

rights review

NEWS & COMMENT ON SOCIAL SECURITY ISSUES

disability support pension cuts to help fund “well-off welfare”

It is not surprising that in the recent Federal Budget, the best kept secret (the \$1.2B deficit) and the most leaked “nasty” (cuts to Disability Support Pension eligibility), are intimately linked. But the link is not as clear or direct as the media at the time assumed and needs to be explored if we are to understand the long term upward redistribution this Government is undertaking.

The proposed cuts to Disability Support Pension (DSP) eligibility, along with those to the Pharmaceutical Benefits Scheme, have been justified by the Government on the grounds of the Intergenerational Report tabled by Mr. Costello with the Budget. As reported, the cuts are necessary because of the predicted huge blow out in, among other things, age, disability and pharmaceutical costs, which will result in a \$36B deficit by the year 2042.

Given all this very helpful evidence, there is no justification for the proposed DSP eligibility cuts to be found in the Intergenerational Report. Yet the

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health costs

A close examination of the Intergenerational Report reveals that this “fiscal gap” has precious little to do with either aging or pension costs. The report in fact identifies health costs as being responsible for 80% of the projected \$36B “fiscal gap”. Further, it reveals that the bulk of these additional health costs will be caused, not by the aging of the population but by “the growing cost of new health care technology, the increasing use of services and strong consumer demand and expectations”.

The Intergenerational Report also reveals:

- ◆ that the increased costs of Australia’s population aging (from 2.9% of GDP to only 4.6% of GDP by 2042) are modest and manageable, especially compared to most other developed countries;
- ◆ that the share of GDP going to Disability Support and sole parent pensions will be unchanged over the next 40 years;
- ◆ that the share of GDP going to unemployment benefits will in fact halve (because we’ll be in an era of labour shortage); and
- ◆ that the overall increase in the proportion of GDP going to pensions and benefits together will be a mere .6%.



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Available at www.welfarerights.org.au
Poster size guide to social security payments!

Welfare Rights Centre

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

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Linda Forbes — Casework Coordinator

Catalina Loyola — Administrator

Carla Mullins — Principal Policy Officer

Kerry Perkins — Admin Assistant (p/t)

Michael Raper — Director

Danny Shaw — Publications Officer

Sam Trinity — Financial Administrator

Telephone: 9211 5300;

1800 226 028 (outside Sydney)

Fax: 9211 5268

TTY: 9211 0238

www.welfarerights.org.au

The views expressed in this Newsletter are those of the Welfare Rights Centre, except where the article is signed by an individual or organisation.

All cases cited are actual cases but names have been changed.

The Centre welcomes feedback about the issues raised in the Newsletter and will publish correspondence whenever possible. ▲

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disability support pension cuts to help fund “well-off welfare”

Government is determined to reclassify some 200,000 Disability Support Pensioners, and by so doing, reduce their income by between \$26 per week (full rate pensioner with no earned income) and \$110 per week (part rate pensioner earning \$306 from 15 or more hours work). As Adele Horin put it recently in the Sydney Morning Herald, the Government wants to see reclassified pensioners, still with very significant levels of disability, “struggle like regular unemployed people do – on a below Poverty Line \$180 per week, paying full price for medicines, filling in Dole Diaries, accosting half a dozen employers a week for work and jumping to Centrelink’s commands”.

no merit

It is clear that the proposed changes to DSP eligibility have little merit in policy terms. The mere reclassification of people from DSP to Newstart Allowance will neither create more jobs nor make people with significant levels of disability more likely to be employed.

Yet the Government wants to press ahead with its quest for \$350m in savings from this measure by 2005-2006, by which time the Budget will be back in surplus. In fact the Budget will return to surplus next year – a healthy \$2.1B, building to about \$4.6B by the time of the next election. This is to be achieved despite significantly increased spending on election commitments (defence, detention, aged care) largely through increased revenue from higher predicted economic growth of 3.75% (up from 3% last October). However, this increased spending is to be off-set by a number of important cuts in this Budget. In fact the Budget contains at least \$1B in spending cuts affecting people on low incomes (eg. tougher eligibility for DSP, changes to the PBS, cuts to Job Network funding

and the deferral of the new “working credit”). It also contains at least \$1B of new expenditure devoted to people who are well-off (eg. the 5% cut to the superannuation surcharge for the top 5% and the extension of pensioner concessions and tax rebates to high income retirees – couples on up to \$80,000).

upward redistribution

So, putting all these different pieces of the Budget jigsaw together, it would appear that the main purpose of the proposed DSP cuts is to make a healthy contribution to the substantial upward redistribution at the heart of this Budget.

In addition to the DSP cuts, the Social Security budget contains a number of other significant savings measures:

- ◆ \$200m over four years from “better employment prospects”, as a result of better monitoring of “Preparing for Work Agreements” (it’s hard to see how Treasury accepted these alleged savings, but to the extent they turn out to be genuine, they will mostly come from people going off payment through having obtained work);
- ◆ \$264m over four years as a result of “additional strategies for minimising fraud and incorrect payments” (the old chestnut); and
- ◆ \$40m from a six month deferment (to April 2003) of the main positive “welfare reform” proposal in last year’s Budget – the “working credit”.

Altogether, these measures will make a substantial contribution to both filling the current deficit and to building the future surpluses that, regrettably, may well be raided for further upward redistribution in the years to come. ▲

budget targets disability

The Budget announcement that Disability Support Pension (DSP) eligibility criteria will be tightened (see page 4 and 6), has inevitably prompted many calls to the Centre from concerned and confused Disability Support Pensioners.

