



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (AUSTRALIANS WORKING TOGETHER AND OTHER 2001 BUDGET MEASURES) BILL 2002

In Committee

SPEECH

Thursday, 12 December 2002

BY AUTHORITY OF THE SENATE

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Questioner
Speaker Cherry, Sen John

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Senator CHERRY (Queensland) (6.20 pm)—The Australian Democrats will be supporting these amendments, but I just want to put two things on the record. The first is that a number of these amendments are, of course, very similar to the amendments that the Democrats have moved. It is good to see that the Labor Party has picked up some of the ideas we put down when we moved our amendments three weeks ago. I thank the Labor Party for that. It would be good to see some acknowledgment of it from time to time. In particular, I note that the amendments provide a 14-day notice period before the breaches can be imposed, reduce the breach accumulation period from two years to 12 months and provide for the consideration of compliance capacity after a breach, although that is too late for a person with a mental illness, who is homeless or who has some other disadvantage.

I do not want to deal with the other amendments in any great detail, but I do want to note a general concern about the approach that the Labor Party and the government are taking to these provisions. The fundamental concern I have with the Labor Party's approach, which has obviously been agreed with the government, is the notion that you fix it when you get to the breaching stage. The key difference, as I outlined in my earlier speech, was the notion that if you are going to put sole parents into this fundamentally flawed breaching regime—which, as I understand it, the government is not prepared to change terribly much in terms of the overall penalties, periods and so forth, but we will have that debate later—the best thing to do is, if there is a conflict between work responsibilities and family responsibilities or between work responsibilities and caring responsibilities, not to put those people into an activity test. That comes back to that fundamental issue of who is exempted from having to go into a parenting payment participation agreement.

Our amendment was much broader than that. Unfortunately, a lot of the provisions we had in our amendment have been picked up not so much as exemptions from participation agreements but rather as exemptions from the breach. They are factors that the secretary, the department and Centrelink need to take into account before they breach people. To be perfectly honest—and I have to say this—I know that Centrelink is improving its processes and so forth, but I just do not trust them to actually deliver a decent consideration of the circumstances of individuals. When you are talking about whether a sole parent is to be breached and knocked off benefits for up to 26 weeks, I just do not trust Centrelink to do that properly. I want to read into the Senate *Hansard* an extract from the Commonwealth Ombudsman's report entitled *Social Security Breach Penalties—Issues of Administration*. It says:

Review of a sample of 100 complaint records 8 identified some significant deficiencies in Centrelink procedures and practice in relation to breach penalties. It was not possible, at that stage, to determine whether those procedures and practices were in accordance with

Centrelink guidelines or instructions from the policy department (FaCS).

- In most of the cases reviewed, there did not appear to be any attempt by Centrelink to discuss the circumstances of, or reasons for, the person's actions prior to making a decision to impose a breach penalty.

- Where the person did receive an opportunity to explain their actions to the decision maker, they were often presented with an unreasonable burden of proof. Typically they were required to obtain and provide written evidence from third parties to support any explanation before it was accepted.

- It appeared that many of the Centrelink decision makers involved did not have an adequate understanding of the activity test breach provisions.

- There was little evidence of adequate investigation in cases involving a penalty for under reporting of income from earnings.

And it goes on from there. All of these pages and pages of amendments are about trying to ensure that the secretary, essentially Centrelink and the department, actually takes into account all of these new factors that we are adding to the legislation, when the evidence from the Ombudsman is that they do not look at the factors

there now or that they put in an excessive burden of proof. That is the fundamental problem with what we are doing here: we are taking a flawed penalty system and a department that is overstressed with work because of the excessive compliance burden that has been put on it and saying, 'We're going to put sole parents into it'—a very vulnerable group—and we're going to expect the department to change its culture overnight and take into account their personal circumstances.' We are going to expect that somehow all these problems that the Ombudsman identified only a couple of months ago will be fixed and that we can now expect the secretary and the department to ensure that all these new factors we propose to put in will be taken into account in whether people are breached.

I do not think it is going to happen, because there is a culture here we have to deal with. Unless we deal with the culture by changing the nature of the penalty breach provisions and changing the training and getting some more staff into Centrelink, we are not going to be able to deal with these issues of individual circumstances. So, while we will support these amendments with extreme reluctance, I do not think they are going to achieve the outcome that the Australian Labor Party has set. And I do not think they will achieve the benchmark that Wayne Swan has set of making sure that the care responsibilities of parents are taken into account adequately when determining how this activity testing will actually apply. It is very disappointing. The ALP has not achieved the objective of its own amendments in this deal with the government. The Democrats will support it with extreme reluctance, but it just is not going to work.