THE SENATE

BILLS

Social Services Legislation Amendment (Miscellaneous Measures) Bill 2015

Second Reading

SPEECH

Wednesday, 4 May 2016

BY AUTHORITY OF THE SENATE
Moore, Sen Claire

Senator MOORE (Queensland) (10:30): This very cleverly titled bill, the Social Services Legislation Amendment (Miscellaneous Measures) Bill 2015, was introduced by Minister Porter in the other place as a bill to fix up anomalies and to bring into line some changes that needed to be made, making the social services legislation clearer. We totally support that aim. A community affairs committee consideration of this particular piece of legislation led to one major change. But what I thought I would do is put in place the intent of the bill in the first place, seeing that we have had the second reading speech tabled by the government, in terms of understanding exactly what this bill does.

The bill will make a number of changes. The first one is to clarify that people serving an income maintenance waiting period for a mainstream income support payment cannot access special benefit. This is the part of the bill where I believe the government is going to be moving an amendment to remove this from the legislation. In our Senate inquiry, this element of the bill was the one that engaged a large number of responses from people within the welfare system and also from individuals who felt that this component of the bill was actually unfair. I will identify exactly what the proponent was.

Special benefit is a payment for people in financial hardship due to circumstances beyond their control. I think it was National Welfare Rights Network, an organisation that is always interested in these issues and that has a strong record of understanding the social security system, that called special benefit the payment of last resort. When I worked in the department, this was the payment that people got when they could not get anything else. Special benefit is for people in financial hardship due to circumstances beyond their control. The proposal in the original legislation was the longstanding intent that it should not be paid to a person who is serving an income maintenance waiting period for a mainstream income payment due to receiving a termination payment or leave payment. The intent of the original legislation was that there would be an absolute preclusion in legislation for anyone who was serving the income maintenance waiting period to receive special benefit. We expect the amendment put forward by the government will change that.

The other elements of the bill are really in terms of a number of tidy-up processes. One of the other elements of the bill is to align time frames for meeting the family tax benefit reconciliation conditions and related amendments. Also, it passed the proposal that we alter student payment eligibility criteria so that the requirements for new apprentices can be determined by the minister in a legislative instrument. The bill will amend the definition of the new apprentice in the Social Security Act to remove the requirement for a Commonwealth Registration Number. It alters requirements for that definition so it can be determined by the minister in a legislative instrument.

I have spoken many times in this place about my concerns about essential elements of consideration of legislation not being in the core legislation, but rather being put into regulation. In fact, I think there is hardly a bill that comes forward in this area where I do not make comments of that kind. However, in consideration of this particular proposal about having the definition of an apprentice and the details of that put into legislation, we support that. We think it is the most effective and most flexible way to ensure that the proposals can be considered by the department and that changes around definitions can be defined more quickly and in a more appropriate way in regulation. We are supporting it in this way, but I could not miss the chance to put my normal opposition to having large chunks of detail put into regulation rather than legislation.

In the student area, this confirms that students are only assessed against one course of education under the full-time study requirements of youth allowance as a student and the qualifying study requirements of Austudy and not against more than one course of part-time study during a single study period. This is a matter of clarification and ensures that the claimants fully understand the basis on which they are claiming Austudy and receiving that payment, so having that assessment of only one course of education makes that clearer and people are able to work through that in the claimant process.

The explanatory memorandum also states that the bill will:
Clarify the policy intention relating to a person's exemption from the Austudy payment assets test if their partner is receiving or has received a relevant pension, benefit, allowance, compensation or has received lump sum compensation as an armed services widow or widower under the *Military Rehabilitation Compensation Act 2004* in the past.

Even reading it out indicates how complex these areas are. The proposal in this bill is to clarify the proposal on which someone can receive Austudy.

The next point is to simplify, consolidate, and remove inconsistencies and redundant provisions in relation to the indexation of pharmaceutical allowance. This is actually a clean-up clause, again clarifying and simplifying exactly how that pharmaceutical allowance is defined in the legislation. The second last point is:

- clarify which components of Newstart allowance are taken into account under the allowable income limits for the health care card;

Again, this is a clarification element, and we totally support that so that both the people who are claiming payment and the people who are determining the payment are clear about exactly what components of Newstart allowance are available to be taken into account under the limits of the health care card. The bill will also:

- remove an administrative restriction in the family assistance delegation provisions;

This is again a clarification. It will also:

- correct cross-references and similar technical errors.

This is always important but, because of the way legislation is put together and the way that the process operates, when some of these errors are found, the only way that they can be clarified is to bring them back through the process here in parliament, identify them and make sure they are fixed. It is a natural part of what we do.

That is what the bill does. I think it is relevant in the discussion here to look at some of the issues that were raised around the original bill when the Committee Affairs Legislation Committee considered this bill. The issues that caused the most concern were around the payment of special benefit while someone is serving a waiting period. That caused a great deal of correspondence around concerns about the impact that the simple and complete removal of that option in legislation would have on people who are in hardship in the community. In terms of concern about the proposal that the government had put forward, it is worthwhile quoting some of the evidence that was put forward about. People with Disabilities Australia, an organisation that looks at a range of community members who have disabilities and their carers:

… expressed concern that the proposed amendments to the rules governing IMPs and special benefit will have a disproportionate impact on people with disability and may result in potential harm to people with disability:

They said:

People with disability who receive large payouts, for example as compensation for an injury, may not have, or may no longer have the skills to manage such a large amount of money, nor be sufficiently informed about the IMP duration, given they are unlikely to know about IMP until they apply for Centrelink support. Their IMP— which is that waiting period for payment— may continue for years, whether their payout has been sufficient to cover their expenses during this time.

