

**SPECIAL BENEFIT**

**Social exclusion and poverty traps**

**A call for reform from the National Welfare Rights Network**

**December 2011**

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# INTRODUCTION

## About the NWRN

The National Welfare Rights Network (NWRN) is a network comprised of 16 community legal services throughout Australia which specialise in social security and family assistance law and its administration by Centrelink. Based on the experience of clients of NWRN members, the Network develops policy and advocates for law reform for improvements in how services are delivered and how information is communicated about individual’s obligations and rights.

NWRN member organisations provide casework assistance to their clients and conduct training and education for community workers and produce publications to help social security recipients and community organisations understand the system.

## Background to this paper

As a result of many years of advising and advocating in Special Benefit matters, the NWRN has become increasingly concerned by a number of serious problems relating to the qualification for, and payment of, Special Benefit.

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 the usual residential or certain other requirements.

The vast majority of Special Benefit recipients are migrants, often newly or recently arrived, who are unable to meet the residential requirements for other social security payments, and whose circumstances are so dire that they may qualify for Special Benefit.

The primary qualification criteria for Special Benefit are found in the *Social Security Act 1991*, however unlike other income support payments, most of the qualification provisions, and all of the payability provisions, are contained in policy rather than in legislation. This means that, for the most part, Special Benefit is in practice more a discretionary payment than a statutory entitlement.

It is in the community’s best interests to have such a payment but Special Benefit is now arguably the most legally complex, confusing and difficult payment type.

At as June 1990 there were 27,913 people receiving Special Benefit. This number has steadily decreased over the years to the point where, as at June 2010, there were only 6,307 people receiving Special Benefit.[[1]](#footnote-1) This means that over the past decade the number of people receiving Special Benefit has decreased by 443 per cent.

Of these 6,307 more than 50 per cent were people who were not residentially qualified for Age Pension (which generally requires at least 10 years of residence from the grant of a permanent resident’s visa). Presumably many of these people would have sufficient periods of residence to qualify for another payment (eg Newstart Allowance) but are unable to claim and/or qualify for those payments because they have reached Age Pension age. Certainly, Welfare Rights workers have helped many people in exactly this situation.

The other large group in the June 2010 figure of 6,307 are people on Spouse Provisional visas, who comprise just under 30 per cent of the total figure. This number will presumably drop considerably from 2012 as people on Spouse Provisional visas 309 and 820 will no longer have an automatic family member exemption from the waiting period for Special Benefit on the basis of their relationship with their spouse.

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.

The following table provides a snap shot profile of Special Benefit recipients.

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| **Table 1. Profile of Special Benefit recipients** |
| **Age** | Just over half (51.6%) of all Special Benefit recipients are aged over 65, reflecting the high numbers of older people unable to meet residency requirements (N= 3,257). These people of Age Pension age live on $131 less than other older people of similar age.People under 24 account for 18.4 % of those on Special Benefit and 8.9% (563) are aged under 16. |
| **Country of birth** | Almost 48 % live in NSW (3,026), 28% in Victoria (1,787) and 595 in Queensland (9.4%). Looking at country of birth, 23.8% were born in China, followed by 8.5% who were born in Australia, with 6.2% born in the Philippines. |
| **Duration of receipt** | Fifty-five % have been on Special Benefit for more than 12 months;One-in five (19.9%) have been in receipt of Special Benefit for four or more years;The mean time on benefits is 115 weeks (2 years, 1 month) |
| Source: Department of Families, Housing, Community Services and Indigenous Affairs, *Statistical Paper No. 9, Income support customers: a statistical overview 2010.* |

## 1.3 Scope of this paper

This paper details the problems with legislation and policy on Special Benefit and proposes simple and effective solutions for addressing these problems.

Special Benefit policy is particularly flawed and the resulting impact on extremely vulnerable groups, particularly migrants and very young people, are immense. Most of the problems with Special Benefit can be remedied by changes to policy and would not require legislative change.

As well as changes to existing policy this paper proposes changes to extend qualification for Special Benefit to some particularly vulnerable people. There is scope for a limited expansion of Special Benefit qualification when considered in the context of:

* the desperate need of certain vulnerable groups who currently cannot receive Special Benefit and whose social exclusion is entrenched by lack of access to income support; and
* the massive reduction in the number of people currently receiving Special Benefit.

# PROBLEMS WITH THE RATE AND QUALIFICATION

## Requirement to obtain support from all possible alternative sources

A person’s claim for Special Benefit may be rejected if the person has not attempted to obtain support from all possible sources. This means that Special Benefit might be rejected because a person has not sought support from friends, family members or charities.

