30 July 2021

Committee Secretary
Senate Community Affairs References Committee
By email only: community.affairs.sen@aph.gov.au

Dear Committee Secretary,

Economic Justice Australia (EJA) submission to inquiry into the purpose, intent and adequacy of the Disability Support Pension

Economic Justice Australia (EJA) is the peak organisation for community legal centres providing specialist advice regarding social security issues and rights. Our members across Australia have provided free and independent information, advice, education and representation in the area of social security for over 30 years.

EJA draws on its members' casework experience to identify systemic policy issues and provide expert advice to government on reforms needed to make the social security system more effective and accessible. Our law and policy reform work:

- Strengthens the effectiveness and integrity of our social security system;
- Educates the community; and
- Improves people's lives by reducing poverty and inequality.

Advising people regarding DSP qualification criteria and representing people in internal reviews and appeals to the Administrative Appeals Tribunal is a significant component of our members' advocacy work. Our members also advise and represent people with disability struggling with mutual obligation requirements for JobSeeker Payment, Youth Allowance, Austudy and Parenting Payment. This means that we have unique collective insights into the application of the DSP legislative qualification criteria, the DSP Impairment Tables, and issues regarding the DSP assessment processes.

The current DSP legislative framework and system for assessing DSP eligibility imposes fundamental systemic barriers to accessing DSP for particular cohorts of people with disability. As a result, many vulnerable people with disability in these cohorts who are prima facie eligible for DSP, are effectively consigned to JobSeeker or other activity tested payments indefinitely, struggling to comply with mutual obligations. For these people, ongoing requirements to negotiate mutual obligations with Employment Services Provider staff who may have no real understanding of the impact of particular impairments or chronic multiple health conditions on work capacity can cause considerable distress and hardship.

The de-identified case studies presented in this submission, provided by EJA members, clearly show the ways in which these systemic barriers can result in people in these cohorts who should be on DSP, and not subject to the rigors of activity testing non-compliance and the penalty regime, are falling between the cracks. This indicates that the income support framework for people with disability is not functioning as intended.

EJA welcomes the opportunity to make this submission.

RECOMMENDATIONS

- ***Access and equity issues:***

1. *That Departmental policy guidelines be developed regarding grant of DSP to people who are manifestly eligible to enable manifest grants to people whose primary condition is psychiatric*
2. *That Services Australia consult with national disability peaks to facilitate its implementation of the Fifth National Mental Health and Suicide Prevention Plan*
3. *That Services Australia develop targeted information resources on DSP eligibility criteria for people with disability, in accessible formats that take into account barriers experienced by people with particular impairments*
4. *That Services Australia consult with community peaks to ensure that DSP resources and communications for Aboriginal and Torres Strait Islander people and people from CALD communities are accessible, and available in Easy English as well as community languages*
5. *That Services Australia consult with People with Disability Australia to develop processes to ensure that appropriate community referrals are made for people in need of disability support or advocacy to claim DSP, and regarding mutual obligation requirements for JobSeeker or other income support payments*
6. *That Services Australia develop targeted actions for implementation of the Indigenous Servicing Strategy toward enhancing access to social security entitlements for people in remote communities, focussing on people with disability and carers. Actions should be informed by consultations with NACCHO, disability advocacy services working with remote communities, and community legal centres providing advice and advocacy to people in remote communities. Actions should include:*
    a. *Substantial boost to funding for Services Australia Remote Servicing Teams, ensuring that each Team has delegates with expertise on DSP*
    b. *Development of structures to support effective liaison between Services Australia, DESE and Employment Services Providers operating in remote communities*
    c. *Development of processes to ensure that people with disability known to be vulnerable to dropping out of the system are actively assisted, connected with local community supports and legal help, and where appropriate, supported in claiming DSP*
7. *That additional funding be provided to community legal centres serving remote Aboriginal and Torres Strait Islander communities, to enable provision of specialist legal advice and representation regarding social security issues.*
8. *That additional funding be allocated to community legal centres providing advice and representation on social security issues.*

- ***Requirement that a condition be 'fully' diagnosed, treated and stabilised:***

9. *That the preamble to the DSP Impairment Tables be amended so as to delete references to 'fully' as a qualifier to 'diagnosed', 'treated' and 'stabilised'.*

- ***Program of support requirement:***

10. *Amend section 94 of the Social Security Act so as to remove the program of support requirement; **OR**, in the alternative, amend section 94 so as to include exemption criteria.*