Many callers - particularly older Disability Support Pensioners who are unskilled and whose disabilities are the result of workplace injuries - feel upset and humiliated by the rhetoric accompanying the announcements. They are also distressed that some media coverage of the issue has depicted Disability Support Pensioners who are capable of part-time work as rorters who need to be culled from the population of people with "genuine" disabilities.

dsp package

It is little understood in the community that DSP was never intended to be only payable to people with severe disabilities that totally preclude work. The introduction of DSP in 1991 as part of the Disability Reform Package, was intended to bring in a new era of actively assisting people with disabilities that restrict work capacity to under thirty hours per week, to enter or re-enter the workforce. Unfortunately, however, in many respects the "reforms" finally consisted of little more than a change of name from Invalid Pension to DSP, accompanied by regular changes to assessment procedures and changes to legislative eligibility criteria.

Successive Governments' failure to implement the full range of reforms proposed under the Disability Reform Package has meant that even Disability Support Pensioners who are capable of working between twenty and thirty hours per week have been offered little practical job-seeking support, and perceive themselves to have been "invalided out" of the workforce. These people are not rorting the system - the system is failing them.

The Government's proposed means of targeting these people is to change



the DSP eligibility rules so that a person with a disability will only qualify if they cannot work 15 hours per week. This would shift many of the current and potential pension population to Newstart Allowance (NSA), where they will be compelled to actively seek the part-time work of which they are capable, and to take up offers of support and assistance proposed in the Budget.

reform needed

We share the Government's concern that Disability Support Pensioners capable of part-time work should be provided with appropriate support and opportunities to participate in the workforce; and we applaud the proposed measures that are intended to enhance Disability Support Pensioners' economic and social participation. However, we cannot agree that providing such support should be accompanied by shifting vast numbers of people with a disability from DSP to activity-tested NSA - particularly as this group of people will be extremely vulnerable to being breached and penalised.

The sudden transition to activity

testing people who may only be physically capable of working 16 to 20 hours per week will be fraught with difficulties for job seekers, for Job Network providers, and for potential employers. It is predictable that a person with a disability who can only work three hours a day, and who has made the limitations posed by their physical or psychiatric disability known to their provider and to a potential employer, will have difficulties - in getting referrals for jobs, in competing for a job, and in satisfying Centrelink of adequate job-seeking efforts. Any of these difficulties can result in breaches and penalties.

To suddenly change tack and move significant numbers of people from DSP to activity-tested NSA and its penalty regime in no way redresses progressive Governments' failure to provide the active assistance to Disability Support Pensioners intended under the Disability Reform Package. Reform is much needed, but not at the cost of exposing people (with physical and psychiatric disabilities who have significant workforce barriers) to the penalty regime. ▲

more delays for welfare reform

The Federal Government has announced a delay in the introduction of one of its more innovative policy proposals to date. In the 2002-2003 Budget, the date for the implementation of the "Working Credit" measure has been pushed back from September 2002 to April 2003.

In the March edition of "rights review" we advised of the proposed "Working Credit" scheme and how this initiative is aimed at reducing the severity of the Social Security income test by allowing people on pensions and benefits to accumulate a "Working Credit" of up to \$1000. When a person obtains paid employment, the accrued "Working Credit" will reduce the effect of the income test currently applying to pensions and allowances. The change will be particularly beneficial for allowees, given the harshness of the allowance income test. It is indeed a long-awaited

response to the problems faced by many people who rely on a pension or allowance to supplement irregular earnings from casual and part-time work.

reasons for delay

The Federal Government seeks to justify the delay in implementing this policy by arguing that more time is needed to ensure that people fully understand it. This ignores the fact that it is the Government's responsibility to promote the initiative in such a way that Social Security recipients and their nominees are

able to understand it. If billions of dollars could be found to justify exorbitant expenditure in defence, then surely enough money for an adequate education campaign on the "Working Credit" could also be found. We question the Government's commitment to a notion of "welfare reform" that allocates more emphasis and resources on portraying welfare recipients as "cheats" than implementing a measure that has the capacity to benefit so many low-income earners.▲

drastic changes for the sick and injured

In the 2002-2003 Budget the Federal Government announced its intention to amend the Social Security Act so that Newstart Allowance and Youth Allowance recipients who are temporarily unable to work will no longer be completely exempt from the activity test. Currently, people in receipt of Newstart Allowance or Youth Allowance who have a medical certificate stating that they are unfit for work, are exempt from the activity test for up to 13-weeks.

In the Budget papers the Government states that "the changes are important in delivering a clear message that disability or incapacity does not necessarily mean a person cannot participate economically or socially". The clear message that should be read into this is that people who have a medical exemption from working will be required to undertake certain activities (as yet undefined) or be subject to the harsh breach and penalty regime.

This measure comes on top of the Government's plans to amend the

eligibility criteria for Disability Support Pension (DSP) such that people with disabilities who are able to work at least 15 hours per week will no longer be entitled (a change from the current 30 hours) to this benefit. These measures, if enacted, will have a cumulative harsh impact on people with disabilities. For example, if a Newstart Allowee with episodic schizophrenia suffers an episode of mental illness and lodges a medical certificate from his or her doctor declaring that s/he is temporarily unable to work, it is highly likely that s/he will have difficulties complying

with any type of activity requirement - even "social participation" of some kind. It is therefore likely that s/he will incur a breach, notwithstanding the Government's assurances that the needs of people with such conditions will be catered for.

