

BACKGROUND PAPER

Employment and Workplace relations Legislation Amendment (Welfare to Work and other Measures) Act 2005.

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Aim of this Paper

To investigate the impact of the Government's Welfare to Work package on people with disabilities and on the community sector.

Legislation and its Requirements

The *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005* changed the eligibility criteria for people claiming a Disability Support Pension (DSP) after 1 July 2006 and those who were granted a DSP between 11 May 2005 and 30 June 2006.¹ In order to be deemed eligible for a DSP a person must now be assessed as unable to work 15 hours a week. This has lowered minimum hours for entitlement from the previous threshold of 30 hours per week. Those applying for DSP must be assessed by a Job Capacity Assessor (JCA) who determines their ability to engage in employment. Those already in receipt of DSP prior to 11 May 2005 will continue to be assessed under the previous criteria. The changes are estimated to effect around 81,000 new applicants for DSP, in the first three years, who will be assessed as having a disability but capable of 15 hours work per week.²

Those that are able to work 15 hours per week are now placed on a Newstart allowance and are required to comply with job search activity requirements. Newstart Allowance is paid a lower rate than DSP.³ The National Welfare Rights Network has observed that those who are classified as able to work at least 15 hours a week and who are placed on a Newstart allowance will be \$46 per week worse off than those who are eligible for a DSP.⁴ Those transferred to the lower rate are able to increase their income by gaining part-time employment.⁵ The activity requirements include looking for work or undertaking a suitable program

¹ Australian Government: Centrelink, *Welfare to Work: Questions and Answers*, <www.centrelink.gov.au/internet.nsf/services/welfare_questions_answers_dsp> accessed on 10 May 2007.

² Australian Council of Social Services, *Effect of Welfare to Work Policy*, (ACOSS Paper 146 March 2007)

³.

³ *Ibid.*

⁴ Michael Raper, "'Welfare to Work' Package Still Fundamentally Flawed,' National Welfare Rights Network (Media Release 21 September 2005)

⁵ *Ibid.*

as recommended by their Job Capacity Assessor.⁶ Those who are assessed as capable of undertaking 15 hours of work per week may be entitled to a mobility allowance of between \$74 and \$105 per fortnight.⁷ This was designed to address the concern that whilst the Newstart payment for those deemed able to work would be lower, the cost of seeking employment would increase the cost of living.

The Penalty Regime

The Job Capacity Assessment has a dual purpose: to tailor the jobseekers' needs to a particular agency; and to provide reports to Centrelink on the jobseekers performance.⁸ On the basis of the reports made to Centrelink by Job Network agencies, welfare recipients may incur penalties for failing to comply with activity requirements. The '3 strike' penalty regime involves a reduction in payment for a failing to meet the activity requirement. On the third strike within twelve months, or first strike if they refuse a job offer, a person's payment can be cut for 8 weeks.⁹ If they are classified as 'exceptionally vulnerable' those who incur the 8 week penalty will have their financial needs, such as food and bills, case managed.¹⁰ The case management system has been criticised for being insufficient to meet needs with only 4000-5000, of an estimated 18,000 who will face an 8 week suspension, being eligible.¹¹ The financial management system leaves the provision of essential services in the hands of charities that may make moral assessments of people's needs and is an exceptionally patronising system that may restrict the provision of cash for things such as transport.¹² The case management system has been heavily criticised by charities, many of whom refused to apply for funding, feeling the government was leaving them to do the dirty work.¹³ Their main criticism is that the case management scheme is far more effective at causing hardship than it is an effective policy mechanism.¹⁴

The effectiveness of the penalty regime in enforcing compliance is questionable with a high number of people being repeatedly breached.¹⁵ The *Pearce Report*, released following the Independent Review of Breaches and Penalties in the Social Security System, recommended that the 8 week penalty period be reduced in duration.¹⁶ This recommendation was rejected by the then Minister for Family and Community Services Amanda Vanstone on the grounds that a

⁶ Department of Family and Community Services, Commonwealth, *Guide to Social Security Law: Who Does Activity Testing Apply to?*, http://www.facs.gov.au/guides_acts/ssg/ssguide-3/ssguide-3.2/ssguide-3.2.7/ssguide-3.2.7.20.html at 2 May 2007.

