial changes” to a person’s circumstances after the claimant is

“irrevocably committed” to migrating to Australia, if they have been granted a visa **outside Australia**, like Chelechkov and Antipina.

However, where a permanent visa is granted after the person has arrived in Australia, Centrelink’s guidelines provide that the “substantial change” must have occurred **after the claimant has become an Australian resident**. In our opinion this interpretation is not supported by law. The policy is too restrictive and contrary to case law on the issue. The application of this policy may mean that a person who is in

Australia and has a “substantial change” to their circumstances immediately prior to being issued a permanent visa cannot receive Special Benefit.

Given that this policy would appear to have been imposed without rhyme or reason, Welfare Rights shall raise the issue with the Government and seek amendment to the policy so that the guidelines instruct decision makers to take into account “substantial changes” that have occurred since the person was “irrevocably committed” to the migration process, whether they are in or outside Australia.▲

appeal denied – not fit but not temporary

In March last year, Michael, who was in receipt of Newstart Allowance (NSA), provided Centrelink with a medical certificate which stated that due to his depression he was unable to work. Centrelink rejected the medical certificate on the grounds that it believed it had been “doctored”. Not able to adequately deal with this and other issues in his life, Michael retreated from the world. Fortunately for him, his mother made regular visits to cook and look after him. During the three months that his NSA was cancelled he had little contact with the outside world, however, he did contact Centrelink a few times and even visited his local office in an attempt to have his payment restored.

Michael eventually claimed NSA which was granted. However, he had been without payment for three months and to seek the arrears he lodged an appeal to the Social Security Appeals Tribunal (SSAT).

The SSAT was provided with evidence, which it accepted, that the original medical certificate that Centrelink said was “doctored” was a false claim.

However, the appeal was unsuccessful as the SSAT decided that his depression was not “temporary” as he had suffered from severe depression for two years. To

be exempt from the NSA activity test on medical grounds the illness must “be likely to be of a temporary nature” not “permanent”. While there is no definition in Social Security law about what is “temporary” and what is “permanent”, the SSAT took the view that to suffer from the same illness for two years put that illness outside the meaning of “temporary”. Although Michael was not happy with the decision, he was happy with the fact that at least he had exercised his legal rights and lodged an appeal.▲

students left in the lurch

The lack of any discretion to allow a person to continue to receive Austudy Payment or Youth Allowance (student) if they have run out of “allowable time,” or even to get Newstart Allowance to finish the course, has deprived a country town of a much needed pharmacist. The case of Liam below demonstrates the need for immediate change.

One of the important issues to emerge in the lead-up to the “Welfare to Work” legislation was its likely impact on students and apprentices. The first recommendation of the Senate Community Affairs Committee’s majority report on the “Welfare to Work” legislation focussed on this issue:

“The Committee recommends that the Government closely examine the interface between further education, welfare and the needs of a changing labour market on a periodic basis.”

The Welfare Rights Centre is frequently contacted by clients who have experienced difficulties in obtaining income support payments while completing their studies. These clients are generally ineligible for Austudy Payment or Youth Allowance (student) either because they have run out of the “allowable time” to finish their course or because they are studying at Masters level.

no discretion

Unfortunately there is no discretion in the legislation to allow a person to continue to receive Austudy Payment or Youth Allowance (student) if they have run out of “allowable time” or if they are studying at Masters level. Although there is discretion to disregard previous study, the discretion is very limited in scope and is not regularly utilised.

Liam’s case is an example of the inflexibility of these guidelines. He left secondary school at the end of Year 10 to join the Royal Australian Air Force, where he served for 12 years. He then decided to change careers and undertake a Pharmacy course so that he could work as a pharmacist in country New South

Wales. After completing bridging courses he was accepted into a Bachelor of Science degree at university. At the end of his second year he was accepted to undertake a four-year Bachelor of Pharmacy degree.

Liam expected to finish this course at the end of 2007. However, given that he transferred to a Pharmacy degree from a Science degree his “allowable time” to be paid Austudy Payment ran out in the middle of 2006. There is no flexibility in the legislation to extend this “allowable time” in Liam’s case.

Liam then applied for Newstart Allowance (NSA). Liam’s claim for Newstart Allowance (NSA) was rejected on the basis that his study activities did not meet the policy guidelines for approval of full-time study.

few options

Liam does not have family who can support him in Sydney. He has few options for supporting himself given the demanding nature of his course. The University’s course rules preclude him from finishing his course as a part-time student. This means Liam can either continue his studies with *no* income support or he can discontinue his studies, with the result that he has only completed three-quarters of a Pharmacy degree.