People with a medical exemption which states that due to their illness or condition they are unable to work, should remain exempt from the activity test until their condition has improved.▲

four new international agreements

In the 2002–2003 Budget four new international Social Security agreements were announced. These agreements will be of benefit to people who have worked in Croatia, Norway, Slovenia or Switzerland as well as having resided in Australia. It is expected that these agreements will come into force in January 2004.

Social Security agreements can enable people who have lived in both Australia and another country to qualify for Social Security, even though they have not lived in either one of the countries for long enough to meet the usual qualification requirements.

For example, Marie is of Age Pension age and has resided in Australia for five years. She has also spent nine years working in Switzerland. At present she is not entitled to the Age Pension, even though she is living in Australia. This is because a person needs to have resided in Australia for at least 10 years in order to qualify for the Age Pension. However, once the agreement between Australia and Switzerland is finalised, Marie will be able to count her period of working-life residence in Switzerland in order to make up the 10 years qualifying residence period she needs to receive the Age Pension in Australia. If she decides to live in Switzerland, then she will be able to count her period of residence in Australia to meet qualification requirements in Switzerland once this agreement is finalised.

The financial responsibility for these pensions is shared between Australia and the agreement countries. That is, each country pays a proportion of their pension based on the length of residence or contributions that the person in question has accrued. There are currently 11 Social Security agreements already in place, with a further two agreements to be added later this year.▲

generosity limited

In the 2002-03 Budget the Government announced it will outlay \$25.5 million to provide reciprocal travel concessions enabling state government Seniors Card holders to travel at concessional rates on public transport outside their home state.

Currently, holders of state or territory issued Seniors Cards are generally only entitled to concessions on public transport services in their home state or territory. The same restrictions apply to people on allowances such as Newstart Allowance.

The proposed change is welcome, as it will provide assistance to seniors travelling interstate. However, why hasn't the Government extended this measure to include other Australians – such as people in receipt of Newstart Allowance or Sickness Allowance? These people may also wish to travel in other states to look for a job or to visit family. Yet they do not, and will not, receive concessional rates on public transport outside their home state.

This proposed measure compounds the inequities in the treatment of unemployed people. As previously

reported in "rights review", not all state and territory governments provide concessions to unemployed people travelling on public transport in their home state. In Queensland and Tasmania, travel concessions are not available to the unemployed. In New South Wales and the Northern Territory concessions are available but when a person incurs a breach they lose access to travel concessions, even though they still need to meet various Activity Test obligations.

Given that the Federal Government can only implement the reciprocal transport concessions Budget measure if they reach agreement on funding with the states and territories, this would be an ideal opportunity for all governments to discuss national transport concessions for other Social Security recipients.▲

budget 2002-2003

2002/2003 budget changes at a glance

In the 2002-2003 Budget the Federal Government announced a series of changes to Social Security legislation and administrative procedures. The following list details the major changes, and the dates the Government proposes they be introduced.

disability support pension

Disability Support Pension qualification criteria will change so that it is paid to people with a very restricted capacity to work. People who are assessed as able to work at least 15 hours a week at award wages within two years of assessment, will no longer qualify for Disability Support Pension.

These changes will apply to all new Disability Support Pension claimants and will apply to existing claimants when their pension entitlement is reviewed.

Also, when a person aged 55 or over is assessed for Disability Support Pension local labour market conditions will no longer be taken into account when considering work capacity.

Proposed date of commencement:
1 July 2003

restricting activity test exemptions

The Social Security Act will be amended so that job seekers who are incapacitated for work but who are considered to be capable of participating in other activities will not be completely exempt from the activity test. Where appropriate, they will be referred to other services or for rehabilitation.

Proposed date of commencement:
20 September 2003

centrelink assessments of work capacity and retraining

Centrelink staff will assess the work capacity of people applying for Disability Support Pension, with a particular emphasis on determining a person's capacity to work or be retrained within the next two years. Health Services Australia currently makes this assessment.

Proposed date of commencement:
20 September 2002

nominees

Social Security nominees (people who are authorised to look after correspondence and receive payment on behalf of a Social Security recipient) will be made more accountable.

Proposed date of commencement:
1 July 2003

working credit

The "working credit" initiative was announced in the 2001-2002 Budget, to be implemented in September 2002. In this Budget the Government indicated that it would delay the implementation of this measure until 28 April 2003.

The working credit system will be introduced for workforce age pensioners and allowees. Credits will accrue at \$48 per fortnight (like the former "earnings credit system"),

to a maximum of \$1000. Employment income will then only affect a person's Social Security entitlement once their income free area and their working credit balances are zero.

new international social security agreements

Australia will finalise new Social Security agreements with Croatia, Norway, Slovenia and Switzerland.

Proposed date of commencement:
1 January 2004

state seniors card

Holders of State Seniors Cards will be eligible to receive concessional public transport fares while travelling interstate.

Proposed date of commencement:
1 July and ongoing (subject to negotiations between Federal and state/territory Governments) ▲

australians working together legislation

Substantial changes to Social Security legislation that will impact on parents, mature age workers and on the income test arrangements for all “work force age people”, are likely to be introduced soon. The proposed changes were recently tabled in Federal Parliament as part of the “Australians Working Together” package. These proposals are of considerable concern to welfare groups as they extend the activity testing regime, and breach penalties, to Social Security recipients who would not be subject to breaching and penalties under the current rules.

