

# Observations on Australia's performance regarding its Social Security obligations under clauses 26 and 27 of the United Nations Convention on the Rights of the Child

National Welfare Rights Network, specialising in Social Security law  
and practice

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## Overview

Australia is an affluent nation which to date has emerged from the recent global economic crisis with relatively low levels of public debt and strong institutions. It is therefore of grave concern that young people in Australia who need income support often find themselves in a parlous position living in poverty. Unemployed young people, for example, are expected to survive on income support payments which are significantly lower than the income support payments for unemployed people over the age of 21. This is a significant issue given that in November 2010 the Organisation for Economic Co-operation and Development (OECD) warned that Australia's unemployment benefit is already so low as to raise "issues about its effectiveness" in supporting people who are unemployed and helping them get a job.

## Developments since March 2005

The Non-Government Report on the Implementation of the United Nations Convention on the Rights of the Child dated March 2005 identified at least seven recommendations to address problems relating specifically to Social Security. Some progress has been made in relation to four of the recommendations namely:

- the parental means test income free area threshold has been increased to match the Family Tax Benefit (Part A) income free area;
- an improved activity and compliance regime was introduced and, for homeless youth, "homelessness flags" were introduced. Although better than under the previous regime, significant problems still exist within the activity and compliance regime for young people;
- changes were made to taper rates and income free areas for full-time students. However these changes did not adequately address existing problems with the rate of Youth Allowance; and,
- the age of independence is being gradually lowered from 25 to 22 years of age (an improvement, although it falls well short of the age of 18 recommended by the Report).

Other positive developments included the introduction of student start up scholarships and changes to qualification for Carer Payment (child).

Unfortunately, the major problems with Social Security for young people continued unaddressed, including:

- the rate of Youth Allowance
- the rate and qualification for Special Benefit
- the rate and qualification for parenting and family payments
- some systemic problems, and
- debt provisions.

Moreover, there are a number of other measures which were introduced producing varied, and often negative impacts on children. These measures include:

- the Northern Territory Emergency Response
- the Schooling Enrolment and Attendance Measures
- the introduction of compulsory income management across the Northern Territory.

This paper will detail a number of the problems still facing young people in the Australian social security system and will make recommendations accordingly.

## 1 Problems with the rate of Youth Allowance

There are many problems with the rate of Youth Allowance including:

- inadequacy: rates are well below the poverty line and well below other allowances<sup>1</sup>
- indexation arrangements
- taper rates and inadequacy of free area thresholds for unemployed
- overly restrictive criteria for independence
- inadequacy of Rent Assistance rate and the disproportionate effect of the “two thirds” rule contained in the rent assistance “sharers” provisions

### 1.1 Maximum rates well below the poverty line and other allowances

The rate of Youth Allowance is grossly inadequate, falling far short of the widely accepted poverty line figure<sup>2</sup>. A table comparing Henderson Poverty Lines with the income of adults who receive maximum welfare payments and have no other income for the June quarter 2010 is extracted below:

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<sup>1</sup> For poverty line see: *Poverty Lines: Australia*, Melbourne Institute of Applied Economic and Social Research, June Quarter 2010 ISSN 14480530 Table 4. For rates of Youth Allowance see *A Guide to Australian Government Payments*, published quarterly by Centrelink and published at [www.centrelink.gov.au](http://www.centrelink.gov.au)

<sup>2</sup> For poverty line see: *Poverty Lines: Australia*, Melbourne Institute of Applied Economic and Social Research, June Quarter 2010 ISSN 14480530 Table 4. For rates of Youth Allowance see *A Guide to Australian Government Payments*, published quarterly by Centrelink and published at [www.centrelink.gov.au](http://www.centrelink.gov.au)

### Comparison of the poverty lines with income support payments

In Table 4 we compare the poverty lines with maximum welfare payments in the June quarter for various family types. The reported payment levels are for 'standard' situations (excluding, for example,

supplementary benefits for remote areas) and take no account of non-cash benefits to which many recipients are entitled. Non-cash benefits include concessions for health and welfare services, housing, transport, education and other goods and services.

**Table 4: Comparison of Henderson Poverty Lines with the income of adults who receive maximum welfare payments and have no other income, June Quarter 2010**  
(Per capita household disposable income = \$647.88 per week)

	Basic Payment of Person 1 <sup>a</sup>	Payment of Person 2 (Partner) <sup>a</sup>	Family Tax Benefit Part A	Family Tax Benefit Part B	Rent Assistance	Total Income <sup>b</sup>	Poverty Line <sup>c</sup>
<b>Married couple</b>							
Allowee <sup>d</sup>	208.85	208.85	0.00	0.00	53.50	471.20	538.46
Pensioner <sup>e</sup>	264.25	264.25	0.00	0.00	53.50	582.00	462.32
Couple with 1 child <sup>g</sup>	208.85	208.85	78.47	22.70	66.64	585.51	647.25
2 children	208.85	208.85	156.94	22.70	66.64	663.98	756.05
3 children	208.85	208.85	240.80	42.93	75.32	776.75	864.84
4 children	208.85	208.85	348.25	42.93	75.32	884.20	973.64
<b>Single adult</b>							
Allowee <sup>d</sup>	231.40	-	0.00	0.00	56.70	288.10	402.52
Pensioner <sup>e</sup>	350.55	-	0.00	0.00	56.70	407.25	326.38
Single with 1 child <sup>f</sup>	300.65	-	78.47	46.55	66.64	492.31	440.55
2 children	300.65	-	156.94	46.55	66.64	570.78	549.34
3 children	300.65	-	240.80	66.78	75.32	683.55	658.14
4 children	300.65	-	348.25	66.78	75.32	791.00	766.93

*Sources:* Information booklets on benefits and allowances are published quarterly by Centrelink. The booklets provide details of eligibility criteria and rates of payment for all income support and non-income support payments made by Centrelink on behalf of the Australian Government Departments of Families, Housing, Community Services and Indigenous Affairs and Education, Employment and Workplace Relations.

#### Notes:

<sup>a</sup> A married couple without children receiving Allowances is assumed to be receiving Newstart Allowance.

<sup>b</sup> A married couple without children receiving Pensions is assumed to be receiving the Age Pension or Disability Support Pension.

<sup>c</sup> A married couple with children receiving Allowances is assumed to be receiving Newstart Allowance or Parenting Payment Partnered.

<sup>d</sup> A single person receiving an Allowance is assumed to be receiving Newstart Allowance.

<sup>e</sup> A single person receiving a Pension is assumed to be receiving the Age Pension or the Disability Support Pension.

<sup>f</sup> A sole parent is assumed to be receiving Parenting Payment Single.

<sup>g</sup> All basic payments for Pensioners include the maximum applicable Pension Supplement.

