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SOCIAL SECURITY

Reporter

Including SSAT Decisions

Opinion

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The Australians Working Together legislation and social security breaches**A widening of the net**

In March 2003, the *Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Act 2003* (Cth) ('AWT legislation') was passed. This legislation has resulted in a further widening of groups that can be breached. Financial penalties for up to 26 weeks, equivalent to a 'fine' of between \$700 and \$1700, or the total loss of income for eight weeks, will be extended to mature age unemployed people and parents who fail to meet the requirements of the new Participation Agreements.¹

The Welfare Rights Centre does not believe that these groups will be breached with the same enthusiasm as other unemployed people have been over the last five years. However, anyone who is breached will suffer the same unjustifiably harsh penalties that the Pearce Independent Review has discredited as 'arbitrary, harsh and unfair'.²

The government says that it does not intend to breach these new groups but it is worth remembering that breach

numbers for people on unemployment payments has grown from 120,000 in 1997 to 379,000 in 2001.³ Indeed, despite the government's view, the Welfare Rights Centre is concerned that many older unemployed people will be breached. This is particularly so given that this group includes people with complex care responsibilities and those with moderate disabilities; disabilities which are compounded by ageing. Such people often do not qualify for Disability Support Pension or Carer Payment.

A reduction in the severity of penalties

At the same time, the AWT legislation has effected the first reduction in social security penalties since 1997. This change could see some 'fines' reduced by up to \$500.

For instance, if a person on Newstart or Youth Allowance under 50 is breached, they can have the six-month reduction in payment reduced to eight weeks if they subsequently comply with the applicable activity test requirements

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within eight weeks. Parents can have their payments restored if they comply within 13 weeks. It should be noted, however, that, in the meantime, they and their children suffer a \$40 per week reduction in Poverty Line payments. Older unemployed people and Special Benefit recipients over 50 can have the remainder of their penalty period waived from the time that they take steps to comply.⁴

The value of community advocacy

So how is it that the political spotlight focused on the plight of unemployed Australians saw, in part, a thawing of the government's tough rhetoric about unemployed people not living up to their obligations?

This thawing was due in no small measure to the tidal wave of criticism that emanated from church, community and welfare organisations as social security penalties soared to 379,000 in 2001. Such criticisms, along with a Senate inquiry, an independent review of social security penalties, the Pearce Independent Review,⁵ and an own-motion investigation by the Commonwealth Ombudsman spurred the government into taking action to reduce the high number of people being breached.⁶

Such action included a third breach alert and an internal review of how Centrelink imposed breaches, improved and more consistent training for Centrelink staff, and the introduction of suspension prior to the imposition of a breach.

Key measures have also been adopted as part of the agreement between the government and the Australian Democrats which enabled the passage of the AWT Act.⁷ For instance, Centrelink has committed to the public release of breach data each quarter. This data will include a breakdown of breach rates by each Centrelink office. This measure is bound to keep even more pressure on

Centrelink to keep breach numbers down.

Unfinished business

Importantly, the agreement between the Democrats and the government has resulted in the formation of the Breaching Review Taskforce. The main task of this taskforce will be to assess the fairness of social security penalties imposed on Newstart beneficiaries and new groups covered by the AWT legislation and to report to the new Minister of Family and Community Services, Senator Kay Paterson, in 2004.

Tony Blunn, former Secretary to the Department of Social Security, has been given the job of chairing this Taskforce. Members of the taskforce include Andrew McCallum, President of the Australian Council of Social Service and Michael Raper, President of the National Welfare Rights Network.

The Welfare Rights Centre is hopeful that the taskforce will address several key issues. First, there is a need to put in place concrete and practical measures to address the disproportionate number of social security breaches that are experienced in some indigenous communities. Data obtained by the Welfare Rights Centre, Sydney, under Freedom of Information, revealed that in the NSW rural town of Dubbo, indigenous people were twice as likely to be breached as non-indigenous people. The Welfare Rights Centre suspects that breach rates in other parts of the country could be even higher. Hence, it has sought additional longitudinal data from Centrelink to get a picture of the situation nationally. Until the government gets a handle on this problem, there should be an immediate moratorium on the imposition of social security penalties on Indigenous people.

Secondly, alongside the issue of the number of people being breached, there is the key question of the severity of the penalties. As the terms of reference for the Taskforce explicitly charge it to

examine the overall fairness of the penalty system, the Welfare Rights Centre will be seeking to have the financial burden imposed by these unfair penalties reduced.

A further issue for the Taskforce is to examine ways of simplifying the penalty system. The extension of the penalty regime to new groups, such as parents, mature age unemployed people and Temporary Protection Visa holders now sees a quite complex set of arrangements in place. Penalties can now vary according to a person's age and the type of payment they receive. Payment reinstatement provisions also vary considerably with rules that are complex, inconsistent and arbitrary.

Gerard Thomas

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5. See n 2.
6. Commonwealth Ombudsman, *Social Security Breach Penalties — Issues of Administration*, Report under s 15 of the *Ombudsman Act 1976* (September 2000).
7. Correspondence between the Senator Amanda Vanstone, Minister for Family and Community Services and Senator John Cherry of the Australian Democrats, March 2003.