The proposed extension of the breaching regime to parents on Parenting Payment and the proposed abolition of Mature Age Allowance (currently payable to people who are 60 or over, but under Age Pension age), are related measures.

The abolition of Mature Age Allowance will mean that the only option for many unemployed people over 60 will be to claim Newstart Allowance. The parents and mature age job seekers affected by these changes will be required to “participate” in activities detailed in a “Participation Agreement” for Parenting Payment recipients, and in a Newstart Activity Agreement in the case of mature age Newstart Allowees.

penalty system

Failure to comply with the requirements of these Agreements will mean that Parenting Payment recipients will be subject to nearly the same penalties as those currently applied to Newstart Allowance (NSA) and Youth Allowance recipients, and mature age Newstart Allowees will be subject to the same penalties.

When considering the extension of such harsh penalties, care must be taken to ensure that this legislation does not repeat the mistakes of the past, which include failure to:

- ◆ provide adequate protection for “vulnerable individuals”;
- ◆ tailor agreements so that a person’s age, circumstances and caring responsibilities are considered;

- ◆ provide appropriate safeguards, such as a satisfactory “cooling off” period for people when they are negotiating their Agreements; and
- ◆ ensure that breaches are overturned where the person has a “reasonable excuse” for not meeting the requirements.

legislation inadequate

The proposals will mean that any parent whose youngest child is 13 or over will be required to enter into a “Participation Plan”, unless they have been exempted from the requirement to enter into a plan. This may seem to be a reasonable safeguard but unfortunately, the provisions to exempt an individual from the requirements to enter into a “Participation Plan” are very restrictive. They are so restrictive that the few people who would be eligible for an exemption would generally be entitled to receive Carer Payment for a “profoundly disabled child”. These exemption provisions are completely inadequate and need to be extended.

Another major flaw is that there are no provisions to allow for a “temporary exemption” from the requirement to enter such an Agreement because of personal crisis. For instance, if a person is required to claim Parenting Payment because of the recent death of their partner, they will not be able to be exempted from the requirement, even on a temporary basis of three to six months whilst dealing with the bereavement and their changed circumstances.

There needs to be greater flexibility to cater to individual circumstances that would impede compliance with an Agreement.

The legislation is also flawed because it repeats many of the problems already in existence for Newstart Allowance and Youth Allowance, for example:

- ◆ the penalties for failures to meet obligations are too harsh; and
- ◆ there is no legislative protection to allow an individual to negotiate their Agreement activities with a Centrelink officer.

positive measure

A positive measure of the package is that should a breach be imposed and the person subsequently complies with the Agreement, the breach will be overturned - but only from the date the person commenced to comply.

This measure partly recognises the inherent unfairness of the breach regime as it currently applies to Newstart Allowance and Youth Allowance recipients, as breaches are imposed for a set period, regardless of the person’s subsequent compliance with the activity test. In fairness to Newstart and Youth Allowance recipients the proposed softer rules should be extended to them.▲

social security changes

what's happening when in 2002

personal support advisers

- ◆ Personal Advisers to be provided by Centrelink to older workers (ie people over 50 years) who are unemployed, to people with dependent children, to indigenous Australians, to released prisoners and to people exempted from the activity test.

*Proposed date of commencement:
1 July 2002, subject to passage of
legislation*

portability changes

- ◆ The working life residency requirement for a portable pension to be payable at the maximum rate after a pensioner has been overseas for more than six months, will be increased from 25 years working life residence in Australia to 30 years.

*Proposed date of commencement:
1 July 2002, subject to passage of
legislation*

widow allowance

- ◆ Widow Allowance recipients will be required to attend an annual "participation planning interview" and will be required to enter into a Participation Plan. Penalties will be imposed for non-compliance.

*Proposed date of commencement:
1 July 2003, subject to passage of
legislation*

newstart allowance

- ◆ Newstart Allowance recipients

who are 50 years or over will be required to attend ongoing "participation planning interviews", and to enter into a Participation Plan and a Participation Agreement. Penalties will be imposed for non-compliance.

*Proposed date of commencement:
1 July 2003, subject to passage of
legislation*

mature age allowance and partner allowance

- ◆ Mature Age Allowance and Partner Allowance to be abolished.

*Proposed date of commencement:
1 July 2003, subject to passage of
legislation*

new participation requirements for parents

- ◆ Annual "participation planning interviews" to be introduced for parents whose youngest child is six years or over. The initiative will be introduced in two stages:

from September 2002, for those whose youngest child is 11 or over; and

from July 2003, for those whose youngest child is 6 or over.

*Proposed date of commencement:
1 July 2003*

- ◆ Parenting Payment recipients (both single and partnered) whose youngest child is between 13 and 16 will be required to attend annual

"participation planning interviews", and to enter into a "Participation Agreement" requiring "participation" of up to 150 hours over six months. Failure to attend an interview, sign an Agreement or meet the requirements of an Agreement will attract penalties. A penalty may be waived where a person subsequently complies with their Agreement within 13 weeks.

*Proposed date of commencement:
1 July 2003, subject to passage of
legislation*

temporary protection visa holders

- ◆ Temporary Protection Visa holders are to be activity tested for Special Benefit purposes. They will also be required to negotiate and sign a Preparing for Work Agreement.

