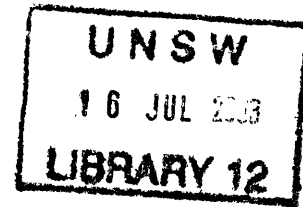


SOCIAL SECURITY



Including SSAT Decisions

Opinion

The end of 'unemployment': toward a common working-age payment?

The government received the McClure report three years ago.¹ While it has announced a major campaign, *Australians Working Together*,² so far it has made only minor amendments to the current system. Now, under the rubric of *Building a Simpler System*,³ it is engaged in a new round of consultations. The Consultation Document is both threatening and tantalising in stating that:

A key issue is how far-reaching change should be. The Government could replace the current system of 15 different payments for people of working age with a payment system, where assistance and requirements to participate vary according to a person's circumstances and capacity and there are improved incentives to work. A broader approach might also address the linkages between the social security system, wages and the tax system. Alternatively, smaller scale changes could reduce anomalies between payments.

We want to put some of the issues raised by welfare reform in an historical perspective. We see the likely changes to be as much about labour regulation as they are about social security.⁴ Our concern is that social security will join labour law in deferring to the vagaries of the market, rather than disciplining them.

For example, William Walters has argued that 'unemployment' is linked in complex ways to the changing political economy of the employment relationship.⁵ As Noel Whiteside has observed in the British context, attempts to divide the labour market into two discrete categories — the 'employed' and the 'unemployed' — have tended to ignore large numbers of people whose working lives do not allow them to be placed unproblematically in either category. The extent to which such a bipolar ordering did manage to capture the experience of the bulk of labour market participants in the decades immediately following World War II, she comments, makes those years exceptional.⁶

The proliferation of casual, subcontracting and short-time working in the pre-World War II labour market in Australia confounded administrators' desire to delineate an unemployed class. The 'organisation' of the labour market around stable, long-term, full-time employment relationships was seen as a precondition for any attempt to ameliorate the problem of unemployment. Only when the temporal and spatial

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The **Social Security Reporter** is published six times a year by the Legal Service Bulletin Co-operative Ltd.
Tel. (03) 9544 0974

ISSN 0817 3524

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Typesetting: Marilyn Gillespie

Printing: Thajo Printing, 4 Yeovil Court, Wheelers Hill 3150

Subscriptions are available at \$66 a year, \$44 for Alternative Law Journal subscribers.

Please address **all correspondence** to Legal Service Bulletin Co-op,
C/- Law Faculty, PO Box 12, Monash University Vic 3800

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Print Post approved PP381667/00178

dimensions of work were standardised in practice did 'unemployment' become a robust administrative and legal category. With this shift in the nature of the employment relationship, there emerged in Australia an idea of unemployment as an involuntary activity caused by the loss of 'permanent' or ongoing employment. This was a fundamentally different idea of unemployment than that which prevailed in, say, the 1920s or 1930s.

Thus, social security and labour law, although operating in separate spheres, were mutually constitutive, reflecting a new, mid-century understanding of employment relationships and a national labour market characterised by a system of uniform regulation and increasingly homogenised or generic work practices based around the open-ended or 'permanent' employment contract.

One way of understanding current trends in welfare reform is the displacement of 'unemployment' as a robust administrative and legal category. The array of now familiar social policy practices and regulatory interventions we associate with 'Active Society' approaches — labour market programs, 'welfare-to-work' measures, 'activity agreements', wage subsidies and so on — tend to be directed not just at the formally unemployed but at groups such as lone parents and the disabled as well. This partly reflects changing aspirations on the part of groups hitherto largely excluded from the labour force. Also, 'worklessness' or 'dependency' rather than 'unemployment' has become of increasing concern to policy makers, especially to the extent that an increased proportion of the jobless appear to be concentrated within households which are living in poverty and making increased claims on the income support system. At the same time, if 'worklessness' has displaced 'unemployment', then the policy solution is no longer found in standard 'employment' but in 'activity' or 'participation'.⁷

This concern is evident in the government's goals for welfare reform: a significant reduction in the incidence of jobless families and jobless households; a significant reduction in the proportion of the working age population that needs to rely heavily on income support; and stronger communities that generate more opportunities for social and economic participation.

This shift is made possible by a radically changed labour market characterised by a rapid growth in forms of part-time and casual employment contracts which, when mixed with the less

rapid but noticeable growth in fixed-term employment and forms of 'self-employment' and contracting arrangements, meant that by the late 1990s less than 60% of workers were supplying their labour under open-ended, full-time contracts of employment.⁸ The de-standardisation of labour law has helped this happen.

Social security is responding in a complementary way. Liberalised means tests allow claimants to retain larger amounts of earned income, even if these earnings fluctuate over time, while still accessing all or part of an unemployment benefit.⁹ Part of the *Australian Working Together* initiatives, such as the working credit amendments, are the latest version of this liberalisation.¹⁰ Consequently, there is considerable evidence that many recipients alternate between short-term or intermittent employment and periods without work.¹¹ The combined effect is that the lines between involuntary unemployment and non-employment on the one hand, and that between 'welfare' and 'work' on the other, are blurred.

For such reasons, Walters has argued that unemployment has lost its 'formal centrality' and new modes of economic inactivity have taken over 'some of the regulatory work previously done by unemployment'.¹²

The government's current reforms are taking this a step further. Moves toward 'active' income support in the 1980s did not upset the basic categorical system that has been the hallmark of the Australian system for most of the 20th century. By contrast, we have noted that the Government is now floating the abolition of the categorical system in favour of a single payment for all people of workforce age.¹³ This is consistent with the belief that the existing categories of payment no longer command a consensus in the community, because they no longer represent the labour market expectations for many groups in the population, such, it is suggested, as sole parents and the disabled.