⁷ Australian Government: Centrelink, 'How Much Mobility Allowance do I Get?' <<http://www.centrelink.gov.au>> at 27 May 2007,

⁸ Lucy Macali, 'Contemporary Disability Employment Policy in Australia: How can it Best Support Transitions from Welfare to Work,' (2006) 32(3) *Australian Bulletin of Labour*, 227, 229.

⁹ Australian Council of Social Services, *Effect of Welfare to Work Policy*, (ACOSS Paper 146 March 2007) 4.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Genevieve Bolton, *Government Should Review 8 week No Payment Penalty in Wake of Homelessness: Centrelink "Financial Case Management Fiasco"*, Media Release, National Welfare Rights Network, (29 May 2006) 1.

¹³ Stephen Crittendon, Interview with John Falzon, CEO, St Vincent de Paul Society (The Religion Report, ABC Radio National, 23 August 2006)

¹⁴ *Ibid*

¹⁵ Simon Schooneveldt, 'Centrelink's Breaching Policies Do the Unemployed More Harm than Good', *Online Opinion*, (22 March 2004), at 5 June 2007.

¹⁶ Denis Pearce, Julian Disney and Heather Ridout, *Report of the Independent Review of Breaches and Penalties in the Social Security System*, Australian Council of Social Services, 2002, cited in Australian Council of Social Services, 'Welfare Reform: Participation or Punishment?' *Acoss Info* 373 May 2005, 33.

softening of the regime was not supported by community expectations.¹⁷ The effectiveness of the breaching regime was examined in study by the Social Policy research who conducted a survey of 1005 Centrelink recipients who had been breached.¹⁸ The survey found that breaching caused around two thirds to increase efforts to find work but three fifths reported that being breached made looking for work harder.¹⁹ Whilst two fifths of respondents found work or increased their hours following the breach one third reduced efforts to seek work or found cash jobs.²⁰ In between 10 to 20 per cent of cases the penalty resulted in the loss of accommodation or necessitated a move to cheaper housing.²¹ With the increase in numbers of people on a disability pension required to comply with activity requirements it is likely that the number of breaches will increase.

Impact of Requirements on the Community Sector

As part of the welfare to work package the government has created Job Capacity Assessment teams who closely examine each case, interview jobseekers, formulate an action plan and furnish Centrelink with a report. Around 20 per cent of the assessments are carried out through private providers.²² The Service Coordinator from Banyule Community Health, interviewed as part of clinical placement, states that there has been a marked increase in the demand for counselling services from people referred through private providers.²³ She fears that waiting lists are expanding due to people being pressured by suggestions, by these providers, to undergo counselling.²⁴ People are being contractually bound to undergo counselling which she feels may be of little benefit to them if they are not ready for it and may indeed be harmful.²⁵ Overall she feels that the new requirements are having an impact on the already overstretched community sector by increasing waiting list times for those that are ready and willing to undertake counselling.²⁶ She contends that it is very likely that the Government envisaged that the private agencies would conduct their own counselling but it appears that much of the work is being referred back to the community sector.²⁷

A 2006 survey of the community sector revealed a 9% increase in demand for services in 2004-05 with 220,000 more people receiving services from 2003-04.²⁸ Health services (including mental health and drug and alcohol related services) were nominated as the services most needed in the community sector.²⁹ It is clear that there is a great need for the services provided by the community and that demand frequently outstrips capacity. The question is then

¹⁷ Amanda Vanstone, 'Independent Breaching Report Old News', <http://www.facsia.gov.au/internet/minfacs.nsf/549ed30c27024062ca2569e900837d9c/43724bc7fd263f8fca256b7a0013d3d2?OpenDocument> at 5 June 2007.

¹⁸ Tony Eardley, 'The Impact of Breaching on Income Support Recipients,' (2005) 91 SPRC Newsletter, 6.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² Australian Government Job Capacity Assessment, *More Help for People Moving into Work*, (Media Release 4 May 2006) <http://www.jca.gov.au/media/media-releases/060504.html> at 28 May 2007.