*Proposed date of commencement:
subject to passage of legislation ▲*

clients' rights and obligations

When a person receives, or makes a claim, for any income support payment from Centrelink they are responsible for telling Centrelink about any changes to their circumstances within a specified time (usually 14 days). If a person fails to notify Centrelink about changes in circumstances, their payment can be cancelled or suspended. Should Centrelink not have the correct information an overpayment may arise, which generally must be paid back to Centrelink. If Centrelink determines a person has deliberately withheld information the matter can also be referred for possible criminal prosecution. Given the severity of possible outcomes if Centrelink does not have correct information it is important that people notify it of changes to their circumstances.

As well as obligations, recipients of payments also have rights when dealing with Centrelink. These rights ensure that people are not disadvantaged and have access to their full Social Security and Family Assistance entitlements.

what rights?

Right to lodge a claim for payment:

Claims for payments must be lodged in writing on the appropriate form. Centrelink must accept all claims lodged in this way and cannot refuse to accept a valid claim for payment.

The right to decisions in writing:

Centrelink is required to provide written explanations for its decisions.

The right to see personal information held by Centrelink:

Everyone has the right to access their Centrelink file under the Freedom of Information (FOI) Act. Some records that include another person's details may be exempt from release. Centrelink should release information under FOI within 28 days of a request.

The right to refuse to answer Centrelink questions immediately:

Centrelink has broad information gathering powers. However, people have the right to request that Centrelink send a letter requesting certain information or requiring attendance at an interview and giving them at least seven days to reply to the notice.

The right to refuse Centrelink access to a person's home:

Centrelink sometimes conducts home visits. A person does not have

to let a Centrelink officer into their home if they choose not to. They can make an alternative arrangement for any interviews to take place at a Centrelink office.

The right to be treated politely and with respect:

Centrelink has a complaints system for people to make complaints about any inappropriate behaviour of Centrelink staff.

The right to appeal:

Most decisions made by Centrelink are appealable. Centrelink officers at times discourage people from appealing, but they should not do so. If a person is not happy with a decision, they have the right to appeal and they should request a review by an Authorised Review Officer (ARO). Appealing is free. If a person is not happy with the ARO decision they have the right to appeal to the Social Security Appeals Tribunal.

providing information

There are some easy ways for people to ensure that Centrelink has all the correct information and that payments are correct. It is important to remember that even where Centrelink makes a mistake, the overpayment may still be repayable.

Always carefully read any Centrelink letters:

Centrelink letters contain information about a person's notification obligations, and about the information Centrelink is currently using to determine their rate of payment. For example, if a person is earning an income, the amount of income Centrelink is using to

determine the rate of payment will be on the back of its notices (ie the letters it sends to people). This will be accompanied by information regarding changes of circumstances of which the person is obliged to notify Centrelink. To avoid overpayment, it is crucial to check that the information used to determine eligibility and the rate of payment is correct.

Keep a record of conversations with Centrelink:

When advising Centrelink by phone of changes in circumstances, it is important to make a note of the date of the call, the information provided, and what was said by the Centrelink officer.

Keep copies of anything given to Centrelink:

If a person provides Centrelink with medical certificates, pay slips, etc, it is useful to keep a copy. A person can ask Centrelink to make an extra copy of such documents, and date stamp them for return to the client. This can serve as proof that the documents have been lodged.

Keep receipt numbers from telephone calls:

If a person provides Centrelink with information over the phone they can get a receipt number from the conversation. The client should make a record of that number. ▲

breach overturned

Mark is appealing to the Administrative Appeals Tribunal (AAT) against a breach and penalty imposed for his alleged failure to complete his Work for the Dole requirements. It is his third breach and if he loses at the AAT, the penalty he will face is an eight week non-payment period. His Newstart Allowance (NSA) is continuing, pending the outcome of his AAT appeal.

When Mark sought the Centre's assistance regarding the third breach, he had not yet appealed against the imposition of either of his first two breaches. His first breach was also imposed due to his alleged failure to satisfy the activity test. The circumstances that led to the first breach being imposed were that Centrelink issued him with two Employment Contact Certificates (ECCs) to be returned with his fortnightly NSA continuation form. Mark returned one completed ECC with his NSA form as well as advising, on the NSA form, of two enquiries he made with regard to possible employment. In addition he had a medical certificate exempting him from work for nine days of the fortnight. Despite this a breach had been imposed.

We assisted Mark to appeal the first breach to an ARO, who promptly overturned the decision to impose the breach on the basis that Mark

satisfied the activity test breach for the relevant period.

The success of the ARO appeal means that should Mark lose his appeal to the AAT he will not be subject to an eight week non-payment period.

Instead his NSA will be reduced by 24% for 26 weeks. This is a severe enough penalty in itself, but at least Mark will have some level of income support, albeit at well below the poverty line. ▲

centrelink delay

Jackie was injured at work and received a lump sum compensation payment which precluded her from receiving Social Security until February 2002.

At the time she received the compensation payment she was married and her husband worked. Jackie and her husband decided to spend the compensation money on buying a car, paying off family debts and visiting relatives overseas. Soon after the compensation money was spent, Jackie's husband left her. Jackie had no savings or financial support, with just over two years left of the compensation preclusion period.

She supported herself and her son on her Family Tax Benefit.

Jackie wrote a letter to Centrelink earlier this year requesting that the preclusion period be reduced due to her change in circumstances. Five months later Centrelink had still not reviewed the case. Only after Jackie contacted the Centre and we advocated on her behalf did Centrelink start to review her file. ▲

two-year wait incorrectly imposed

Gay, 19, lodged a claim for Youth Allowance in February this year and was advised by Centrelink that she was subject to the two-year waiting period for newly arrived residents. Centrelink applied the two-year waiting period for newly arrived residents on the basis that she recently arrived in Australia from New Zealand.