11. *That Services Australia and the Department of Employment Skills and Employment (DESE) undertake and report modelling examining the costs of maintaining a person with disability on activity-tested JobSeeker Payment, compared to the cost of granting a person Disability Support Pension without a POS requirement.*

➢ ***Evidence requirements:***

12. *Reintroduce completion of a treating doctor report (TDR) as a mandatory component of DSP claims, with the TDR pro forma part of the DSP claim package*
13. *Enable completion of the mandatory TDR to be billable under Medicare, with a Medicare item number introduced for report completion*
14. *That Services Australia develop clear guidelines for treating health professionals regarding the type of evidence required for DSP claims, and that DSP claimants be provided with those guidelines as part of the DSP claim package*
15. *That Services Australia consult with organisations including the Australian Medical Association (AMA), the Fellowship of the Royal Australian College of General Practitioners (FRACGP) and the National Aboriginal Community Controlled Health Organisation (NACCHO) regarding the most effective ways to communicate these guidelines*
16. *That Department of Social Services policy guidelines for delegates be reviewed and amended, to clarify that where a condition has been diagnosed by a psychiatrist or clinical psychologist, General Practitioner (GP) evidence which attests that the condition is ongoing, treatment is ongoing, and the condition is stabilised to the extent possible in the circumstances, should suffice.*

Further to the above, EJA endorses the recommendations made by our member centre Social Security Rights Victoria in its submission to this inquiry.

BACKGROUND - INCOME SUPPORT FRAMEWORK FOR PEOPLE WITH DISABILITY

1. Disability Support Pension (DSP) is intended to provide income support for people with disability who have medical and/or psychiatric conditions that result in impairments which limit capacity for work to less than 15 hours per week for at least the next two years. Unless an applicant for DSP meets the definition of 'severely disabled', they also generally need to have undertaken a 'program of support' for at least 18 months during the three years to qualify.

2. Most people with disability of working age who need social security income support and either do not meet the DSP qualification criteria, or may be eligible but are unable to navigate the claims process, claim JobSeeker Payment. JobSeeker Payment is available to people between 22 years and Age Pension age who are unemployed and seeking work - including people with 'partial capacity' for work due to disability. Eligibility criteria for JobSeeker Payment include mutual obligation requirements which ostensibly can take into account limitations on work capacity due to disability.

3. As noted by ACOSS in its submission to this inquiry:

> 'The decline in the number of people who have their DSP claims granted has led to an increase in people with disability or chronic medical conditions claiming unemployment payments. We can see this in the numbers of people receiving JobSeeker whose capacity to work is less than 30 hours a week ('partial work capacity'). There are 375,000 people receiving JobSeeker who have a partial work capacity, up from around 124,000 in 2013 … . This figure rose by more than 100,000 in 2019 when the Department stopped excluding people whose partial work capacity assessment was more than two years old from the figures.
>
> 'The abolition of Sickness Allowance as a separate income support payment in 2020 also led to a small increase in JobSeeker numbers, but this has not driven the huge influx of people with disability or chronic health conditions onto JobSeeker (the number of people receiving Sickness Allowance before this payment was rolled into JobSeeker was fewer than 5,000). Changes to DSP eligibility policy have been the key driver of people with disability ending up on JobSeeker.'

4. This means that there is an ever-widening pool of people with disability subject to a mutual obligations compliance system that, as shown below, causes hardship and distress for people with disability among vulnerable cohorts.

5. In examining the impacts of streaming an increasing proportion of people with partial capacity to work to activity tested income support payments, it is also important to bear in mind that the notion that people with 'severe' disability may access DSP without first proving that they cannot benefit from a program of support, while people with disability who have a 'partial capacity' for work need first to show that a program of support, is based on a false dichotomy. Most people on DSP in fact have a partial capacity for work, it is just that this partial capacity relates primarily to a single DSP Impairment Table; and many people refused DSP who are relegated to other income support payments have disability that effectively precludes work. A person on DSP may have an ongoing capacity for 10 to 14 hours work a week; while a person on JobSeeker Payment with several disabling conditions who has been refused DSP, may have no or minimal capacity for work.

DSP qualification criteria – section 94 of the Social Security Act

6. To qualify for DSP, a person must be between 16 years of age and Age Pension age (currently 66) and meet residence requirements. Section 94 of the Social Security Act 1991 (the Act) provides the **DSP medical qualification criteria**, key provisions requiring that:

   (a) the person has a physical, intellectual or psychiatric impairment; and

   (b) the person's impairment is of 20 points or more under the **Impairment Tables**; and

   (c) one of the following applies:

      (i) the person has a **continuing inability to work**; [or]

      (ii) the Secretary is satisfied that the person is participating in the program administered by the Commonwealth known as the supported wage system.

