THE SENATE

BILLS

Social Services Legislation Amendment (Miscellaneous Measures) Bill 2015

Second Reading

SPEECH

Wednesday, 4 May 2016

BY AUTHORITY OF THE SENATE
Senator CAROL BROWN (Tasmania) (11:00): The Social Services Legislation (Miscellaneous Measures) Bill introduces a number of minor amendments in the social services portfolio. Largely the amendments correct technical errors and clarify intended policy by removing minor ambiguities and anomalies. The uncontroversial elements of this bill: align timeframes for meeting the family tax benefit reconciliation conditions and related amendments; alter student payment eligibility criteria so that the requirements for ‘new apprentice’ can be determined by the minister in a legislative instrument, and the bill will amend the definition of new apprentice in the Social Security Act to remove the requirement for a Commonwealth registration number and alter the requirements for that definition so it can be determined by the minister in a legislative instrument; confirm that students are only assessed against one course of education under the full-time study requirements of youth allowance (student) and the qualifying study requirements of Austudy, and not against more than one course of part-time study during a single study period; 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; simplify, consolidate, and remove inconsistencies and redundant provisions in relation to the indexation of pharmaceutical allowance; clarify which components of Newstart allowance are taken into account under the allowable income limits for the health care card; remove an administrative restriction in the family assistance delegation provisions; and correct cross-references and similar technical errors.

However the remaining elements of the bill, contained in schedule 1, are of significant concern as they have the potential to have a devastating impact on a small number of people, leaving them without any support. This bill was considered by the Community Affairs Legislation Committee. In the course of that inquiry, it became clear that there is significant concern about schedule 1 of the bill. Schedule 1 of the bill has the effect of excluding people serving an income maintenance period from receiving special benefit. Special benefit is a payment intended for people experiencing financial hardship. According to the government, it is current Centrelink policy to reject applications for special benefit for people on an income maintenance period. The government have therefore argued that this legislation simply clarifies and implements the current policy.

However, evidence provided to the Senate committee inquiry into this bill, from various welfare agencies, illustrated that there have been a number of successful appeals of decisions of Centrelink in relation to this policy. In these decisions, the Administrative Appeals Tribunal has found that access to special benefit is warranted for people on an income maintenance period if they are in severe financial hardship due to circumstances beyond their control. This might occur due to costs associated with illness, disability or other circumstances.

A significant number of the submissions to the inquiry expressed concern that by removing the discretion of Centrelink and the AAT to grant special benefit, this bill has the potential to leave a group of people without a social safety net. While this is only expected to be a very small group of people, it is distressing that these changes would leave them without any assistance at all. For this reason, Labor senators on the Community Affairs Legislation Committee recommended that the bill be amended to remove schedule 1.

The impact of an income maintenance period is to reduce a person’s rate of income support or to preclude them from receipt of any payment for a period following receipt of a payment for retrenchment. The Social Security Act provides that an income maintenance period can be reduced or waived if a person is in ‘severe financial hardship’ as a result of ‘unavoidable or reasonable expenditure’. The special benefit can be granted to people in severe financial hardship due to circumstances beyond their control who are unable to earn enough income to support themselves and their dependants and who are not able to receive any other income support payment. It is a discretionary payment. The circumstances under which the payment is granted and the amount paid are determined by a delegate of the secretary of the Department of Social Services.
In their submission to the Community Affairs Legislation Committee inquiry into the bill, the National Welfare Rights Network rightly described the payment as a payment of ‘last resort’. The evidence of the National Welfare Rights Network and their concerns about this schedule was based on their experience of advocating for clients seeking payment of the special benefit. The National Welfare Rights Network specifically cited two complaints that they had made to the Commonwealth Ombudsman in relation to the practice of automatically rejecting special benefit claims. These complaints led to the Ombudsman’s examination of the policy instructions provided by the Department of Social Services to the Department of Human Services.

A report by the Ombudsman, Income Maintenance Periods and Special Benefit, was released on 7 March 2016. The Ombudsman’s report stated that, for many people, the size of the termination payment will mean they must serve an income maintenance period, which may extend for some months, as an income maintenance period applies for the equivalent number of weeks that the employment related termination payment represents. The report also noted that there is no obligation on employers to advise employees about income maintenance periods and other waiting periods and that employers are only required to notify the DHS if 15 or more employees are being made redundant. Further to this, the Ombudsman stated that it is not uncommon for people to spend all of their termination payment before they contact the DHS to apply for income support, some having found themselves in severe financial hardship. The Ombudsman’s report noted:

The Act does not currently apply IMPs to Special Benefit and there is nothing in the Act that says Special Benefit cannot be paid while a person is serving an IMP for another payment. Contrary to this, DSS had issued a policy instruction that Special Benefit should not be paid to a person who is serving an IMP in relation to another income support payment. Due to this instruction, DHS could not grant Special Benefit to someone serving an IMP. However, if the person sought review of that decision before an external tribunal, it was and remains possible that Special Benefit would be granted.

The Ombudsman’s report recommended that DSS amend the policy instruction for IMP reduction so that it takes account of each person's circumstances, including the portion of the termination payment that was spent on non-permitted items in relation to the actual size of the payment and the length of the IMP. It also recommended that it amend its instruction about the grant of special benefit during an IMP so that the Department of Human Services is permitted to properly consider and, where appropriate, grant claims in that situation. The Ombudsman’s report also recommended that DSS raise community awareness of the impact of employment termination upon income support non-payment and waiting periods—which anyone here should agree is obviously a very sensible thing to do.