The Administrative Appeals Tribunal (AAT) observed in Hussaini that the requirement to obtain support from all possible alternative sources in government policy is unreasonable and lacks legislative basis.[[2]](#footnote-2) The AAT stated at paragraph 31:

“*I observe that s 3.7.2.20 of the Guide requires that n*ewly arrived residents are required to have attempted to obtain support from all possible alternative sources before being granted Special Benefit.  Whilst I am not bound to apply policy guidelines of the kind referred to in the Guide (see Drake v Minister for Immigration and Ethnic Affairs (1979) 2 ALD 60), I may do so and, indeed, the Tribunal will usually apply the guidelines unless there are cogent reasons in a particular case for not doing so: see Re Drake and Minister for Immigration and Ethnic Affairs (No 2) (1979) 2 ALD 634 at pp 639 to 645; Re Dainty and Minister for Immigration and Ethic Affairs (1987) 6 AAR 259 at p 267; and Minister for Immigration, Local Government and Ethnic Affairs v Roberts (1993) 41 FCR 82 at p 86.  **I doubt that there is any legislative basis for this requirement, and, it seems to me, unreasonable that Australian charities should be asked to support incoming migrants whose circumstances have changed, such that they are unable to support themselves, before Centrelink might consider entitlement to special benefit.**  Nonetheless, in this matter there was evidence that the Applicants had been living off the generosity of Ebrar’s friends and that they had sought charity assistance, without success.” (Emphasis added).

Special benefit was specifically introduced to remedy situations where, in spite of not qualifying for other income support payments, it is nevertheless appropriate for a person to receive an income support payment from the Government. Special benefit has been designed to plug certain gaps that may arise from time to time in the Government’s social security system.

The current policy at 3.7.2.20 unnecessarily fetters this original purpose of Special Benefit. Moreover, it tries to shift responsibility for plugging the gaps in the social security from the Government back onto the major charities and the generosity of private individuals, thereby placing an undue and unreasonable burden on them.

It should not be necessary for a person who falls through the gaps of our social security system to test whether they can receive support from charities or from the generosity of friends before the Government will step in to plug that gap, when they meet the legislative criteria for Special Benefit.

The major charities in Australia should not be put in the position of being considered to be an alternate social security system.

The current policy at 3.7.2.20 is without legislative basis and should be removed.

**Recommendation No. 1.**The requirement to have attempted to obtain support from all possible alternative sources before being granted Special Benefit should be removed from the Guide to Social Security Law.

## Special Benefit homelessness requirement for school children

Under the *Social Security Act 1991*, a child must be "homeless" in order to receive Special Benefit, if they are also a full-time student.[[3]](#footnote-3)

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 Australian citizen child aged between six 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.[[4]](#footnote-4) The application of the UTLAH provisions 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 be over 16 years old. [[5]](#footnote-5) 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 provision 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 No. 2.**
The "homelessness" requirement for school students should be removed.

## Parent cannot receive FTB if 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 means that despite being in serious financial hardship, a family relying on Special Benefit in this way generally receives several hundred dollars per fortnight less than a family relying on Newstart Allowance as the primary income support payment. Such a family would also miss out on the annual Family Tax Benefit supplements.

This is an anomaly caused by section 22A(1) of the *Family Assistance Act****,***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. *[[6]](#footnote-6)/*[[7]](#footnote-7) 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 the impact of these provisions are as follows:

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| **Table 2. Anomalies in existing legislation causing hardship** |
| Example of the intended operation of the s 22A(1)[[8]](#footnote-8) rule | Example of the unintended operation of the s 22A(1)[[9]](#footnote-9) rule: |
| 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 her child claims Youth Allowance which is paid to the child (although in practise the Youth Allowance is generally deposited to the mother’s account).Thus the family income is $486.80 (the parent’s Newstart Allowance) plus $212.70 (the child’s Youth Allowance) - total $699.50 per fortnight.[[10]](#footnote-10) | 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 $486.80 which is paid to the child (but in practise would be deposited to the mother’s bank account). Thus the family income is total $486.80 per fortnight (the child’s Special Benefit only).[[11]](#footnote-11) |

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 No. 3.**
The requirement for a parent to forego Family Tax Benefit 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.

## 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.

Arguably, leaving vulnerable people without payment for the duration of the Newly Arrived Residents Waiting Period (NARWP) period contravenes one or more of the international conventions to which Australia is signatory (see for example *Article 27 of the Convention on the Rights of the Child*, the scope of which is not limited to citizens and permanent residents).

**Recommendation No. 4.**

The Newly Arrived Residents Waiting Period (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.

## The diabolical Special Benefit means tests

Unlike other income support payments, which have income and assets tests prescribed by the Social Security Act, the means tests for Special Benefit are set out in policy. They are considerably harsher than any other means test.