I have already mentioned the valuable work that the National Welfare Rights Organisation do and continue to do looking at the issues of social security and welfare in our community. They Community Affairs Committee report stated that they:

… submitted that a review of IMP laws, policy and administration is necessary to addresses poverty traps before access to special benefit is removed.

They suggested a number of ways that that could be done, but it focussed on the fact that there needs to be this constant review about exactly how the system interacts and impacts on the community.
The way the social security system operates is very much a result of personal impact on people who are seeking support, often when they are in serious trouble or unsure of their rights within the system. That is very important particularly when we are talking about the payment of special benefit. The National Welfare Rights Organisation highlighted the impacts of financial hardship. We talked about the impact on people with disabilities who received a large payout for their disability in a compensation process. They had to tell that to Centrelink, or the Department of Human Services, when they were looking at ongoing pension requirements but the people receiving the income may not have been able to understand how the two systems interacted. The National Welfare Rights Organisation said:

The consequences of running out of money cannot be understated. It can lead to homelessness, social isolation, exacerbation of mental and physical illnesses, economic and social exclusion. Being without money can be a barrier to participation in the paid work force.

The focus must always be on the impact on the person.

Another submission to the inquiry that talked about the impact of payment of special benefit during IMPs was from Professor Whiteford and Ms Regan, who do research in this area. They put forward the proposition that people could experience financial difficulty while serving an IMP as a result of a lack of awareness of IMPs, spending behaviour and adverse life events and ongoing problems. The system as it now operates, and the way that the minister presented the original legislation, is that it is current practice within the social welfare system, within the Centrelink process, that people cannot receive special benefit while they are serving this waiting period. On the basis of that current practice the department and the minister indicated that they would change the legislation to confirm that practice. Our community affairs investigation found that, whilst it could be current practice, there had been a number of cases put through the appeal process which highlighted that there should not be an absolute preclusion of payment of special benefit during the waiting period, but that individual circumstances must be taken into account so that any decision would reflect the individual circumstances of the person. On that basis, when we did consider the proposals that were put forward to us, we rejected the application from the minister to say that they should confirm current practice. We felt that it should do the reverse and remain the same—individual circumstances must always be taken into account by decision makers when they are looking at decisions on people's social welfare. So we rejected the proposition that people should be unable to receive the special benefit while they were in the waiting period.

The other issue—I really want to talk about this in a more general way—is making sure that people understand and know their rights. As I just said, Professor Whiteford and Ms Regan suggested that one of the issues around this special benefit process was a feeling that people just did not understand how the waiting periods operated. Whilst you can never actually enforce understanding, I think there must be ongoing consideration by the department of putting in place as best they can ways of ensuring that people truly understand the way the system operates. That is particularly clear with the waiting period.

With respect to another part of the legislation, regarding student payments and Austudy, again it was put forward by the National Union of Students and other contributors to the committee that one of the concerns could be that people were confused—they did not really understand their own circumstances and how the system operated. I think it is worthwhile ensuring that this issue of understanding the system is considered, as this was raised in a number of ways during this committee inquiry and is a consistent element of community discussion when we have discussions in our own electorates about issues around social welfare, as it has been in previous community affairs committee hearings. This element of understanding the system comes out very regularly. This particular bill is a mechanics bill, and we support it to make sure that we are moving towards clarification. It is most important that all of us here get the message to the department that the issue of communication, the issue of awareness-raising, and the issue of personal understanding—all of those together are absolutely critical for any way of working with government in terms of social welfare.

The other thing that is very clear again in this piece of legislation, and in the way that the community affairs committee operates, is the knowledge and the engagement of organisations such as the National Welfare Rights Network, People With Disability, and ACOSS. These organisations work closely with a range of community members, many of whom are closely involved with the social welfare system—sometimes through decisions that they have made in their lives; sometimes through things over which they have no control, such as injury or illness. I think it is an essential element of the way the Senate operates that we have this interaction with
community organisations, so that we can best understand their needs and also best understand the impact of legislation on them.

One of the other things that came out in the discussions around this piece of legislation was ongoing concern about other pieces of legislation that are currently before the Senate. They have been rejected by the Senate, but we know from the budget last night that these measures are still in the minds of the government. People giving evidence to this inquiry talked about their concerns about their family payments—Family Tax Benefit A, Family Tax Benefit A, and payments that have been cut by the government. One of the witnesses talked about the paid parental leave process, and said that their opportunities to be involved in their work and also in their community would be impacted by those cuts. When we talk about any element of social welfare, naturally people come forward with their own experiences generally; with what is happening to them. We saw again last night in the budget that there was no change to the circumstances of people who are reliant on social welfare, except the cut for people who are newly going onto payments, who will have lower payments because of the reduction of the allowance that was in place to cover the carbon reduction scheme compensation.

In relation to people in the community, people who will be affected by some of the changes we are putting forward in this piece of legislation will continue to be the most disadvantaged, and they will not see much benefit from what happened in the budget that we heard last night—nor in the raft of legislation that continues to be unresolved, which contains payment cuts from previous budgets that have come before this place.

Labor supports the legislation, provided that the government brings forward the amendment to remove schedule 1. We support the need to ensure that every effort continues to simplify and consolidate the very complex system under which we operate. We also reaffirm the importance, when there are legislative changes being put forward, of going through the Senate community affairs committee process because, consistently, the work that the committee does, including the interactions with the community organisations, improves the legislation that finally comes forward to the Senate. I cannot remember—and I am looking at Senator Siewert—where we have had recommendations come forward which do not actually reflect the impact on the community; recommendations which we as the Senate can then consider. We will not agree with everything, but at least we will have fulfilled the expectation of the community that the Senate is there—and the community affairs committee and the committee process is there—to ensure that community members who will be impacted by legislation will have the opportunity to have their say. It is also there to clarify any issues which may come forward in future bills which look at miscellaneous measures in social services.