²³ Service Coordinator Banyule Community Health (Interviewed as part of clinical placement 24 May 2007)

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ Australian Council of Social Services, *Australian Community Services Sector*, 2006, (ACOSS Paper 146)

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²⁹ *Ibid.*, 17.

whether the already overstretched community sector will be able to cope with the increased strain that Welfare to work brings.

Policy

The motivation behind the legislative change is to encourage working age people to find employment and remain in employment.³⁰ The primary concern for the Government is that the number of people receiving DSP has increased by 66% in the last decade.³¹ The Organisation for Economic Co-operation and Development (OECD), in a review of disability support policies, made a number of recommendations to encourage those on disability support pensions.³² These included:

- ◆ Regular reviews of disability status³³
- ◆ Introduce a culture of mutual obligations³⁴
- ◆ Introduce new obligations by making payment conditional on participation in rehabilitation and vocational training³⁵
- ◆ Ensure participation by using sanctions for non-compliance³⁶
- ◆ Involve employers in the process³⁷
- ◆ Promotion of early intervention³⁸
- ◆ Inclusion of flexible cash benefits³⁹

The new welfare to work legislation includes provisions for a regular review of disability status. The Australian Government has embraced the mutual obligation rhetoric by establishing participation requirements to ensure that people who are capable of participating in part time work demonstrate some effort to find work. The recommendation that a failure to comply with participation requirements should result in benefit sanctions was already in place in Australia before the report came out.⁴⁰ The already extensive use of the penalties system demonstrates that the sanctions regime is well established in the Australian welfare system.⁴¹ A joint report by National Welfare Rights Network and Australian Council of Social Services showed that the number of penalties for breaches of social security rules increased by 250% between the years 1997-2000.⁴²

The economic benefits of increasing participation are self evident – with more people in paid employment and a reduction in public spending on benefits, the overall increase in a country's wealth should follow. The individual benefits of

³⁰ Second Reading Speech, Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Bill 2005

³¹ Australian Government Treasury, 'Australia's Demographic Challenges', www.demographics.treasury.gov.au/content accessed 28 May 2007.

³² Policy Brief, 'Disability Programmes in Need of Reform,' *OECD Observer*, March 2003, 3.

³³ *Ibid.*

³⁴ *Ibid.*, 4.

³⁵ *Ibid.*

³⁶ *Ibid.*,

³⁷ *Ibid.*, 6.

³⁸ *Ibid.*, 7

³⁹ *Ibid.*, 8.

⁴⁰ *Ibid.*

⁴¹ National Welfare Rights Network and Australian Council of Social Security, *Doling out Punishment: The Rise and Rise of Social Security Penalties*, <www.welfarerights.org.au/policy/ppdoling.pdf> at 17 April 2007.

⁴² *Ibid.*

employment on psychological well-being are also well documented.⁴³ Thus measures taken to encourage employment are to be commended.

Role of Education and Training

People who are outside the labour market for long periods of time face substantial difficulties when attempting to re-enter employment. They may have had limited or no experience in paid employment. They may have low literacy and numeracy skills. Research shows that people with disabilities are far less likely than the general population to have completed high school and tertiary studies.⁴⁴ Sixty-three per cent of people with a disability who have an educational qualification of Year 10 or less as compared to 25% of the general population having this level of achievement.⁴⁵ As the possession of a Year 12 certificate reduces the risk of unemployment by an estimated 60% people with disabilities are at a substantial disadvantage.⁴⁶ As there is a strong correlation between lower levels of education and risk of unemployment; it follows that increasing the level of education of the population generally and of people with disabilities in particular will decrease the number of people reliant on welfare. There is, however, conflicting evidence over the best method of education to achieve good employment outcomes. Some studies have shown that further education only has a modest effect on employability.⁴⁷ More recent research suggests that a combination of training and workplace experience gives the best outcomes for both employment and level of earnings.⁴⁸