Liam’s case was brought to the attention of three Ministers: the Minister for Employment and Workplace Relations, the Minister for Workforce Participation and the Minister for Education, Science and Training. The responses from the latter two Ministers were unfavourable and pointed out that to allow Liam to receive Newstart Allowance in the last 18 months of

his study would be “inconsistent” with Australian Federal Government policy in relation to student payments. We are yet to hear back from the Minister for Employment and Workplace Relations.

lack of support

This lack of support for a student who has spent 12 years serving in our armed forces and who aims to work in a desperately-needed profession in rural Australia surely cannot have been intended by the legislators and Departmental policy-makers.

Given the Government’s commitment to ensuring that “Welfare to Work” legislation does not impede the local acquisition of skills and vocational knowledge through education, we believe that the inflexible provisions in relation to “allowable time” and Masters level study for the purposes of Austudy Payment should be revised to provide exemptions in appropriate cases, such as Liam’s.▲

mental illness and Social Security

For too long, the issue of mental illness and its complex relationship with disadvantage, unemployment and the income support system has either been overlooked or swept under the carpet. It is time the following key points about mental illness in Australia were taken into account in overhauling our approach to people with mental illness who are on income support.

1. Around 10% of working age Australians have an anxiety disorder and around 8% have a depressive disorder in any 12 month period – that is just over 18% of adult Australians experience a mental disorder within a 12 month period;
2. Mental illness is responsible for the greatest level of disability or impairment in the Australian community - over twice that associated with either cardio vascular or musculoskeletal disorders;
3. For income support recipients, the level of common mental disorder is much higher (in fact 66% more prevalent) than in the adult population generally, at around 31% compared with 18%. The level of mental illness is as high as 34% for unemployed people, and up to 45% for lone mothers on Parenting Payment Single.

Unemployment, poverty, low socio-economic status and sole parenthood are established risk factors for poor mental health and in many cases poor mental health may be the cause of the adverse circumstances and disadvantage - their relationship is complex.

However, it is clear that people with mental illness have ambitions like other people. Overseas studies show that 70% of people with serious mental illness want to work – clearly, mental illness does not

always extinguish ambition and hope in the individuals affected. In relation to Social Security recipients what is required are strategies that take account of, and are sensitive to, the higher prevalence of mental health problems among this population. A one shoe fits all approach does not work.

In this context, the provisions relating to workforce age payments under the new “work first” philosophy of the current “Welfare to Work” regime, need a serious overhaul to more sensitively and intelligently take account of the complex relationship between mental illness, unemployment and income support. ▲

equity and climate change

Despite being one of the driest continents on earth, urban water prices in Australia are less than half of those in Europe and are among the lowest in the world. There is little doubt that our water is under priced, in both the cities and in rural areas, and hence undervalued, inefficiently used and poorly managed. It is highly likely that in the near future this will lead to the adoption of market solutions and higher prices.

Similarly, it is inevitable that petrol and other energy costs will increase significantly in the face of further market solutions being introduced in the form of carbon taxes or a tradable credits system. Some estimates suggest that electricity could rise as much as 40% over the next four years.

The question we need to consider sooner rather than after the event is, how, in the face of these new applications of price signals and market solutions, will we deal with the equity and redistribution issues, if at all?

The market has already priced far too many Social Security recipients and other low income earners out of the housing market, to the long term detriment of our economic progress and social cohesion, and the risk is

that the same will happen with the daily necessities of water and energy.

In responding to climate change it is essential that we not only get policies that are as efficient and effective as possible but also that they are as fair as possible.

As market forces and price signals are increasingly employed over the next decade to address the adverse impacts of global warming on climate change, it is critical that we anticipate the likely impact of these on low income and otherwise disadvantaged people in both Australia and in our region and address these in our policy responses. Market based solutions may well be inevitable but they are often a very blunt instrument that can also do lots of damage.

To address this the Brotherhood of St Lawrence, the National Welfare Rights Network, the Australian Conservation Foundation and the Climate Institute Australia have convened a 60 person Round table in Melbourne on 26 March 2007. The alliance has commissioned research on the potential price impacts of the most likely market responses to climate change. The Round table will pull together the best, most equitable policy responses possible from the combined experience of the attendees representing the environment, community welfare sector and academe from all over Australia.

Watch this space for outcomes in the next edition. ▲

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