<sup>h</sup> Total income is the sum of allowances, pensions and benefits for persons who have no other income. To be comparable with the poverty lines, total income reported should be net of personal income tax. However, allowing for offsets/rebates, no income tax would be payable for welfare recipients who received no other income. Hence, direct comparisons of total income with the poverty lines are valid.

<sup>i</sup> Poverty lines for single persons and married couples with up to four children are shown here, inclusive of housing costs. For recipients of allowances, the income unit head is assumed to be in the workforce, since recipients of the most common allowance, Newstart Allowance, are usually required to search for employment to be eligible for payment. For pensioners and sole parent families, costs are based on poverty lines for income units where the head is not in the workforce.

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This table shows that, for a single person receiving Newstart Allowance, the poverty line figure is \$402.52 per week. A person receiving the maximum rate of Newstart Allowance and rent assistance receives \$288.10pw (ie only 71% of the poverty line figure<sup>3</sup>).

A person cannot receive Newstart Allowance until the age of 21. By way of comparison, Youth Allowance rates are:

- under 18 years, living at home: \$103.15<sup>4</sup> (25.6% of the poverty line figure<sup>5</sup>)
- over 18 years, living at home: \$124.05<sup>6</sup> (30.8% of the poverty line figure<sup>7</sup>)
- living away from home or Independent: \$245.20<sup>8</sup> (60.9% of the poverty line figure<sup>9</sup>)

There is little doubt that rates falling so far beneath the accepted poverty line are manifestly inadequate. There is evidence that many students are living in poverty unable to afford food and are more likely to rely on soup kitchens, suffer fatigue and drop out of university.<sup>10</sup>

<sup>3</sup> ie \$114.42 per week below the poverty line figure.

<sup>4</sup> Rent assistance is not payable

<sup>5</sup> ie \$299.37 per week below the poverty line figure.

<sup>6</sup> Rent assistance is not payable

<sup>7</sup> ie \$278.47 per week below the poverty line figure.

<sup>8</sup> Figure includes maximum rate of rent assistance

<sup>9</sup> ie \$214.02 per week below the poverty line figure.

<sup>10</sup> Tomazin, F and Smith, B. *Learning the Hard Way*, The Age, 25 July 2008.

Only pensioners (eg age pension, disability support pension, carer payment and parenting payment single) receive payments above the Henderson poverty line. A person receiving Youth Allowance or Newstart Allowance will generally receive a Health Care Card, but usually not the considerably more valuable Pensioner Concession Card.

A young person must meet a stringent set of criteria to be considered “independent” or “living away from home”. Many young people who do not live at home, and/or receive little or no financial assistance from their families receive only the “at home” rate because they cannot meet these stringent criteria (discussed below).

A young person being paid at the “at home” rate cannot receive rent assistance, regardless of whether or not they are required to pay rent.

Welfare Rights has observed that young people assessed as living away from home or as independent are often, as a group, considerably more vulnerable than their Newstart Allowance counterparts<sup>11</sup>.

The Henderson Poverty line is still often quoted as the poverty line in Australia. However, the OECD poverty line measure is 50% of the median disposable income for all households in the country. The poverty line used by the European Union and the United Kingdom is less than 60% of the median income.

The table below shows Australian income support payments per week compared with both the OECD and the European/UK poverty lines for the year 2006. Please note that in September 2009 the pension (single) increased by over \$30 per week. This increase was not provided for allowances and parenting payment.

Family type, payment type	Income support payment	50% of median poverty line	Difference	60% of median poverty line	Difference
Single, Newstart allowance	\$202	\$281	-\$79	\$337	-\$135
Single, Pension	\$244	\$281	-\$37	\$337	-\$93
Couple, Newstart allowance	\$365	\$421	-\$56	\$506	-\$141
Couple, pension	\$408	\$421	-\$13	\$506	-\$98
Sole parent with 2 children (on Parenting Payment)	\$423	\$449	-\$26	\$539	-\$116

<sup>11</sup> Similarly, SACOSS has reported that single independent youth allowees are among the most economically disadvantaged groups in Australian society today: SACOSS, *Cost of Living Biannual Update*, July 2009, p. 41.

Couple, 2 children (job seeker, on Allowances)	\$528	\$590	-\$62	\$708	-\$180
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**Table 3: Income Support payments compared with poverty lines, 2006 (\$ per week)**

SOURCE: Saunders, Peter; Hill, Trish; and Bradbury, Bruce (2008): *Poverty in Australia, Sensitivity Analysis and Recent Trends*. Social Policy Research Centre Report 4/08.

**Recommendation:** Youth Allowance rates should be increased to the equivalent of the Henderson Poverty Line figure, or at very least to the equivalent of the Newstart Allowance figure.

## 1.2 Taper rates and income free areas

Income free areas and taper rates for youth allowees who are unemployed are considerably harsher than they are for full-time students. The high impact reduction that earnings have on Youth Allowance create disincentives to work and can result in poverty traps.

Full time students receiving Youth Allowance may earn up to \$236 per fortnight before their rate of Youth Allowance begins to reduce under the income test. This is known as the income free area. In July 2012 the income free area is set to rise from \$236 to \$400 per fortnight.

However, unemployed young people receiving Youth Allowance may only earn \$62 per fortnight before their payment begins to reduce under the income test. The income free areas for pension payments in the Australian Social Security system are indexed in line with the Consumer Price Index in July each year, yet the free area for job seekers and students is not. The income test facing young people has been increased by just \$1 a week in the last 30 years – in 2000 as part of the compensation package required for the introduction of the Goods and Services Tax.

The amount that a person can have before payment is withdrawn has declined significantly in real terms because of the current indexation arrangements. In 1986 the allowance free area was 31 per cent of the lower single rate of allowance. By 1995 this had fallen to 20 per cent and is currently 14 per cent. The recent report into Australia's tax and transfer system by the Secretary of the Treasury concluded that "it is difficult to see a rationale for these outcomes". (Source: Report to the Treasurer, *Australia's future tax system*, December 2009, p. 520.)

Taper rates for students operate so that income between \$236 and \$316 reduces payment by 50 cents per dollar and income above \$316 by 60 cents per dollar.

However, for unemployed Youth Allowance recipients, the taper rates operate so that income between \$62 and \$250 reduces payment by 50 cents and where earnings exceed \$250 by 60 cents per dollar.

**Recommendation:** The Youth Allowance free area and taper rates for unemployed people should be increased gradually to the rates for pension payments and indexed annually in line with movements in the Consumer Price Index (CPI).