Under Welfare to Work, the Government has instituted a “job-first” policy which requires people to take any employment, of any type, for any length of time.⁴⁹ The focus is on rapid entry into the job market over obtaining skills for quality employment.⁵⁰ Those that assessed at the new rate do not have access to the Pensioner Education Supplement, valued at \$31 a week, which acts as a disincentive to further education.⁵¹ Whilst in theory those on the Newstart Allowance can combine part-time work and part-time study in practice those with disabilities would struggle, both financially and with time management.⁵² The activity requirements are not lessened for those undertaking part-time study and they may still be forced to quit, by the threat of penalties, if they are offered a job.⁵³

A changing job market in Australia means that jobs for low-skilled workers are often casual or part-time.⁵⁴ The Federal Government is seeking to encourage the

⁴³ See for example Norman Feather, *The Psychological Impact of Unemployment*, 1990

⁴⁴ Australian Council of Social Services, *Fair Services for People with Disabilities* (ACOSS Submission to the Senate Community Affairs Committee 8 November 2006)

⁴⁵ Australian Council of Social Services, *The Role of Further Education and Training in Welfare to Work Policies*, (ACOSS Paper 146 March 2007) 4.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*, 5.

⁴⁸ *Ibid.*, 6.

⁴⁹ Terry Carney, ‘Welfare Reform? Following the Work First Way’ (Working Paper No 7, Brotherhood of St Lawrence, 2007) 1.

⁵⁰ ACOSS Paper 146, n. 2, 8.

⁵¹ St Vincent de Paul Society, Submission to the Inquiry into Employment and Workplace Relations Legislation Amendment (Welfare to Work) Bill 2005 and Family and Community Services Amendment (Welfare to Work) Bill 2005, November 2005, 4.

⁵² ACOSS Paper 146, n. 2, 9.

⁵³ *Ibid.*

⁵⁴ ACOSS Paper 146, n. 2, 4.

movement of unemployed people into part-time work as a stepping stone to finding full-time employment.⁵⁵ A Productivity Commission Report drawing upon longitudinal studies found that people with disability who find casual work have a higher probability of reverting to unemployment.⁵⁶ The report recommended that in order to encourage people with disabilities to stay in the labour market, the Government should supplement assistance in finding employment with a support mechanism once they are employed.⁵⁷

Under the current system assistance for jobseekers with disabilities is administered through the Disability Employment Network. In the 2005-06 Budget the Commonwealth Government announced that they were funding 21,000 new places in Open Employment Services, who offer intensive support for jobseekers with special needs.⁵⁸ The problem with this however is that 17,000 places are earmarked for people assessed as capable of working 15 hours under the new assessment criteria which leaves only 5000 places for those assessed under the old criteria.⁵⁹ This highlights a particular problem with the Welfare to Work legislation in that it creates an artificial distinction between people with disabilities based on when they were assessed.⁶⁰ The Open Employment Service has a good record of finding people with disabilities employment; but, prior to welfare to work reforms, they only assisted people who voluntarily sought their services.⁶¹ It remains to be seen how effective their assistance will be with jobseekers forced to comply with activity requirements.

In discussions with the Community Programs Coordinator of Banyule Community Health Centre whilst on clinical placement it was clear that the long-term unemployed often face a range of impediments when seeking employment.⁶² The Coordinator has been involved in the Employment Support Initiative, a program designed to move twelve women from unemployment benefits into work.⁶³ She notes that some of the women had no previous work experience and have many other factors that make finding work a difficult task.⁶⁴ She also noted that the sort of support needed to ensure that the women found and attended appropriate training would be beyond that offered by most Job Network agencies.⁶⁵ Through ESI, the women have undergone training to gain certificates, training for interview skills, resume writing and given practical assistance with clothing.⁶⁶ It is clear that multiple factors militate against gaining employment highly personalised and targeted interventions are needed to assist the long-term unemployed re-enter the workforce.

⁵⁵ Australian Government Treasury, *Australia's Demographic Challenges*, www.demographics.treasury.gov.au/content at 28 May 2007. (R)

⁵⁶ Productivity Committee, Commonwealth, *The Role of Non-Traditional Work in the Australian Labour Market*, (Research Paper, May 2006) xxiv.

⁵⁷ *Ibid*, 104.