Based on the findings of the Ombudsman’s report it is clear that this schedule of the bill does not ‘correct technical errors and clarify intended policy by removing minor ambiguities and anomalies’; rather, it gives effect to the policy that has been applied by the department contrary to the current act. It is quite clear. This will have the effect of removing the final safety net, Special Benefit, which supports people in rare cases of extreme hardship that cannot be remedied by existing IMP waivers.

Submissions to the inquiry highlighted the types of financial hardships that can be experienced by someone serving an IMP that may not satisfy the waiver conditions, and identified a number of common factors that lead to this financial hardship. The common factors identified in the Welfare Rights Network submission were ill health or disability impacting capacity to make rational decisions; inability to re-enter the workforce, for example due to lack of skills diversity, health, disability and age discrimination; financial exploitation; poor financial literacy and/or inexperience in managing large sums of money; pre-existing debt; lack of English or low educational attainment; difficulty adjusting to unemployment, sometimes coinciding with adjustment to new disability, both emotionally and financially; addictions; incorrect advice affecting decision making; failed investments; strong personal and cultural obligations to financially provide for extended family; emotional issues such as depression and anxiety; and social isolation. This was, again, in the submission by Professor Peter Whiteford and Ms Sue Regan of the Social Policy Institute, Crawford School of Public Policy, Australian National University, who had been commissioned by the National Welfare Rights Network to undertake research relating to people excluded from income support because they are serving an IMP who are in financial difficulty.

The three main factors that were identified by Professor Whiteford and Ms Regan in their preliminary research as contributing to people experiencing financial difficulty while serving an IMP are lack of awareness of IMPs; spending behaviour; and adverse life events and ongoing problems. The submission from the National Welfare Rights Network highlighted the impacts of the resulting financial hardship. Their submission states:
The consequences of running out of money cannot be understated. It can lead to homelessness, social isolation, exacerbation of mental and physical illness, economic and social exclusion. Being without money can be a barrier to participation in the paid workforce.

So, while the Social Security Act does set out circumstances under which an IMP can be reduced or waived to respond to cases of 'severe financial hardships', submitters to the inquiry argued that these provisions are insufficiently flexible. In considering the adequacy of the current IMP waivers, the National Welfare Rights Network stated:

While we agree that ordinarily relief from an IMP should be assessed under the IMP waiver rules, the existence of those rules is not inconsistent with the policy intent behind special benefit which recognises that from time to time there are special circumstances under which a person should be paid income support despite not meeting the usual requirements or exemptions contained under the Act.

Also, the National Union of Students or NUS in their submission raised concerns about removing the safety net provided by special benefit. The NUS submission recommended that the committee:

… should confirm that alternative safety net provisions are in place to deal with exceptional circumstances that the Special Benefit was designed to deal with and that the alternative processes can be accessed in a timely manner.

The bill and the supporting documents provide no assurances or indication that there is any alternative assistance to be made available to people who, in exceptional circumstances, find themselves in financial hardship which does not meet the criteria for an IMP waiver.

It is clear that retaining special benefit for people serving an IMP is not inconsistent with the policy intention of the payment. Special benefit is designed to recognise that, in some rare instances, there are circumstances that should give rise to income support payments, even where a person does not meet the usual requirements. As People with Disabilities Australia stated in its submission:

Special benefit is designed to ensure that when all other income support payments are excluded, and if a person is in a dire financial position with no other prospect of supporting themselves, they are able to access this payment.

Their submission also went on to say:

This benefit recognises that there are some instances where the discretion to assist ensures that people with no support are not further financially disadvantaged.

It is clearly appropriate that the current arrangements remain in place with the broad discretion remaining with the delegate of the secretary of the department to grant special benefit to alleviate financial hardship experienced by somebody unable to qualify for another income support payment as they are serving an IMP. While Labor broadly supports this bill, we seek to have the bill amended to remove the schedule containing this measure. This might occur due to costs associated with illness, disability or other circumstances.

Of course, Labor continues to oppose other social service legislation that the government has tried to get through the parliament. We oppose the government’s attempts to cut family payments from 1.6 million families and three million children. We oppose their unfair cuts to Paid Parental Leave which will leave thousands of new mothers worse off. We oppose the government’s cuts to the pension and the proposal to force Australians to keep working until they are 70.

The government’s record on supporting families, older people and vulnerable Australians is atrocious. Labor will continue to stand up for them and protect the fair go—unlike those opposite, who handed down a budget which prioritises businesses over battlers. The Turnbull government is giving tax cuts to millionaires and multinationals while cutting the household budgets of families and pensioners and, in the case of this bill, removing the last remaining safety net for people.

The budget that we saw handed down last night only adds to the cuts and unfairness of the Abbott budget. Under the Liberal government, it is clear that Australian families and pensioners really are the biggest losers. Even after Mr Turnbull’s $6 tax cut, some families will still be as much as $4½ thousand a year worse off per child. We have seen Mr Turnbull break the Liberals’ pre-election promises not to touch the clean energy supplement,
for example. So what have they done? By abolishing the clean energy supplement for new entrants, families receiving family tax benefit A will be $116 a year worse off per child. Families receiving family tax benefit B will lose up to $73 a year. Single pensioners will lose $366 a year and couple pensioners will be $550 a year worse off per child. These new cuts are on top of the existing cuts Mr Turnbull is determined to inflict on low- and middle-income families. I say that— (Time expired)