### 1.3 Indexation

Youth Allowance and Abstudy are indexed once annually in line with the annual CPI increase . An “indexation lag” of up to 18 months can occur. Newstart Allowance is indexed twice annually in line with the six monthly increase in CPI. On the other hand, pensions are indexed twice annually in line with either the MTAW or the six month CPI increase or the Pensioner and Beneficiary Cost of Living Index (whichever is greater). According to the Government’s own data<sup>12</sup> in the last decade pension rates have increased by 20 per cent in real terms and in that same time the real increase of a single allowance has been a fraction of this at just 0.5 per cent.

**Recommendation:** Youth Allowance and ABSTUDY should be indexed twice annually in line with the six monthly increase in Consumer Price Index.

### 1.4 Overly restrictive criteria for independence rate

#### 1.4.1 *Unreasonable to live at home (UTLAH) requirements*

A young person may be considered independent if they cannot live at the home of either or both of their parents because of:

- extreme family breakdown or other similar exceptional circumstances; or
- it would be unreasonable to expect the person to do so due to the serious risk to his or her physical or mental well-being due to violence, sexual abuse or other similar unreasonable circumstances, or
- their parents are unable to provide a home because they lack stable accommodation.

In the experience of Welfare Rights, these categories of independence are too narrow leaving vulnerable young people in desperate situations. Further, these provisions are narrowly construed by government policy and the administering agency.

Many young people leave home under conditions which, although they fall short of these UTLAH requirements, are serious enough that the young person chooses to forego the Youth Allowance rather than return to the home. For young people in this situation, homelessness is often the result. Almost half of all homeless people in Australia are under the age of 18.<sup>13</sup> Welfare Rights agrees with the National Youth and Children’s Law Centre that: “These criteria are not representative of the reality of youth homelessness and do not take into account the many and diverse reasons for youth homelessness”.<sup>14</sup>

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<sup>12</sup> Harmer, J. *Pension Review, Background Paper*, Department of Housing, Families, Community Services and Indigenous Affairs, 2008, p. 15.

<sup>13</sup> Australian Government, *White Paper on Homelessness: The Road Home*, December 2008, p. 9.

<sup>14</sup> National Youth and Children’s Law Centre , *Young People and Welfare NCYLC Discussion Paper on Youth Allowance*, p. 9.

Around one-in-three claims for access to independent income support by young people are rejected by Centrelink each year (around 21,000 claims). In most circumstances these young people, and the circumstances of their lives after being rejected for payment, are not known to Centrelink.

UTLAH provisions are based on the assumption that a young person's family will support the young person until the age of independence. However, the provisions do not provide for situations where a young person's family stops supporting the young person.

**Recommendation:** A review should be conducted into UTLAH provisions in consultation with youth groups and NGOs and new legislation and guidelines adopted accordingly; a provision is needed to allow the UTLAH rate to be paid where the young person's well-being, study or job prospects are likely to be improved by living out of home.

**Recommendation:** That Centrelink put in place processes to follow up the circumstances of young people whose claims for the UTLAH provisions are rejected, to ensure they are offered assistance and that they do not fall between the cracks in the Australian social security system.

### **1.4.2** *Age of independence*

This issue was raised in the March 2005 Non-government Report on the Implementation of the United Nations Convention on the Rights of the Child in Australia<sup>15</sup>. The report recommended that the age of independence for Youth Allowance be reduced to 18 years. Since the last NGO report to the UN in 2005, the government has legislated to reduce the age of independence to 22 by the year 2012. This is a considerable improvement on the former age of independence of 25 years; however, it falls short of the recommended age of independence of 18 years.

**Recommendation:** Independence age for Youth Allowance should be 18 years.

### **1.4.3** *Earnings*

In July 2010 rules which enabled young people to establish independence by earning a certain amount of money within a certain period of time were tightened. Two of the three existing criteria for "earning independence" were removed. From July 2010 a person can only earn independence where they work full-time for at least 30 hours per week for at least 18 months in any two year period.

The two abolished criteria enabled a person to earn independence if they worked part-time (at least 15 hours per week) for at least two years since leaving school, or if they had out of school for at least 18 months and earned at least \$19,532 over an 18 month period. There are some exceptions for young people in certain rural and/or remote areas to enable them to have access to these abolished criteria.

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<sup>15</sup> At page 77

The July 2010 rules impede the options for young people over the age of 18 years to receive Youth Allowance at the Independent rate. They are also complex and potentially difficult to administer.

### 1.5 Rent assistance

In addition to the clear inadequacy of Youth Allowance rates in comparison to other payment types, the rent assistance that may be added to Youth Allowance payments is subject to more restrictive qualification criteria and often lower rates than the Rent Assistance received by people on other payment types.

The rule that people in share housing receive less Rent Assistance than people in other housing situations has an inequitable and disproportionate impact on young people because they tend to use share housing options more than other groups of people.

The rule that a person being paid the at home rate cannot receive Rent Assistance, regardless of whether or not they are paying rent, is similarly unfair.

The rate of Rent Assistance continues to be inadequate and falls far short of the real costs of renting in Australia, particularly in major urban areas where universities and other educational institutions tend to be located.

<p><b>Recommendations:</b> The sharers rules for Rent Assistance should be abolished. Rent assistance should be paid to Youth allowees as it is to Newstart allowees. The maximum rate of Rent Assistance should be increased by 30 per cent to better reflect the real costs of renting.</p>
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## 2 Problems with rate and qualification for Special Benefit

### 2.1 Overview

Special Benefit can be paid to certain people whose circumstances are so desperate that they have “no sufficient livelihood” and they are not residentially or otherwise qualified for another income support payment. The existence of Special Benefit **as a last resort safety net payment** recognises that from time to time there are special circumstances under which a person should be paid income support despite not meeting residential or certain other requirements.

It is in the nation’s best interests to have such a payment but over the years Australia has gradually pared back eligibility to the point where Special Benefit is now arguably the most legally complex, confusing and difficult payment type.

Qualification for Special Benefit and its rate of payment are so severely restricted by both legislation and policy that many children and their families, who are in dire need, are left at great risk with no income and no sufficient livelihood.

Where a person does qualify for Special Benefit, the harsh income test creates poverty traps which operate to worsen poverty and create disincentives to work.

### 2.2 Special Benefit homelessness requirement for school children

Under the *Social Security Act*, a child must be “homeless” in order to receive Special Benefit, if they are also a full-time student<sup>16</sup>. The Administrative Appeals Tribunal has read the definition of “full-time student” broadly to include even primary and secondary school education (*Mokofisi and SDFACS 55 ALD 605*). This means that in most cases where a parent is not residentially qualified for a payment, but they have an Australia citizen child aged between 6 and 16 in their care, the child will not receive Special Benefit unless they meet the “homelessness” criterion.