An integrated payment structure would also clear some of the anomalies that currently result from the distinction between pensions (traditionally intended to cover conditions requiring long-term income support, such as widowhood, disability and old age) and allowances (historically intended for people in need of short-term income support due to frictional unemployment and sickness). Traditionally, pensions have been paid at higher rates and for longer unconditional periods than allowances. Increasingly, the circumstances of each category of people in terms of need for support and

duration on benefit are no longer so easily distinguished.¹⁴ Yet importantly, a single participation support payment advances the assumption, as never before, that *all* people of workforce age are potentially, indeed continuously, participants in the labour market.

If, as our historical analysis suggests, this type of shift is linked to a fragmentation once again of patterns of labour market organisation, where it is difficult to distinguish between the unemployed worker, the intermittent or casual worker, and the non-employed person, then clearly the onus has shifted away from government responsibility for the state of the labour market. If economic participation is to be the dominant theme, and participation is to be in a market in which employment is unstable and labour law accepts the proliferation of 'non-standard' work, then we must question whether change will throw the needy at the mercy of the market by insisting on impossible participation, either in terms of capacity to participate or the state of the labour market.

Alternatively, if it is not possible, or not desirable, to attempt to standardise jobs once again, will the government accept a new role for social security? Will it decouple it from the labour market and underwrite income on a flexible and adequate basis?¹⁵ Will it support social as well as economic participation properly? After all, it is not so long ago that Tony Abbott declared himself a Rawlsian too and supported an earned-income tax credit scheme.¹⁶

The government's critique of traditional income security programs therefore takes it in two, potentially conflicting, directions. One is to make income support less categorical, linked to a generic subject based around 'workforce age' and the imperative of 'participation', which could be implemented in either expansive or increasingly punitive ways. The other is to make social support increasingly individualised, a trend seen in the rise of both case management, the proliferation of 'agreement' making and the outsourcing of welfare services.

Insofar as new forms of individualised assistance, incentives and coercion have overwhelmingly targeted the unemployed, unemployment remains one of the main laboratories of welfare reform. Yet it is clearly the hope of government that such techniques prove generalisable to other groups, who might be merged with the unemployed. It remains to be seen what new model of the labour market and the labour market

subject will be built on what Walters terms the 'ruins of unemployment'.¹⁷

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13. Commonwealth of Australia, above, ref 3, at 13. The idea has an established pedigree within the Commonwealth Department: see Department of Social Security, *A Common Payment? Simplifying Income Support for People of Workforce Age*, Policy Discussion Paper No 7, Canberra, 1995; further Reference Group on Welfare Reform, above, ref 1. In the light of the vaunted crisis of early retirement and attempts to address the falling labour market participation rates of mature age Australians, the continued emphasis on a policy built around 'workforce age' as something distinct from retirement policy, might prove increasingly difficult to sustain.
14. See now the requirements being placed on sole parents, above, ref 10.
15. Terry Carney, 'Contracting Welfare and Labour Relations in the "Contracting" State?' in Andrew Frazer, Ron McCallum and Paul Ronfeldt (eds), *Individual Contracts and Workplace Relations*, ACIRRT Working Paper No. 50, University of Sydney, 1997.
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Administrative Appeals Tribunal Decisions

Pension bonus scheme: whether disqualified by prior receipt of age pension raised as a debt and refunded; discretion to backdate registration

BRIGNELL and SECRETARY TO THE DFaCS
(No. 2003/177)

Decided: 24 February 2003 by P.J. Lindsay.

Background

Brignell was in receipt of disability support pension when, on 10 September 1996, he was automatically transferred to age pension. He claimed to have notified Centrelink on two occasions that he was employed but had been told he remained entitled. He relied on that advice to disregard subsequent letters concerning his age pension. His pension was ultimately cancelled on 29 October 1998 following notification of income, and debts were

raised which included all sums of age pension paid. Brignell was prosecuted and pleaded guilty to fraud and the debts were recovered by garnishee from a superannuation payout in September 2001.

Brignell registered with the pension bonus scheme on 29 August 2001. He accepted he found out about the scheme in possibly 1997 or 1998, had made enquiries but was told he was ineligible given he was receiving age pension. Centrelink extended the registration date to 29 August 2001, the date Brignell registered, but decided that although he had been accepted as a member of the scheme, he was ineligible for the bonus because he had previously received age pension.

The issue

The primary issue for the Tribunal was whether Brignell 'received' an age pension in circumstances where he was not legally entitled. If that question was resolved in Brignell's favour, the Tribunal needed to determine whether it could apply the discretion to backdate his membership of the scheme to an earlier date.

The law

Section 92C(b) requires that a person must not have 'received' an age pension at any time prior to making a claim for

the pension bonus. Section 92H requires a person who became qualified for age pension prior to 1 July 1998 to register for the scheme no later than 13 weeks after 1 July 1998, subject to a discretion to extend both the deadline and the effect of the registration.

Submissions

The Department relied upon *Secretary, Department of Social Security and Jessop* (1989) 17 ALD 62. Senior Member McMahon (as he then was) found that:

The ordinary and natural meaning of the word 'receive' has reference to the physical act of taking something into one's possession. 'Receiving' and 'is not receiving' have corresponding meanings. There is nothing difficult or obscure in understanding the meaning of these words, either in the abstract or in the context in which they are found.

The Department argued that the age pension was received by Brignell at the time it was available for his use, which occurred on payment into Brignell's bank account. Even if Brignell was not disqualified on that basis, he was not entitled to the benefit of the scheme prior to the date of his registration on 29 August 2001. The Department