Gay had, in fact, previously resided in Australia. She came to Australia with her mother in April 1998 and stayed until September 1998, attending high school. Her family returned to New Zealand after five months as her mother was experiencing financial difficulties. Gay came back to Australia with her mother and siblings in August 2000 and has been here since. She again enrolled at the local high school and attended TAFE after school, completing a one-year course in

business administration.

Generally, a person from New Zealand is subject to a two-year waiting period before they are eligible for Youth Allowance. However, the newly arrived resident's waiting period legislation provides that the waiting period does not always apply in certain situations.

Under these provisions Gay is not subject to a two-year waiting period, because she first became an Australian resident before 1 July

1998, and had been an Australian resident for the preceding 12 months when she lodged her claim for Youth Allowance.

Youth Allowance was eventually granted to Gay, with full arrears paid as the request for review of the decision not to grant Youth Allowance was lodged within three months of Centrelink issuing the notice advising Gay that she was not qualified. ▲

unjust legislation

Maxine receives Family Tax Benefit for her son Matthew, 17. In order for Maxine to be eligible for Family Tax Benefit (FTB), Matthew's personal income needs to be less than a certain amount.

When Matthew left school, Maxine immediately rang Centrelink to cancel her FTB. The Centrelink officer informed her that as long as Matthew's income was under \$7,663, she would still be entitled to FTB. When Matthew secured a permanent job, Maxine realised that his income would soon exceed the limit. She therefore contacted Centrelink again to cancel her FTB, advising Centrelink of her son's income. Five weeks later, Maxine was contacted by Centrelink and told that nothing had been done to cancel her FTB. She was advised that she was obliged to repay the amount overpaid, even though Centrelink's records showed that she had informed Centrelink promptly of Matthew's income.

If Maxine's debt had been for any payment *other* than FTB, then she would have had a very good chance of having recovery of the debt waived. This is because Centrelink must generally waive recovery of debts caused solely by Centrelink's administrative error, where the payments were received in good faith. Maxine's debt was without a doubt caused by Centrelink's sole administrative error, and Centrelink accepted that Maxine received the payments in good faith. Centrelink's actions had left her in no doubt that she was entitled to her payments but unlike other debts, Centrelink cannot waive a FTB debt on these grounds unless the person is also in "severe financial hardship". This is because FTB is administered under different legislation to most other Centrelink payments. Centrelink's guidelines define "severe financial hardship" such that in order to fit the definition, a person needs to have less than \$10 a fortnight left over after their expenses are taken into account.

The Family Tax Benefit waiver legislation and Centrelink's interpretation of "severe financial hardship" are unduly strict. In Maxine's case, it meant that her debt could not be waived, even though her debt was solely caused by Centrelink's administrative error.

There is no justification for such a harsh approach to Family Tax Benefit debt recovery, which places families who are overpaid FTB due to errors on Centrelink's part in a worse position than people who have other types of debt due to Centrelink errors.▲

debt waived

Cathy received a lump sum compensation settlement for an injury that she sustained at work. When she received the settlement she was advised by Centrelink that due to the operation of the "compensation preclusion period" she would not be entitled to receive Social Security payments for two years.

In the meantime Cathy's husband left work due to illness and claimed payment from Centrelink. She attended the interview with him and was encouraged by Centrelink to claim a payment too. She advised Centrelink that she was not entitled due to the compensation she received. Centrelink assured her that she was entitled as she was providing care for her husband. Cathy completed the claim for Carer Payment, providing Centrelink with all the required information regarding her compensation and the payment was granted. As Centrelink had all the information Cathy naturally assumed she was in fact entitled. Additionally Cathy understood from discussions with Centrelink that she was being paid in relation to the care she was providing for her husband rather than being paid in her own right.

One year later Centrelink realised its error of paying Cathy within the

compensation preclusion period and raised a debt for the entire amount she had received throughout the year. Cathy appealed to the Authorised Review Officer (ARO) on the grounds that it was Centrelink error that had led to the debt. The ARO agreed that Centrelink error led to the debt, however, the debt was not waived as the ARO decided that Cathy had not received the payments in "good faith", as she knew about the preclusion period.

Welfare Rights assisted Cathy in an appeal to the Social Security Appeals Tribunal. The Tribunal waived the debt finding that Cathy did receive the payments in good faith as once she had provided Centrelink with all the necessary information she had the honest belief she was entitled to the payments. ▲

harsher debt recovery methods

A National Welfare Rights Network (NWRN) survey has revealed a general hardening of Centrelink's attitude towards debt recovery. The survey – "Go Ahead, Make Our Day: *Centrelink and Debt Recovery, Investigations and Prosecutions*", involved Welfare Rights and Legal Aid services nationally, and asked for information about Centrelink's covert surveillance policies, investigations, prosecutions and debt recovery practices. The survey results confirm the shared perception of attendees at last year's NWRN annual conference that Centrelink are becoming more zealous and less co-operative in debt recovery negotiations.