The Act requires that a person meet the Youth Allowance definition of “unable to live at home” (UTLAH) in order to be treated as “homeless” for Special Benefit purposes. The application of the UTLAH provisions<sup>17</sup> to cases involving the children of non-resident parents is clumsy. This is because those UTLAH provisions are clearly intended to apply to young people applying for Youth Allowance, who will generally be over 16 years old. UTLAH provisions are also primarily concerned with the reasons a young person cannot reside at the home of a “parent” and whether or not they are receiving any support from their parents. Linking the definition of “homelessness” to the UTLAH just does not fit. It simply cannot readily apply to situations involving child applicants for Special Benefit who are, as a matter of course, reliant on their parents and whatever little support the parents can garner for them through community organisations, family or friends.

**Recommendation:** The “homelessness” requirement for school students should be removed.

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<sup>16</sup> Social Security Act 1991, Section 739.

<sup>17</sup> Social Security Act 1991, Section 1067A (9).

## 2.3 Preclusion of payment of FTB to parent where a child receives Special Benefit

In situations where a child is residentially qualified for Special Benefit, but the parent is not, it should not be necessary for the parent to forego payment of Family Tax Benefit in order for the child to receive Special Benefit.

This is an anomaly caused by section 22A(1) of the *Family Assistance Act*<sup>18</sup>, which states that a person cannot receive Family Tax Benefit in respect of a child who receives an income support payment in their own name<sup>19</sup>. We understand that the intention of this section is to prevent a parent receiving Family Tax Benefit at the same time as their child receives Youth Allowance. In such cases, and unlike child Special Benefit cases, the parents would generally be receiving their own income support payment (eg Newstart Allowance or a pension), or have income of their own. In Special Benefit cases where a child is paid Special Benefit, the parent(s) have no income support payment of their own.

Examples to illustrate how these provisions impact are as follows:

Example of the intended operation of the s 22A(1) <sup>20</sup> rule	Example of the unintended operation of the s 22A(1) <sup>21</sup> rule:
<p>A single parent receives Newstart Allowance and Family Tax Benefit until her child turns 16. At that point, she forgoes Family Tax Benefit and instead claims Youth Allowance which is paid to the child (although in practise the Youth Allowance is deposited to the mother's account).</p> <p>Thus the family income is \$486 (the parent's Newstart Allowance) plus \$203.30 (the child's Youth Allowance) - total <u>\$689.30</u> per fortnight.</p>	<p>A single parent is not herself qualified for a social security payment, but she is qualified for Family Tax Benefit. Her child was born in Australia to a permanent resident father and so can qualify for Special Benefit. However, she must forgo her Family Tax Benefit of \$241.08 to receive Special Benefit of \$486 which is paid to the child (but in practise would be deposited to the mothers bank account).</p> <p>Thus the family income is total <u>\$486</u> per fortnight (the child's Special Benefit only).</p>

It is unlikely that the *Family Assistance Act* was intended to operate in this way in relation to Special Benefit where the child, not the parent, is in receipt of the family's only income support payment.

The Family Tax Benefit is designed to *supplement* a person's primary income source. It is meant to assist with the *additional costs* of raising children. It is not meant to be a primary income support payment and is not, of itself, a "sufficient livelihood" for a child and their parent(s).

**Recommendation:** The requirement for a parent to forego FTB in the case of a child receiving Special Benefit should be removed where the child's parent is without a sufficient livelihood and is not receiving a Social Security payment.

<sup>18</sup> A New Tax System (Family Assistance) Act 1999.

<sup>19</sup> Section 22A(1) provides that a child is not an "FTB Child" of a person if the child, or someone on behalf of the child, is receiving a social security pension, benefit or allowance or labour market program payment.

<sup>20</sup> A New Tax System (Family Assistance) Act 1999.

<sup>21</sup> A New Tax System (Family Assistance) Act 1999.

## 2.4 Newly arrived residents waiting period (NARWP)

Given the already stringent qualification criteria for Special Benefit, it is unnecessary for there to also be a two year newly arrived residents waiting period. Where a young person or their parent/guardian has no sufficient livelihood and does not qualify for any other payment they should not be required to endure a further two years of extreme hardship and poverty before receiving Special Benefit.

**Recommendation:** The NARWP requirement should be removed from Special Benefit, or (at the very least) a new category of exemption from the NARWP should be introduced based on the rights of the child found in article 27 of the Convention on the Rights of the Child. For example, an exemption should apply in situations where child or their parent/guardian is without a sufficient livelihood.

## 2.5 The diabolical Special Benefit means tests

### *Issue 1: dollar for dollar reduction*

Where a person's circumstances are such that they do qualify for a Special Benefit, their rate of Special Benefit is reduced by one dollar for every dollar of income they receive from another source, including employment and any "in kind" support. Unlike other payments, there is no income free area and no taper rate to both encourage and reward employment. The "dollar for dollar" deduction treatment of "in kind" support such as free rent, is especially unfair where any other income support payment rate would not be affected. Even limited charitable and non-monetary assistance may drastically reduce the rate of Special Benefit. In effect, a person's Special Benefit is penalised in equal measure to the charitable assistance they receive from others.

### *Issue 2: long and short term available funds tests*

The "short term available funds test" applies where a person is likely to need income support for less than 13 weeks. This test requires that a person's **savings be less than the equivalent of two weeks** of the maximum rates of Special Benefit and Family Tax Benefit in order for Special Benefit to be payable. This could be as low as \$469.70<sup>22</sup> for a single adult for example. These figures and this test expose vulnerable people to too much risk. Where the person has more than this amount, a preclusion period is calculated. If the preclusion period is to be greater than four weeks, the person's claim is rejected.

The "long term available funds test", generally applied where a person is likely to need income support for more than 13 weeks, requires that a person has less than \$5,000 in available funds.

The means tests for Special Benefit are therefore far harsher than those of any other allowance or pension, despite the fact that, in the experience of the Welfare Rights Centre, Special Benefit recipients are generally more vulnerable as a group than other allowees or pensioners.

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<sup>22</sup> Centrelink, *A Guide to Australian Government Payments*, 20 September to 31, December 2010.

The fact that there are separate tests for the one payment is unnecessarily complicated and unfair. A person must effectively pass well beyond the Poverty Line before they can even have a claim processed. Assistance to a person already assessed as being without a sufficient livelihood should not be denied on the grounds that they have not yet spent the last of their usually meagre savings especially when those savings may be the difference between being able to establish essentials such as housing, utilities and food.

#### *Issue 3: treatment of “in kind” support*

Where a person’s circumstances are such that they do qualify for a Special Benefit, their rate of Special Benefit is reduced by one third if they receive free lodging and by two thirds if they are receiving free board and lodging. Often the reason the person is not paying board/lodging is because they do not have the funds to do so. Often the accommodation is temporary or unsustainable.