⁵⁸ Macali, n 8, 232

⁵⁹ *Ibid*.

⁶⁰ Carney, n. 49, 4.

⁶¹ Macali, n. 8, 333.

⁶² Interview with Community Programs Coordinator, Banyule Community Health Centre (BCHC 31 May 2997)

⁶³ *Ibid*

⁶⁴ *Ibid*

⁶⁵ *Ibid*

⁶⁶ *Ibid*

An Alternative Welfare System

While Australia has been commended by the OECD for its Welfare to Work reforms,⁶⁷ Denmark has come up with a different solution for tackling the pressures the modern capitalist economy places on the labour market. They have coined a concept known as flexicurity which marries low level of employment protection with a generous welfare safety net.⁶⁸ The idea behind this concept is that modern companies need the capacity to hire and fire employees as they need whereas individuals need to know they will be able to support themselves.⁶⁹ Whilst in the past this balance has led to legislative restrictions on how employers fire employees the balance in many capitalist economies, including Australia, has shifted back in favour of employers. In Denmark they have attempted to deal with this by deregulating employment and by shoring up the welfare system.⁷⁰ This method has proved successful in promoting a flexible labour force and providing a generous safety net. Denmark has also reported a sizeable reduction in unemployment and the participation rate is high.

This model confounds the theory that generous welfare payments encourage unemployment. As part of the Danish system welfare recipients are currently entitled to a passive period of twelve months where they are entitled to full benefits. It follows a 'social investment' model which allows individuals to "negotiate their own integration into the market".⁷¹ This model has proved to be quite expensive however with the Danish expending a higher percentage of their GDP than Australia on social services.⁷² The Danish system is capable allowing more generous welfare payments due to the contributions made by people whilst they are employed.⁷³ It would be difficult under the current system to replicate the Danish model without major reforms.

The McClure Report, produced by a Government commissioned reference group, recommended radical reforms to the welfare system including generous discretionary packages for welfare recipients, particularly the vulnerable.⁷⁴ It also recommended a removal of the two tiered system of allowances and pensions with allowances increased in line with the higher rates of pensions.⁷⁵ This report has been by and large disregarded in favour of cost-cutting reforms.⁷⁶ With Australia in the middle of a resources boom it is an opportune time to invest in the welfare system to ensure maximum participation in employment by those and able to work.

⁶⁷ OECD, *Economic Policy Reforms: Going for Growth*, 2007, 4.

⁶⁸ Per Konshog Madsen. 'Security and Flexibility: Friends or Foes? Some Observations from the Case of Denmark', 2002, *Symposium France/ ILO*, 42

⁶⁹ *Ibid*

⁷⁰ *Ibid*, 47.

⁷¹ Perkins, D, Nelms, L & Smyth, P 2004, *Beyond neo-liberalism: the social investment state?* Social Policy Working Paper No.3, viewed 25 September 2006, in Carney, n. 43, 8. <http://www.bsl.org.au/pdfs/beyond_neoliberalism_social_investment_state.pdf>.

⁷² Willem Adema and Maxime Ladaique, 'Net Social Expenditure, 2005 Edition: More Comprehensive Measures of Social Support' (Working Paper, 2005 OECD) 10.

⁷³ Peter Saunders, 'Australia's Welfare System is not Mean but Different and Fairer,' Online Opinion, <http://www.onlineopinion.com.au/view.asp?article=2556> at 29 May 2007.

⁷⁴ Carney, n. 43, 10

⁷⁵ Patrick McClure, *Participation Support for a More Equitable Society: Final Report of the Reference Group on Welfare Reform*, July 2000, 19.

⁷⁶ *Ibid*.

Recommendations

- The reduction of the 8 week penalty period in line with the recommendation in the *Pearce Report*.
- Streamline the welfare system to remove artificial distinctions between Allowances and pensions in line with the recommendations in the *McClure Report*.
- Reform the activity requirements to enable greater access to training and education.
- Removal of caps from Open Employment Services to allow greater access to the services
- Reform the welfare system with an emphasis on 'social investment.'