7. A person who is assessed as having an impairment rating of at least 20 points under the Impairment Tables has a 'continuing inability to work' if they have an inability to work independently of a 'program of support' within the next two years because of their impairment, and either:
   - they have a **severe impairment**, i.e. they have been assigned at least 20 points under a single Impairment Table; OR
   - they have actively participated in a **program of support**[1] for at least 18 months over the previous three years, i.e., they have participated in a Commonwealth funded program, usually an employment services provider, designed to assist a person find or prepare for work. This means that a person who has scored in excess of 20 points across more than one Impairment Table but did not score in excess of 20 points under any single Table, will generally not qualify for DSP until they meet this requirement. This criterion is generally referred to as the Program of Support (POS) requirement.

8. This means that a person who has scored in excess of 20 points across more than one Impairment Table, but has not received in excess of 20 points under any single Table, will generally not qualify for DSP until they meet the POS requirement.

DSP Impairment Tables

9. A DSP applicant's functional impairment is assessed under the *Social Security (Tables for the Assessment of Work-Related Impairment for Disability Support Pension) Determination 2011* (Impairment Tables). These Impairment Tables expire on 1 April 2022. The Department of Social Services is currently conducting consultations to inform a development of the next set of Tables[2]. EJA has engaged in these consultations, and has made written submissions to the review, including comments and recommendations further to those made below[3].

10. The preamble to the Impairment Tables provides, among other things, that:

    - An impairment rating can only be assigned if the condition causing that impairment is **'permanent'**, and the impairment resulting from that permanent condition 'is more likely than not, in light of available evidence, to persist for more than 2 years'.

    - A condition is 'permanent' if it has been **'fully diagnosed'** by an appropriately qualified medical practitioner; it has been **'fully treated'**; and it been **'fully stabilised'**. Diagnosis of a psychiatric condition must have been made by a psychiatrist or clinical psychologist.

    - In determining whether a condition has been 'fully diagnosed' and 'fully treated' consideration must be given to whether there is corroborating evidence of the condition; what treatment or rehabilitation has occurred in relation to the condition; and whether treatment is continuing or is planned in the next two years.

[1] .The program of support requirement is outlined here: https://guides.dss.gov.au/guide-social-security-law/1/1/a/30 .The rationale for introduction of the program of support requirement is described here: Parliament of Australia, Chapter 4 (Web page), https://www.aph.gov.au/parliamentary_business/committees/senate/community_affairs/completed_inquiries/2010-13/familyassistance11/report/c04

[2] See https://engage.dss.gov.au/review-of-the-disability-support-pension-dsp-impairment-tables/

[3] EJA can provide the Committee with a copy on request.

- A condition is 'fully stabilised' if:
    - either the person has undertaken reasonable treatment for the condition and any further reasonable treatment is unlikely to result in 'significant functional improvement' to a level enabling the person to undertake work in the next 2 years; OR
    - the person has not undertaken reasonable treatment for the condition and significant functional improvement to a level enabling the person to undertake work in the next 2 years is not expected to result, even if the person undertakes reasonable treatment; or there is a medical or other compelling reason for the person not to undertake reasonable treatment.
- 'Reasonable treatment' is treatment that:
    - Is reasonably accessible to the person; and
    - is at a reasonable cost; and
    - can reliably be expected to result in a substantial improvement in functional capacity; and
    - is regularly undertaken or performed; and
    - has a high success rate; and
    - carries a low risk to the person.

11. For conditions that have stabilised as episodic or fluctuating, a rating must be assigned which reflects the overall functional impact of impairments relating to the condition, taking into account the severity, duration and frequency of the episodes or fluctuations.

Evidence requirements for assessment under the Impairment Tables

12. Assessment of whether a person's condition has been 'fully' diagnosed, treated and stabilised, and whether the condition and related impairments are likely to persist for at least two years, is generally made by a Centrelink Job Capacity Assessor (JCA) on the basis of medical evidence submitted with the person's DSP claim. Where these criteria are met, the JCA then assesses impairment ratings under relevant Impairment Tables.

13. Job Capacity Assessors are medical, health and allied health professionals are employed by Services Australia, including:

- accredited exercise physiologists,
- doctors,
- registered physiotherapists,
- registered nurses,
- registered occupational therapists,
- registered psychologists,
- rehabilitation counsellors,
- social workers,
- speech pathologists.