#### *Issue 4: treatment of Family Tax Benefit*

In situations where a parent qualifies for both Family Tax Benefit and Special Benefit, we have occasionally come across cases where Centrelink has treated the Family Tax Benefit received as “a sufficient livelihood” (thereby precluding payment of Special Benefit), or in some cases the dollar for dollar income test is applied to reduce the Special Benefit by the value of the Family Tax Benefit being received. Family tax benefit is not an income support payment and is not intended to be a “livelihood”. Rather it is intended to assist in the extra costs of raising children. Centrelink guidelines and government policy should be amended to make it very clear that Family Tax Benefit should not preclude or reduce the payment of Special Benefit. Special Benefit recipients are no different from other income support recipients in terms of the costs of rearing children, except perhaps that in many cases they may be even more vulnerable.

**Recommendation:** The special income and assets tests for Special Benefit should be abolished. Instead, the income and assets tests to be applied should be that of the pension or allowance that the person would be paid, if the person were residentially qualified for a social security payment. (eg Newstart Allowance for unemployed people of working age, Age Pension for those of Age Pension age). Legislation and policy should make it very clear that family assistance payments should not reduce the rate of Special Benefit in any way.

## **2.6 Young New Zealanders and denial of access to Social Security**

New Zealanders who arrived in Australia on a Special Category Visa after 26 February 2001 generally cannot qualify for any social security payment. However, there are situations where New Zealand citizens find themselves in dire need of Special Benefit, or another social security payment.

It should be possible for New Zealand citizens in dire need to access Special Benefit where they have suffered a substantial change in circumstances since migrating to Australia and it would be unreasonable in the circumstances of the case to expect the person to relocate to New Zealand to access social security payments there. The reasons for this are best illustrated by example:

1. **Toby** arrived in Australia in 2008 with his family. At the time he was 14 years old. Two years later he left his family due to family violence and moved into a refuge. As he is here on a New Zealand passport he is not residentially qualified for Youth Allowance or Special

Benefit. If he were living with an adult, that adult could claim Family Tax Benefit on his behalf, but it cannot be paid to him directly and in the absence of such an adult in his life, it cannot be paid at all. He is surviving only with the assistance of Mission Australia and is falling behind at school. It is not reasonable to expect him to return to New Zealand as he is still only 16 years old and is not mature enough to effect the move and resettle alone.

2. **Sayed**a originally arrived in New Zealand from Somalia as a refugee. In 2005 she resettled in Australia after fleeing New Zealand having been subjected to domestic and family violence from her husband and his family in New Zealand. In Australia she found herself homeless and living in a refuge. With assistance from the refuge and community and health workers, her four children settled into schools and the youngest, who had a disability established good connections with the local health services, specialists and hospitals. Eventually, the refuge in which she was staying told her she had to leave (being a service with a three month maximum stay, although they had let her stay for more than a year). Sayeda was receiving Family Tax Benefit for all four children, but neither she, nor the children, could receive any social security payment, due to their status as SCV holders. As such she could not afford rent and, before long, she and the children were homeless again. Fears of violence from her ex-husbands family made it unreasonable for her to return to New Zealand.
3. **Ron** arrived in Australia in 2007 to be near his child, whose mother had resettled in Australia. He commenced work as a builder's labourer. Several years later, he suffered an accident in which he lost his arm and became incapacitated for work. Unfortunately, he cannot qualify for any social security payment while in rehabilitation or retraining. Given that his child is in Australia, it is not reasonable for him to return to New Zealand.
4. **Emma** arrived in Australia from New Zealand in July 2003 aged 11. She is currently 19 years of age. She is a Special Category Visa holder. As a New Zealand citizen who arrived in Australia after 26.2.01, she is prevented from claiming a Social Security payment due to the operation of s 29(1) of the *Social Security Administration Act 1999* which requires a person to be an Australian resident. While in Australia Emma's mental health deteriorated and she was diagnosed with Bi-Polar Disorder. She developed a good relationship with a psychiatrist in Australia. The mental illness has caused problems for her family relationships and she now remains estranged from most family members. Emma's disability is not severe enough to qualify for payments under the international agreement with New Zealand. She is, however, unable to sustain employment because of her disability. She remains without any source of income. Returning home to New Zealand is not appropriate because she has no contacts or support networks there.

We note that children of New Zealanders often have little or no say over the decisions made by their parents and guardians to move to Australia, and little or no control over the events that unfold while they are here. Welfare Rights centres sees many young people who were minors when the decision was made to come from New Zealand to Australia. It is unfair to leave them without adequate income support when at the time the decision was made for them to come to Australia, they had no input or control over that decision.

**Recommendations:** (1) Amend the definition of Australian Resident to include Special Category Visa holders who arrived as minors. (2) Allow young people in this situation to access Special Benefit. (3) A special circumstances provision should be introduced to qualify new Zealanders for social security income support (eg Special Benefit) in special circumstances and where it would be unreasonable to expect the person to return to New Zealand to access social security there.

## 2.7 Other non-resident children

New Zealand children, and most children on temporary visas,<sup>23</sup> cannot generally qualify for any Australian social security payments. No children who are here unlawfully can qualify for a social security payment. Nor, for that matter, can they access the range of essential services necessary to ensure their rights as enshrined in the CROC.

Under the Convention on the Rights of the Child, Australia must protect the rights of children *within its jurisdiction* irrespective of citizenship status or nationality. Article 2(1) reads:

“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

Further, *General Comment No 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin* states:

“[T]he enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness”.

It is clear that Australia is failing New Zealanders and children who are not permanent residents within its jurisdiction.

**Recommendation:** A special circumstances provision should be introduced to qualify any child within the Australian jurisdiction for a social security income support payment (eg Special Benefit) in special circumstances.

## 3 Problems with parenting and family payments

### 3.1 Overall financial loss when youngest child turns 8

This issue was raised in the March 2005 *Non-government Report on the Implementation of the United Nations Convention on the Rights of the Child in Australia*<sup>24</sup>. At that time the report stated

<sup>23</sup> A limited number of temporary residence visa holders may qualify for Special Benefit, namely 070, 309, 310, 447, 451, 695, 785, 786, 787, 820, 826 and 951.

<sup>24</sup> See page 77.

that families experience a dramatic loss of income when their youngest child turns 16. The reason for this was that, at that time, a person could only qualify for Parenting Payment (a pension) until their youngest child turned 16 (after which the parent would be required to transfer to another payment, usually Newstart Allowance which is an unemployment benefit). Changes to Parenting Payment introduced in July 2006 mean that single parents now lose qualification for Parenting Payment when their youngest child turns eight and partnered parents lose qualification when their youngest child turns six<sup>25</sup>. For single parents this means a fortnightly loss of \$103.70 when their youngest child turns eight, as well as loss of some other benefits associated with payment of a pension rather than an allowance (eg discounted utilities, medical and transport costs).