Bibliography

Articles/ Books/ Reports

Adema, Willem and Ladaique, Maxime, 'Net Social Expenditure, 2005 Edition: More Comprehensive Measures of Social Support' (Working Paper, 2005 OECD)

Australian Council of Social Services, *Fair Services for People with Disabilities* (ACOSS Submission to the Senate Community Affairs Committee 8 November 2006)

Australian Council of Social Services, *The Role of Further Education and Training in Welfare to Work Policies*, (ACOSS Paper 146 March 2007)

Australian Government: Centrelink, 'How Much Mobility Allowance do I Get?' <<http://www.centrelink.gov.au>> at 27 May 2007.

Australian Government: Centrelink, *Welfare to Work: Questions and Answers*, <www.centrelink.gov.au/internet.nsf/services/welfare_questions_answers_dsp> accessed on 10 May 2007.

Australian Government Job Capacity Assessment, *More Help for People Moving into Work*, (Media Release 4 May 2006) <http://www.jca.gov.au/media/media-releases/060504.html> at 28 May 2007.

Australian Government Treasury, *Australia's Demographic Challenges*, www.demographics.treasury.gov.au/content at 28 May 2007

Bolton, Genevieve, *Government Should Review 8 week No Payment Penalty in Wake of Homelessness: Centrelink "Financial Case Management Fiasco"*, Media Release, National Welfare Rights Network, (29 May 2006)

Carney Terry, 'Welfare Reform? Following the Work First Way' (Working Paper No 7, Brotherhood of St Lawrence, 2007).

Crittendon, Stephen, Interview with Falzon, John, CEO, St Vincent de Paul Society (The Religion Report, ABC Radio National, 23 August 2006)

Department of Family and Community Services, Commonwealth, *Guide to Social Security Law: Who Does Activity Testing Apply to?*, http://www.facs.gov.au/guides_acts/ssg/ssguide-3/ssguide-3.2/ssguide-3.2.7/ssguide-3.2.7.20.html at 2 May 2007.

Eardley, Tony, 'The Impact of Breaching on Income Support Recipients,' (2005) 91 SPRC Newsletter

Feather, Norman, *The Psychological Impact of Unemployment*, 1990

Macali, Lucy, 'Contemporary Disability Employment Policy in Australia: How can it Best Support Transitions from Welfare to Work,' (2006) 32(3) *Australian Bulletin of Labour*, 227

McClure, Patrick, *Participation Support for a More Equitable Society: Final Report of the Reference Group on Welfare Reform*, July 2000.

Madsen., Per Konshog 'Security and Flexibility: Friends or Foes? Some Observations from the Case of Denmark', 2002, *Symposium France/ ILO*

National Welfare Rights Network and Australian Council of Social Security, *Doling out Punishment: The Rise and Rise of Social Security Penalties*, <www.welfarerights.org.au/policy/ppdoling.pdf> at 17 April 2007.

OECD Policy Forum on Reassessment of OECD Jobs Strategy, 'Forum Experiences of Asia Pacific Countries: The Australian Experience,' (Paper Presented at OECD Policy Forum, Tokyo 7-8 July 2005)

Policy Brief , 'Disability Programmes in Need of Reform,' *OECD Observer*, March 2003

Productivity Committee, Commonwealth, *The Role of Non-Traditional Work in the Australian Labour Market*, (Research Paper, May 2006)

Raper, Michael, "'Welfare to Work" Package Still Fundamentally Flawed,' National Welfare Rights Network (Media Release 21 September 2005)

St Vincent de Paul Society, Submission to the Inquiry into Employment and Workplace Relations Legislation Amendment (Welfare to Work) Bill 2005 and Family and Community Services Amendment (Welfare to Work) Bill 2005, November 2005.

Saunders, Peter, 'Australia's Welfare System is not Mean but Different and Fairer,' Online Opinion, <http://www.onlineopinion.com.au/view.asp?article=2556> at 29 May 2007.

Vanstone, Amanda 'Independent Breaching Report Old News', <http://www.facsia.gov.au/internet/minfacs.nsf/549ed30c27024062ca2569e900837d9c/43724bc7fd263f8fca256b7a0013d3d2?OpenDocument> at 5 June 2007.

Legislation

Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005