Key findings of the paper are that:

- ◆ Centrelink increasingly uses covert surveillance by private detectives as part of its fraud investigation, particularly in "marriage-like-relationship" investigations.
- ◆ Advocates are concerned regarding the apparent relaxing of the test for "substantial evidence" when deciding whether to assign private detectives, and regarding indications of bias in reports. Some evidence was reported out of context and information supporting the allegations was given more weight in their reports than information supporting the client's explanations.
- ◆ There was a lack of consistency across Australia in terms of whether people are advised of their rights when being interviewed by investigation officers regarding possible prosecution action. Of particular concern was the lack of consistency in advising people of their right to remain silent.
- ◆ By far the clearest message from this survey was advocates' perception that debt recovery officers have hardened their attitude towards customers. The perception is that they are more zealous in recovering money; less willing to negotiate; willing, at times, to break agreements and ignore Tribunal directions; and generally take a more "gung-ho",



grab-as-much-money-as-we-can attitude, regardless of the circumstances of the individual case. This view was common across the nation, regardless of whether a debt arises because of a Centrelink error or an error of the customer. Advocates' experiences lead them to conclude that Centrelink is more determined than ever before to recover money, regardless of the hardship this might cause or the injustice of the recovery action.

The title of the survey report is illustrative of this hard-lined approach. Survey

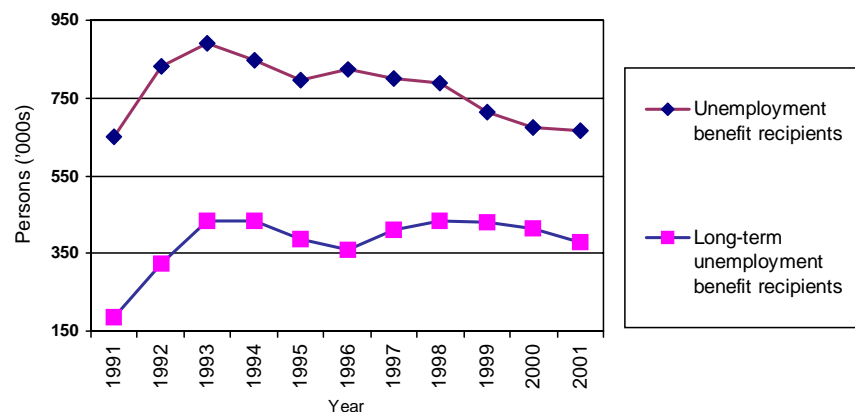
recipients were asked to describe their local debt recovery team's attitude, by likening them to one of a series of fictional film characters, ranging from Clint Eastwood in *Dirty Harry* (aggressive and zealous), to Julie Andrews (sugary sweet). Clint Eastwood was the outright winner, with most respondents indicating that his character's mean and zealous attitude best characterised the newly emerging hardheaded attitude of Centrelink's debt recovery sections.▲

budget blues for the long term unemployed

Yet another Budget has failed to provide substantial comfort to Australia's long-term job seekers, despite the fact that long term unemployment has been stuck at above 350,000 people since the early 1990's.

Recent data released by the Commonwealth Department of Family and Community Services in its series, "Labour Market and Related Programs", shows that Government policy has made no real inroads into achieving job outcomes for the long term unemployed. Some 384,000 job seekers had been in receipt of Social Security payments for over 12 months as at April 2002, compared to 343,000 six years ago. Whilst economic growth in recent years has resulted in a reduction in overall unemployment, the long term unemployed have been left out in the cold.

Unemployment benefit recipients



Sources: Centrelink (various years); Warburton, Opoku & Vuong (1999):

Note: "Unemployment benefits" refers to people on Newstart Allowance, the former Job Search Allowance, and Youth Allowance (other) for over 12 months.

"This year's Budget has failed to address one of the biggest challenges facing our current welfare system."

The Government's own data demonstrates that current employment assistance policies have proved unsuccessful in overcoming barriers to employment. Figures from a recent Productivity Commission report show that only 5% of Intensive Assistance clients within the Job Network are offered work experience and only 14% receive vocational training. (Intensive Assistance is a program for the long term unemployed.)

opportunity missed

The Government has missed the opportunity to restructure the Job Network system and make a greater

investment in employment and training opportunities that are tailored to individual needs. The announcement of an \$850 job seeker account, and the guarantee of basic employment assistance for the long-term unemployed are welcome changes. However, given that the budget papers reveal a net \$40 million dollar funding cut in the Job Network, we have real concerns about whether the capacity of the providers to deliver positive outcomes for the jobless will be greatly enhanced by the initiative.

poverty increase

There was no move in the Budget toward adopting some of the key recommendations of the McClure Report. An integrated payment system delivering a single uniform rate of payment for people of workforce age was overlooked. So too was the recommended

participation allowance to assist people to meet the additional costs of compliance, despite a clear signal from Government that more stringent activity requirements will be imposed. This will mean that job seekers will be forced to stretch their already inadequate payments to meet more extensive obligations. This will only serve to further heighten the risk of breaches and penalties for people with no savings and no income other than their Allowance.

commitment needed

This year's Budget has failed to address one of the biggest challenges facing our current welfare system. Without a strong commitment on the part of Government to confront long term unemployment, the number of people living in abject poverty with no real prospects of finding work will continue to increase.▲

kicking them while down

In 1988 the Federal Government introduced Youth Allowance, with the Hon Phillip Ruddock stating in Parliament that it was designed to:

“encourage young people to complete or further their education by removing undesirable incentives to leave education early or to choose unemployment over education and training. For younger students in particular, it creates a real incentive to complete year 12 or its equivalent before they look for work.”

Honourable sentiments indeed. However, a report just released by the Welfare Rights Centre provides a damning analysis of fundamental flaws in the design and administration of Youth Allowance that impose barriers to further study. The report reveals that these flaws directly cause poverty and homelessness among young people.