**Recommendation:** At the least, parenting payment qualification should be restored to its former requirement that the youngest child be under 16 years of age.

### 3.2 Rates fall short of actual costs of rearing children

Payment rates of income support payments fall short of the actual costs of rearing children. The Australian Council of Social Service points out that: “The costs of children increase as children get older. While a 0-4 year old costs about \$100 per week, a 17 year old costs between \$200 and 288 per week.”<sup>26</sup>

This is particularly the case now that parents are forced onto Newstart Allowance (an unemployment benefit) when their youngest turns 8 (single parents) or 6 (partnered parents).

The Federal Government has announced plans to increase the maximum payment rate of Family Tax Benefit Part A (FTB-A) by more than \$150 a fortnight for young people aged 16-18 who are in school or an equivalent vocational qualification. The new rates will apply from 1 January 2012. Community organisations responded positively to this reform. Affected families will also be eligible to receive Rent Assistance, which currently cuts out when a child turns 16. The Government estimates that there are around 650,000 teenagers turning 16 over the next five years whose families will benefit from this policy.

The Committee should be concerned that the Government has indicated that parents of dependent young people aged 16 to 18 years who are eligible for Youth Allowance under the present eligibility rules for the payment, where the young person is receiving payment under the Youth Allowance (other), as unemployed, rather than studying, may not receive the benefit of this payment increase.

Many of the nation's most disadvantaged families and young people presently rely on Youth Allowance and it is important that they obtain the full benefit of this welcome increase in family assistance.

**Recommendation:** That families and young people who are either in study, training or unemployed receive the promised extra assistance from increased Family Tax Benefit Part A in January 2012.

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<sup>25</sup> See sections 500 and 500D of the Social Security Act 1991 as amended by act 154 of 2005.

<sup>26</sup> Australian Council of Social Service, *ACOSS proposals for reform of family payments, Family Payments factsheet*, April 2010.

### 3.3 Preclusion of FTB to parent where child in receipt of Special Benefit

The anomaly which causes a parent to forego payment of Family Tax Benefit if Special Benefit is being paid to the child is discussed in detail at 2.3 above.

<b>Recommendation:</b> As for 2.3 above
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## 4 Systemic problems

### 4.1 Overrepresentation in penalties and appeals

The Report to Parliament by the Independent Review of the Jobseeker Compliance Framework September 2010 says 30% of activity tested recipients are under 25 years but represent 50% of compliance failures.<sup>27</sup> Unfortunately, young people are also generally under-represented in appeals with the result that young people are generally more likely to be penalised and less likely to appeal against penalty decisions.

**Recommendation:** Systemic reform is needed to investigate and address reasons for overrepresentation in compliance statistics and lower representation in appeals statistics for young people.

### 4.2 Earn or learn regime

The centrepiece of the “earn or learn” (formally known as early school leavers) reforms introduced in July 2009 are that a person who is under 21 cannot receive Youth Allowance as a jobseeker (ie unemployed) if the person has not completed year 12 at school or equivalent qualification. Such a person must instead undertake certain education or training requirements. While the intention behind the reform is sound, its application is inflexible and causes hardship. The Report to Parliament by the Independent Review of the Jobseeker Compliance Framework reported that:

*“..... there is also widespread concern that the regime is too inflexible for people who have been actively looking for work (and perhaps have had some short-term jobs) and are best suited to continuing, at least for a while, to look for work rather than being forced back into education or training for which they are unsuited or unready.”<sup>28</sup>*

A general exemption to earn or learn requirements is needed. Where a young person is better suited to looking for work than undertaking education or training it should be possible for them to do so, rather than setting them up to fail or simply “kill time” in unsuitable training or education.

**Recommendation:** Increased discretion not to apply earn or learn requirements is required for cases where, in the individual circumstances of the case, looking for work is more appropriate.

### 4.3 The absence of Commonwealth State Youth Protocol in some States

The Case Management Protocol between Commonwealth Agencies and State Authorities for Unsupported Young People (more commonly known as the Youth Protocol) has expired in NSW and

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<sup>27</sup> Disney, J. *Impacts of the new Job Seeker Compliance Framework, Report of the Independent Review*, September, 2010. The incidence of participation failures amongst indigenous people was also very high. They comprised about 8 per cent of all jobseekers but accounted for about 16 per cent of all failures. See p. 56.

<sup>28</sup> Disney, J. *Impacts of the new Job Seeker Compliance Framework, Report of the Independent Review*, September 2010, p. 21.

there is currently no Youth Protocol in place. Adherence to the protocols is patchy in many Australian jurisdictions and the protocols are currently being reviewed as part of Australia's child protection framework by the Commonwealth.

Youth Protocols were designed to integrate the various services for unsupported young people and clarify the roles and responsibilities of the various levels of government in relation to unsupported young people.

While the Commonwealth is responsible for providing income support (eg Youth Allowance) to homeless and unsupported young people above school leaving age, and in some cases, may provide income support to a young person below school leaving age (eg Special Benefit), the State and Territory governments are responsible for ensuring the care and protection of young people in accordance with State and Territory legislation.

The Youth Protocol established formal liaison and referral procedures by which unsupported young people who were "at risk" were referred from the Commonwealth to State and Territory welfare departments for assessment and support. It targeted groups of young people at highest risk (eg homeless under 15 years of age, those in State Care, and those at risk from abuse or violence).<sup>29</sup>

**Recommendation:** That new Youth Protocols be negotiated and put in place in all States and Territories where Youth Protocols have expired as soon as possible.

## 5 Income management

Since the last NGO Report in 2005, the Australian Government introduced compulsory income management of social security payments for certain groups in the Northern Territory, Western Australia and Queensland.

In 2010 a Health Impact Assessment of the Northern Territory Emergency Response was published. That Assessment stated, amongst other things: "We could find no evidence that blanket quarantining of income was an effective strategy in improving child health. In fact there was local evidence that [it] was not effective in achieving its stated aims".

The concept of income management was introduced as part of the broader Northern Territory Emergency Response (NTER). The idea was conceived and drafted into legislation in a very short time and with an appalling lack of consultation by the Government. It so clearly targeted Aboriginal people, that it was necessary for the Government to suspend the operation of the *Racial Discrimination Act* for the purposes of the NTER enabling legislation. This model applied income management to all people in particular parts of the Northern Territory (as named in the NTER legislation and by subsequent ministerial declarations), regardless of individual circumstances. Where a person is income managed a percentage of their income support payment is withheld (50%-100%) by Centrelink and credited instead to a theoretical "income management account" (in practice, a "basics card" which carries restrictions as to how, and on what, the money can be spent).