14. Where the JCA considers that a DSP applicant is eligible for DSP, their assessment is reviewed by a Government-contracted doctor[4].

15. Prior to 1 January 2015, the primary source of medical evidence for determining DSP eligibility was a report from the person's treating doctor, referred to as a Treating Doctor's Report. This report was a proforma questionnaire specifically designed to guide the doctor in providing a report on their patient that addressed the relevant qualification criteria. If a doctor refused to complete their patient's form Centrelink was able to send a formal notice invoking a statutory obligation for the doctor to complete the form. From 1 July 2015, along with other changes to the claim and assessment process, the DSP claim package no longer includes a proforma medical report for the applicant's doctor to complete treating doctor. Instead, applicants are simply requested to provide medical reports.

The program of support requirement

16. The requirements and guidelines that must be taken into account in determining whether a person has actively participated in a POS for the purposes of determining DSP qualification under section 94 of the Act are set out in a Ministerial Instrument - the *Social Security (Active Participation for Disability Support Pension) Determination 2014* (the Determination).

17. There is no actual program named 'program of support', the term purely relates to the eligibility criteria for DSP applicable at the date of claim. The DSP POS requirement can be met if the DSP claimant:
    - has participated in a program provided by a government-funded employment services provider, such as a Disability Employment Service, jobactive, ParentsNext of the Community Development Programme[5], that is designed to assist in finding or preparing for work; and
    - they have participated in that program for at least 18 months during the three years prior to claiming DSP.

18. The Determination provides that a person who has not yet participated in a POS for at least 18 months during the previous three years can satisfy the POS requirement for DSP if 'their POS was terminated because the person was unable, solely because of his or her impairment, to improve his or her capacity to prepare for, find or maintain work through continued participation in the program'.

19. A person who is terminated for this reason can reapply for DSP, and potentially qualify.

Appeal rights

20. Where a DSP claim is rejected, the person has the right to seek Centrelink internal review by an Authorised Review Officer, and if unsuccessful may then appeal to the Administrative Appeals Tribunal (AAT) Social Services and Child Support Division (Tier 1). Both the DSP applicant and the Social Services Secretary has the right to appeal AAT Tier 1 decisions to the

[4] See https://www.servicesaustralia.gov.au/individuals/services/centrelink/disability-support-pension/how-we-assess-your-claim/disability-medical-assessment

[5] See https://www.servicesaustralia.gov.au/individuals/services/centrelink/disability-support-pension/how-we-assess-your-claim/assessing-your-ability-work/program-support

General Division (Tier 2). AAT decisions may be appealed to the Federal Court on an error of law.

Jobseeker Payment and people with disability

21. People with impairments that affect capacity to work may qualify for JobSeeker Payment, including people with a DSP claim assessment or appeal pending.

22. JobSeeker Payment recipients who are assessed by Centrelink as having a work capacity of between 15 and 30 hours a week for at least the next two years have the right to negotiate activities and mutual obligation requirements that match their assessed 'partial capacity' to work. JobSeeker Payment recipients assessed as having a work capacity of less than 15 hours a week are not subject to mutual obligation requirements – however, people so assessed who have been refused DSP and are attempting to meet the POS requirement with a view to reclaiming DSP, need to maintain active participation in their POS.

23. All JobSeeker Payment recipients with capacity to work 15 hours a week or more, must:
    - enter into a Job Plan with their employment services provider
    - undertake all the tasks and activities listed in their Job Plan
    - attend scheduled appointments with their employment services provider
    - complete the required number of job searches and report on job searches to their employment services provider
    - accept any offer of suitable paid work.

24. Failure to undertake Job Plan activities or meet mutual obligation requirements can result in application of payment suspensions, demerits, financial penalties or cancellation of payment. The penalty applied depends on the breach/offence, the number of demerits applied in six months, and the number of penalties applied.

25. Demographic data from the Department of Social Services indicates that as at March 2021 there were 374,367 people with a partial capacity to work on JobSeeker Payment[6]. Data from the Department of Social Services obtained through Senate questions on notice indicate that as at 25 September 2020 the majority of people with a partial capacity work on JobSeeker Payment were people whose reported impairment type was a psychological/psychiatric condition (approximately 42 per cent), based on the first recorded medical condition on the Centrelink payment system for the purpose of work capacity assessment. Of those 42 per cent:

    - 2,656 had an Assessed Work Capacity of 8 to 14 hours per week

    - 153,536 had an assessed work capacity of 15 to 29 hours per week

    - 31,129 had been on JobSeeker Payment (formerly Newstart Allowance) for under one year- 125,063 had been on JobSeeker Payment (formerly Newstart Allowance) for more than one year.