For example, a person receiving Newstart Allowance, who loses qualification for Newstart Allowance on turning Age Pension age, would generally be paid Special Benefit. However, the means tests for Special Benefit are so much harsher than Newstart means tests that a person may have their Special Benefit drastically reduced, in some cases to nil, and it may be due to “support” that is not really even “income”.

**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 and participation. The “dollar for dollar” deduction treatment of “in kind” support such as free board and lodging 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.

A compelling example of the unfairness of the dollar for dollar income test is as follows: A homeless 14 year old receiving Special Benefit and no other means of support would like to work for Macdonalds to earn some money to help them meet their costs of living. Unfortunately, every dollar of income from Macdonalds will reduce Special Benefit by a dollar, thus there is no incentive to take the job. In fact, the Special Benefit is reduced by the “gross” amount of income, thus once tax is taken out, the young person would have less in their pocket each fortnight than if they didn’t have the job. Whereas if the person were on any other income support payment (eg Youth Allowance) they would have a free area (ie an allowable amount of income that has no effect on their rate) and a tapered rate of reduction for income over the free area.

The following table illustrates just how disadvantaged Special Benefit recipients are under the income test compared with other allowances and pensions.

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| **Table 3. Special Benefit and other social security payments, December 2011** |
| **Payment Type** | **Single rate(per week)** | **Income Free Area****(per week)** | **No payment when income reaches****(per week)** | **No payment when assets reach (for homeowners)** |
| Special Benefit | $243 | Nil | $243 | $5,000 |
| Newstart Allowance | $243 | $31 | $452 | $186,750 |
| Age Pension | $374 | $75 | $823 | $686,000 |

Unsurprisingly, given the extremely harsh dollar for dollar reduction and the low rates of payment, there were just 1.6 per cent, or just 101 people reporting any earnings (out of 6,203). This compares very unfavourably with Parenting Payment (Single) recipients on pension taper rates, where 32 per cent have employment income; and Newstart Allowance, where a lower 17 per cent of active job seekers report earnings.[[12]](#footnote-12)

This requirement may directly or indirectly cause problems such as increased family conflict, homelessness or exacerbation of health problems. It may lead to a breakdown in the very relationships that make up the limited external support available to them.

**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 $486.80 for a single adult for example.[[13]](#footnote-13) 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 applies 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, irrespective of marital status or number of dependents. Unbelievably, this threshold figure has not been increased or indexed and has remained at $5,000 for ***at least*** the past 14 years.[[14]](#footnote-14)

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 NWRN, Special Benefit recipients are generally more vulnerable as a group than other income support recipients.

These separate tests for the one payment are unnecessarily complicated and unfair. A person must effectively fall well below the Poverty Line before they can even have a claim processed.[[15]](#footnote-15)  Assistance to a person already assessed as being without a sufficient livelihood should not be denied financial assistance 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 afford essential costs 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 (indeed, the person may be experiencing secondary homelessness in such accommodation).

Such an approach is not just illogical, but can have devastating consequences on vulnerable individuals and families. These rules essentially punish and undermine the limited support that may in some cases be available from charities, family or friends. Special Benefit recipients live in poverty and it is our experience that such assistance is commonly needed in addition to income support to meet essential costs of living.

**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 and have even greater need for these family payments intended to support children.

**Recommendation No. 5.**The special means 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). The definition of income should be the same as the definition that applies to Newstart Allowance or Age Pension (as appropriate). Legislation and policy should make it very clear that family assistance payments should not reduce the rate of Special Benefit in any way.

## 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 unlike other migrants, they have the right to live in Australia indefinitely and unlimited work rights. As a result, there are many New Zealanders living in Australia who find themselves in dire need of Special Benefit, or another social security payment (except some very limited payments under the International Agreement with New Zealand).

The lack of access to income support is particularly unfair for children on Special Category Visas who often had little choice in the decision to relocate to Australia and have no entitlement to income support (other than a one off period of up to six months of Youth, Newstart or Sickness Allowance once they have resided here for at least 10 years). Moreover, they do not have access to the full range of programs available to young jobseekers who are Australian residents.

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. **Sayeda** originally arrived in New Zealand from Uganda 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-husband’s family made it unreasonable for her to return to New Zealand. Her ex-husband did visit the family briefly in Australia but provided no support to her and her children.
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 February 2001, 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 again 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 see 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.

**Recommendation No. 6.**
(i) Amend the definition of Australian Resident to include Special Category Visa holders who arrived as minors.
(ii) Allow young people in this situation to access Special Benefit.
(iii) 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.

## Other non-resident children

New Zealand children, and most children on temporary visas, cannot generally qualify for any Australian social security payments. No children who are here unlawfully can qualify for a social security payment.[[16]](#footnote-16) Nor, for that matter, can they access the range of essential services necessary to ensure their rights as enshrined in the *Convention on the Rights of the Child.*

Under the Convention, 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”.