A very different form of income management was introduced in Cape York in Queensland. That model applied income management to individuals, on a case by case basis, as one of the tools

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<sup>29</sup> See Youth Protocol Information Pack – annexed.

available to the newly formed Family Relationships Commission.<sup>30</sup> Another system of income management was introduced into Western Australia, more similar to that introduced in the Northern Territory than that found in Cape York.

Income management may also be triggered for people caring for children where:

- there is a recommendation from child protection authorities
- certain school enrolment requirements are not met
- school attendance requirements are not met

Voluntary income management provisions were also introduced, enabling a person to request that Centrelink manage their income under income management provisions.

In July 2010 the Government acted to reinstate the operation of the *Racial Discrimination Act*. It also extended income management to include “disengaged youth”; that is, young people aged 15 to 24 who have been in receipt of Youth Allowance, Newstart Allowance Special Benefit or Parenting Payment for more than 13 weeks in the preceding 26 week period.

Criticism of compulsory income management has been widespread. General criticism has included:

- a failure to take an evidence based approach when legislating on this issue
- initial and ongoing failure to consult
- application of income management based on geographic location and broad categories, rather than on a case by case or needs basis
- income management is racist in application
- implementation flawed (eg flaws with the “basics card”) due to headlong rush<sup>31</sup> to implement and general failure to research, consult and absence of evidence based approach
- lack of appeal mechanisms to challenge income management decisions
- lack of solid data to measure the successes and failures of income management and to identify clearly its impacts on young people.

Key criticisms in relation to children include:

- problems with linking parental income support with child behaviour (eg school attendance) – potential impact on parent / child relationships
- problems with labelling young people “disengaged youth” after only three months on income support, particularly because the areas subject to income management are frequently areas with limited study and work prospects (and CDEP work, which is often the only available employment is specifically excluded)
- problems for young people who have not learned skills to manage their own income – income management may result in young people becoming dependent on the system if they are not given the opportunity to learn to manage their own income.

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<sup>30</sup> Australian Indigenous Doctors’ Association and Centre for Equity Training, Research and Evaluation, UNSW. Health Impact Assessment of the Northern Territory Emergency Response. Canberra: Australian Indigenous Doctors’ Association, 2010 at p. 23.

<sup>31</sup> The architect of the NT intervention, Mal Brough, the former Minister for Indigenous Affairs in the Howard Government, admits that the NTER policy was conceived in just 48 hours.

**Recommendation:** That the compulsory income management regime be repealed and replaced with a voluntary income management scheme.

## 6 Schooling Requirements regime (SEAM)

The Improving School Enrolment & Attendance through Welfare Reform Measure, more commonly known as SEAM enables Centrelink to suspend a parents income support payments where certain school enrolment and/or attendance requirements are not met.

The enrolment component of SEAM applies irrespective of the location of the school at which the child is enrolled. Payment may be suspended if parents:

- fail to provide information about enrolment to Centrelink when asked, OR
- persistently refuse to enrol their child in school, AND
- they do not have a reasonable excuse or special circumstances to account for their failure.

Payment is suspended until the parent complies (or is found to have a reasonable excuse or special circumstances).

The school attendance component of SEAM only applies to a parent who:

- lives in a SEAM trial site, AND
- has a schooling requirement child enrolled at a school that is a participating SEAM trial school.

Payment may be suspended if a parent refuses to take reasonable steps to support their children to attend school and they do not have a reasonable excuse or special circumstances to account for their failure.

Of concern is the linking of parental income support with the actions of children. Of particular concern is:

- the potentially damaging effect suspension, or the threat of suspension, may have on the relationship between parent and child, especially where the relationship is already difficult or abusive, and
- the implications for the relationships between the school and its student, and the school and parent where the action of the school in reporting to Centrelink may result in suspension of parental income support.

**Recommendation:** SEAM needs to be independently reviewed and evidence of its impacts circulated for public consultation.

## 7 Youth Allowance debts

### 7.1 Limitations on special circumstances debt waiver discretion

Youth Allowance is a single payment type, but a person may qualify in two ways, either as an “unemployed” young person or as a “full-time student”. These two categories of qualification vary markedly – effectively creating two payment types which bear the one name – Youth Allowance.

This creates confusion and often leads to debts. Young people moving between full-time study and looking for work (unemployment) often do not realise the importance of notifying Centrelink of the cessation of study or reduction in study-load.

**Amy** dropped two subjects at University because she needed to work to supplement her Youth Allowance income which was not covering her essential expenses. She didn’t really “get” how important it was to let Centrelink know she had dropped the subjects because she figured she would have been entitled to Youth Allowance as an unemployed person anyway. However, failure to tell Centrelink about the changes to her study meant that she couldn’t qualify for unemployed Youth Allowance until she had notified of her cessation in study, so a debt was raised against her.

Prior to 2008 Centrelink could reduce the amount of a person’s debt where the person would have been “notionally entitled” to another payment<sup>32</sup>. Unfortunately, the notional entitlement provisions of the act were removed in January 2008.<sup>33</sup>

**John** is studying at TAFE. Mid-way through his course, he is sexually assaulted by his step-father. As a result of this traumatic event, he drops out of his studies, leaves home and lives on a friend’s couch for several months. A debt is raised for around \$4,000 of Youth Allowance after he approaches Centrelink, meets with a social worker and explains his circumstances. Had he contacted Centrelink, John could have received an exemption from the activity test owing to his homelessness. When asked why he didn’t tell Centrelink that he’d stopped studying, he says “because at the time I needed the money for food.”

Section 1237AAD of the *Social Security Act* prevents debt waiver in special circumstances where a person knowingly fails to advise Centrelink of a matter affecting their payment. Although John’s circumstances are clearly special and warrant a humanitarian response which would encourage further participation in work or study opportunities, he is legislatively barred from receiving any special treatment because he knowingly failed to tell Centrelink he’d ceased study, and he must pay back the money to Centrelink.

In Welfare Rights’ experience it is not uncommon in Youth Allowance debt cases that the young person was aware, or suspected that, they had not complied with Centrelink notification requirements but was unaware that the delay would have a serious impact on their eligibility for payment, or were overcome with life events or personal crises at the relevant time.

### **Recommendations**

1. Notional entitlement provisions should be restored, in part or whole, to protect young people in such situations

<sup>32</sup> Section 12 of the Social Security (Administration) Act.

<sup>33</sup> See acts 172 of 2007 (Youth Allowance transfer rules) and 173 of 2007 (limiting use of section 12 to 13 weeks).

2. Amendments should be made to “special circumstances” debt waiver legislation to create a general discretion to waive debts (without “knowingly” restrictions) where there are special circumstances which waiver would be appropriate

## 7.2 Debt recovery and inalienability

Where a child turns 16 their parent will usually forgo Family Tax Benefit and instead lodge a claim for Youth Allowance for the child due to its higher rate of payment. Technically, the recipient of Youth Allowance is the child (whereas the recipient of Family Tax Benefit is the parent) although where the child is under 18, the Youth Allowance is usually paid to the parent’s bank account. When problems arise with the child’s Youth Allowance (eg errors or changes in parental income) any resulting debt is raised in the child’s name, rather than the parent’s name, due to the inalienability provisions of the Act.