The report, “Kicking them while they are down - Youth Allowance and Youth Poverty”, examines the causes and effects of breaches, penalties and debts on people in receipt of Youth Allowance.

"57% of all activity test breaches imposed in 2000/2001 were applied to young people under 25"

The research for the report included:

1. an examination of all client enquiries to National Welfare Rights Network members for clients identified as under 25;
2. a series of focus groups with young people and youth workers throughout NSW; and
3. analysis of information obtained from the Department of Family and Community Services under Freedom of Information.



key findings

The report found that fundamental flaws in the structure of Youth Allowance and its administration create debt and poverty among young people. One key finding was that the low rates of Youth Allowance can prevent young people from participating in their studies. One person interviewed for the study stated,

“there is no way I can afford to buy the textbooks for the course, and it makes everything really hard when you have to study, in the end you just drop out”.

Other key findings of the report included:

- ◆ low payment rates of Youth Allowance constitute a significant disincentive to study. Young people had serious financial difficulties in paying for basics such as food and shelter, let alone travel costs to the educational institution;
- ◆ about one in eight people in receipt of Youth Allowance is classified as “homeless”;
- ◆ 57% of all activity test breaches imposed in 2000/2001 were applied to young people under 25;

kicking them while down

- ◆ 57% of all under 18 independent Youth Allowance recipients had a Centrelink debt;
- ◆ 68% of independent Youth Allowance recipients aged 18 to 20 had a Centrelink debt;
- ◆ the disproportionately high level of punishment experienced by young people as a result of structural flaws in the Youth Allowance system has significant consequences for young people including: entrenched poverty; increased homelessness; and inability to complete or undertake education;
- ◆ approximately one in five people in receipt of Youth Allowance had obtained an advance payment which results in a fortnightly reduction in their Youth Allowance until the advance is repaid;
- ◆ people under 25 are more likely to incur breaches than any other age group, incurring 52% of all activity test breaches and 61% of all administrative breaches from July 2001 to December 2001.

The report contains many case examples highlighting the unfairness of Youth Allowance legislation and policy and the approach taken by Centrelink in administering the system. In one case, a 16-year-old who lived more than 90 minutes away from the closest Job Network provider and who had no transport other than a horse, still had fortnightly commuting requirements included in his Preparing for Work Agreement.

need for reform

The report makes a series of recommendations to amend Youth Allowance legislation and policy and

Centrelink administrative practices. The report concludes by stating that the research has identified a "number of fundamental flaws in the legislation providing for the income support of young people. It has also highlighted systemic issues in service delivery by Centrelink that compound the impact of those flaws. These flaws are deepening rather than relieving the poverty and alienation of disadvantaged young people."

It is time for the Youth Allowance

system to be reformed to ensure that it provides incentives, not disincentives, for young people to undertake education and training.

The research paper is available on the National Welfare Rights Network website www.welfarerights.org.au

The Centre thanks the Australian Youth Foundation and the NSW Law and Justice foundation for their financial support of the project.▲

law unjust

Liz notified Centrelink that she had left the parental home but her claim for Youth Allowance at the independent rate was rejected, on the grounds that she was not considered to have sufficient reasons to have left home and was therefore not "independent" for Youth Allowance purposes.

Her mother continued to receive the Youth Allowance payments and Liz received no payments whatsoever. For nearly a year Liz was trying to receive the independent rate because she was not living at home. It was not until she had assistance from a JPET worker that she was finally granted the independent rate of Youth Allowance, but it was not backdated to when she left home. Centrelink then raised a \$2,000 debt against Liz - the amount of Youth Allowance paid to her mother whilst she was not living at home and not undertaking full-time study. Liz had not been able to undertake study because she had no income.

Furthermore, she had not received any of the Youth Allowance payments paid to her mother as her mother used this money to help fund a gambling addiction. Yet Liz was required by Centrelink to repay the debt. Centrelink recovered the debt by withholding 14% of Liz's Youth Allowance, which meant that instead of receiving \$150.85 per week she received \$129.75, from which she was required to pay all her living costs. (In some states, such as New South Wales, young people in these circumstances would not have been entitled to a Transport Concession Card because the debt repayment meant she was not receiving the full rate of Youth Allowance.)▲

youth protocols review

The Welfare Rights Centre is currently undertaking a project to examine the effectiveness of the Youth Protocols. The research is being undertaken by Dale Marjolan, a law student from Columbia Law School in New York, who is currently on placement at the Centre for three months.

The aim of the Protocols is to define the roles of the Commonwealth and the States/Territories in provision of financial support to homeless children under the age of 15, and homeless 15 to 17 year-olds who are at risk of significant harm or are the subject of a Care Order. The Protocols are currently under review by the Department of Family and Community Services. The Centre plans to evaluate the effectiveness of the Protocols in ensuring that the

income support needs of children and young people without parental or other support are properly met.

We are particularly concerned that in NSW some homeless children under the age of 16 are destitute but are not receiving financial assistance or other assistance from either the state Department of Community Services (DOCS), or from the Commonwealth. Special Benefit can be paid by Centrelink to young homeless people

under Youth Allowance age (ie. under 15) in the absence of support from DOCS, but few claims are lodged, and few granted. We want to examine whether tighter Protocols would enhance the access of destitute young people to adequate income support.

If anyone would like to contribute to this project or find out more about it, please call Dale Marjolan at the Centre on 9211 5300 or 1800 226 028. ▲

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