The lack of income support and access to the full range of essential services to children is a clear indication that Australia is failing New Zealanders and children who are not permanent residents within its jurisdiction.

**Recommendation No. 7.**
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.

## Other issues for school age Special Benefit recipients under 16 years

Observations have already been made about the impacts of Special Benefit policy on young people under 16 years, including the adverse impacts of the income test and the homelessness requirement.

We note also that these young people, usually 14 and 15 years old, are generally referred to Centrelink by State/Territory child protection authorities, refuges, youth workers and so on. They are homeless and extremely vulnerable. Unfortunately, because they are on a FaHCSIA payment, they also miss out on a number of beneficial DEEWR programs designed for young people on Youth Allowance relating to participation in education and employment.

**Recommendation No. 8.**
Consideration should be given to options for ensuring that young people on Special Benefit have access to the full range of beneficial programs offered to young people on Youth Allowance related to participation in education and employment.

# SUMMARY OF RECOMMENDATIONS

A summary of the recommendations arising from this examination of Special Benefit are listed below.

1. The requirement to have attempted to obtain support from all possible alternative sources before being granted Special Benefit should be removed from the Guide to Social Security Law.
2. The "homelessness" requirement for school students to qualify for Special Benefit should be removed.
3. The requirement for a parent to forego Family Tax Benefit 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.
4. The Newly Arrived Residents Waiting Period (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.
5. The special means 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). The definition of income should be the same as the definition that applies to Newstart Allowance or Age Pension (as appropriate). Legislation and policy should make it very clear that family assistance payments should not reduce the rate of Special Benefit in any way.
6. (i)The definition of Australian Resident should be amended to include Special Category Visa (SCV) holders who arrived as minors. (ii) Young SCV holders should be able to qualify for Special Benefit. (iii) A special circumstances provision should be introduced to qualify New Zealanders on SCVs 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.
7. 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.
8. Measures should be taken to ensure that young people on Special Benefit have access to the full range of beneficial programs offered to young people on Youth Allowance related to participation in education and employment.
1. Department of Families, Housing. Community Services and Indigenous Affairs, *Statistical Paper No. 9 - Income Support Customers: A Statistical Overview*, 2010, p. 69. [↑](#footnote-ref-1)
2. HUSSAINI and SECRETARY TO THE DFHCSIA (No 2011/94) Decided: 14 February 2011 by N. Isenberg [↑](#footnote-ref-2)
3. Social Security Act 1991, *Section 739.* [↑](#footnote-ref-3)
4. Social Security Act 1991*, Section 1067A (9).* [↑](#footnote-ref-4)
5. A young person whose circumstances are assessed as “unreasonable to live at home” is considered “independent” for youth allowance purposes and therefore receives a higher independent rate of youth allowance, is exempt from parental means tests, and may be eligible for rent assistance. [↑](#footnote-ref-5)
6. A New Tax System (Family Assistance) Act 1999. [↑](#footnote-ref-6)
7. 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. [↑](#footnote-ref-7)
8. A New Tax System (Family Assistance) Act 1999. [↑](#footnote-ref-8)
9. A New Tax System (Family Assistance) Act 1999. [↑](#footnote-ref-9)
10. Centrelink, *A Guide to Australian Government Payments*, 20 September to 31, December 2011 published at <http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm> [↑](#footnote-ref-10)
11. Centrelink, *A Guide to Australian Government Payments*, 20 September to 31, December 2011 published at <http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm> [↑](#footnote-ref-11)
12. Department of Families, Housing, Community Services and Indigenous Affairs, *Statistical Paper No. 9, Income support customers: a statistical overview, 2010.* [↑](#footnote-ref-12)
13. Centrelink, *A Guide to Australian Government Payments*, 20 September to 31, December 2011 published at <http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm> [↑](#footnote-ref-13)
14. DSS Guide to the Administration of the Social Security Act, Volume 1 at 15.900; Guide Issue No.988G. We understand that the threshold has not changed since 1990, ie for 21 years, but have not been able to independently verify this. [↑](#footnote-ref-14)
15. *Poverty Lines: Australia*, Melbourne Institute of Applied Economic and Social Research, June Quarter 2011 ISSN 1448-0530 Table 4. Published 23 September 2011. According to this table, poverty line income for a single adult allowee is $446.47 per week whereas the maximum income support payment allowance rate is $295.65 per week. [↑](#footnote-ref-15)
16. A limited number of temporary residence visa holders may qualify for Special Benefit, namely 070, 310, 447, 451, 695, 785, 786, 787, 826, 951 and until 2012 only 309 and 820. [↑](#footnote-ref-16)