It is inconsistent to on the one hand pay Youth Allowance to persons under 18 directly to their parents, and on the other hand hold the young person accountable for the debt, particularly where the debt is the fault of the parent rather than the young person themselves.

**Recommendation:** Debts raised against young people in these circumstances should be raised against the parents rather than the young person.

## 7.3 Definition of full-time student

Increasingly degrees contain compulsory components such as practical training, or pre-internship “terms” which fall outside the traditional Semester / Year division of study. This causes problems with meeting the definition of “full-time study” and can result in debts and cancellation of payments.

Eg: **Julia** is enrolled as a full-time student. By November 2007 she has completed the bulk of her degree (188 credit points). The only aspect remaining of her course is a Pre-Internship Term (4 credit points), which is a compulsory part of her undergraduate degree. She undertakes the term between November and March. Centrelink decides that Julia is not qualified for her Austudy payment during this period comparing 4 credit points against the 16 ordinarily required for a year. A debt is raised of around \$3,500. Julia’s university considers her to be a full-time student during the Pre-Internship term.

**Recommendations:** Amendments should be made to recognise any period of study recognised by universities/TAFES, such as summer terms; Government policy should state clearly that the issue of what constitutes a “particular study period” (s 569C of the *Social Security Act 1991*) is a question of fact to be decided in each case, in accordance with prevailing case law: *Secretary, Department of Family and Community Services v Matheson* [2004] FCAFC 53.

#### 7.4 Confusion about providers and Centrelink

Many young people are not able to properly distinguish between the roles of Centrelink and their Job Services Australia provider. This creates situations where debts are raised against young people, who believe they have notified Centrelink as to matters affecting their rate of payment or payment type, when in fact they have notified Job Services Australia, not Centrelink.

**Jemima** incurred a debt of \$4,500 for Youth Allowance received over a six month period. She attended TAFE for the first few weeks of semester before stopping her studies. She advised her Job Services provider about this, incorrectly believing that to be sufficient for the purposes of notifying Centrelink.

##### **Recommendations:**

- (1) Communication arrangements between Job Services Australia providers and Centrelink should be reviewed to ensure that all matters affecting a person's rate of payment and payment type are communicated from provider to Centrelink in situations where a person has difficulty communicating with Centrelink generally.
- (2) Where the provider fails to pass on information to Centrelink then any subsequent debts should be waived.

#### 7.5 Problems with apportioned parental income test

Where two siblings both receive Youth Allowance, a parental income reduction is apportioned between the young people in the family who are subject to the parental income test. Given that in only limited situations a person meets the "independent" criteria, this leaves a large number of young people, particularly 'adult' young people aged 18-24, exposed to potential debts through no fault of their own.

**Eg:** Dean is studying and so is his brother Andrew. They live away from home, but do not meet any of the "independent" criteria and so are each subject to the parental means tests. Dean lives in Melbourne, and Andrew is living in Perth. Dean is unaware that Andrew has dropped out of his course, without informing anyone in the family about this. When Centrelink become aware of the issue, Dean's rate of payment is cut and a debt raised against him for the increased rate of Youth Allowance he received during the period Andrew was in receipt of Youth Allowance payments to which he was not entitled. Dean becomes angry with Andrew for not informing him about the situation which has now left him with a debt and a rate cut. Andrew is upset that Centrelink is allowed to disclose his personal information to his family without his consent.

**Recommendations:** Debt waiver provisions should be strengthened to mandate waiver in such cases where a young person was not aware of the activities of their siblings during the relevant period.

## 7.6 Youth Allowance prosecutions

A young person who incurs a debt with Centrelink will often face criminal prosecution for the debt.

The ramifications of a conviction may be disastrous on the young person's future, particularly in relation to their employment prospects.

Defending social security fraud matters is a difficult, costly and often risky endeavour because:

- Centrelink files are very large and time consuming to read
- the number of defence lawyers specialising in social security fraud matters is limited
- youth allowees rarely have the money to pay for a defence lawyer
- it is difficult to challenge the documentary evidence held on Centrelink file proving what is not on the file (eg that the young person contacted Centrelink when the file, as presented, contains no such evidence), and
- an unsuccessfully defended matter will often carry a heavier penalty than an initial guilty plea.

Anecdotally, young people often report the causes of debt as:

- a. Confusion and misunderstanding of reporting obligations
- b. Desperate need for income
- c. Oversight regarding reporting requirements
- d. Immaturity and recklessness and the failure to recognise the gravity of the offence

While it is clear that in some cases prosecution will be warranted, there are many cases where, when the circumstances of the case are taken into account, it would not be in the interests of the community to prosecute the young person.

### **Recommendations:**

(1) Amendments should be made to "special circumstances" debt waiver legislation to create a general discretion to waive debts (without "knowingly" restrictions) where there are special circumstances which waiver would be appropriate

(2) Changes should be made to departmental policy guidelines with respect to referring Youth Allowance and Austudy debts to the Commonwealth DPP such that no prosecution should be commenced unless there is evidence of deliberate fraud. Consideration should also be given to whether the Commonwealth has actually suffered a loss as well as the impact on the individual and the community of "criminalising" the young people in question.

## 8 Other issues

### 8.1 Transport concession eligibility during non-payment periods

A young person who incurs a non-payment period for non-compliance with activity requirements also loses their transport concession in turn reducing opportunities to attend Centrelink, seek work, travel to work, attend medical appointments and so on during the period of non-payment. The following case study is provided by way of example:

**Shane** does not attend a number of appointments with his Job Services Australia provider and is subject to an 8 week non-payment period as a result. He was not able to make these appointments or contact his provider to cancel as he was hospitalised after a serious car accident. He catches the train to Centrelink to try and explain himself and get back on payments. On route, he is stopped by a ticket inspector, informed that his concession train ticket purchased is invalid as his transport concession card is not valid during his non-payment period. Shane incurs a fine of \$200.

This situation is potentially unfair to a number of vulnerable young people, including those with a mental illness or homelessness issues, and those who have a reasonable excuse in relation to their previous participation failure but have not yet had the opportunity to clarify themselves or provide an explanation for their circumstances. The situation also prevents young people from looking for work during their preclusion period, and attending appointments with potential employers by public transport.

<p><b>Recommendation:</b> Amend s 1061ZK of the <i>Social Security Act 1991</i> regarding qualification for Health Care Cards to allow a person to be still “receiving” payment while on a participation penalty period.</p>
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