[6] As noted above, people with 'partial capacity' to work may also receive other income support payments that are subject to mutual obligations and penalties – Youth Allowance, Austudy, Parenting Payment

25. Job seekers who are temporarily incapacitated for at least eight hours work a week, including people with ongoing partial capacity to work, can apply for a medical exemption from mutual obligation requirements. Applications for a medical exemption must be supported with a medical certificate. Exemptions are generally approved for no longer than 13 weeks. The certificate must state that the activities cannot be undertaken for at least eight hours a week and include:

    i. what the illness, injury or disability is

    ii. how long recovery will take

    iii. the period that the person will be unable to work, participate or study.

ACCESS AND EQUITY ISSUES FOR PARTICULAR COHORTS OF PEOPLE WITH DISABILITY

26. The rationales for tightening the DSP qualification over the years, and for changes to DSP assessment processes implemented since 2016, are to better target DSP to people with significant permanent impairments limiting work capacity; and to promote consistency in decision-making. The overall aim has been to reduce the rate of new grants of DSP, and new grant data since 2016 makes it clear that this aim is being met. However, EJA has witnessed how this method of bringing down grant rates is leaving vulnerable groups of people with disability sidelined from accessing DSP.

27. From EJA's perspective the current legislative and policy framework is unduly complex and cannot be administered equitably. There are fundamental systemic barriers to accessing DSP for particular cohorts and as a result, many people with severe disability in these cohorts live in poverty on JobSeeker Payment, on a payment rate that compromises access to health care and community support services. The need to negotiate Job Plans with officers who may have no real understanding of the impact of particular impairments on work capacity creates considerable hardship, and can exacerbate mental health issues that affect capacity to comply with mutual obligations.

28. The demand for legal help among these cohorts is considerable. Our member centre, Welfare Rights Centre NSW (WRC NSW), for example, advises that in the two years to June 2021:

    - 5% of clients who contacted about an issue with being paid, had been breached for failing to comply with their mutual obligations
    - Of clients who were breached, 65% had a disability. Of those who were breached and also had a disability, 49% had a psychological disability
    - Of the clients who had an issue with their Employment Services Provider, 30 had a psychological disability
    - Of clients contacting us about qualification for DSP, 49% contacted about a medical issue (i.e. issues with gathering evidence of medical issue) and 3% about PoS issues
    - Of clients who contacted us about an issue they had with DSP, 7% identified as Aboriginal or Torres Strait Islander.

29. We propose that the complexity of DSP legislation and assessment processes has created an iniquitous culling effect whereby people with severe disability can be excluded from accessing DSP purely because they cannot meet the rigors of the processes involved in claiming and appealing. This complexity can constitute an insurmountable barrier for people with psycho-social disability, intellectual disability or cognitive impairment, especially for people in regional and remote Australia. The result is that there is an expanding pool of people with significant disability on JobSeeker Payment (previously Newstart Allowance) indefinitely, who struggle to comply with mutual obligation requirements – for the very same reasons they may lack the wherewithal to pursue DSP claims and appeals.

People with intellectual disability

30. People with intellectual disability can face challenges understanding DSP claim requirements and completing the tasks needed to get medical evidence – even with support. Given that intellectual disability is not a medical condition, it can be difficult for applicants and treating doctors to provide evidence to support a claim for DSP. People with intellectual disability who enjoy good health may rarely see a GP and may have had no tests to assess intellectual capacity since childhood. Others may see doctors and/or a psychologist regularly, but for physical or mental health conditions unrelated to their intellectual disability.

31. DSP claim and assessment processes need to be simplified and streamlined to ensure accessibility for people with intellectual disability.

Case study - Paul: Paul has an intellectual disability and cannot read or write. He lives independently. He received DSP before the 2015 changes but his DSP was cancelled, and when he contacted our member centre he was unable to explain why. He had been on Newstart for the past two years and was not able to understand letters he was being sent by Centrelink, or the form he was given to make a new DSP claim. Our member assisted Paul to claim DSP, wrote to Centrelink asking for the records for previous DSP claims, and arranged for Paul to see specialists in clinical psychology and cognitive impairment. Paul had great difficulty attending appointments and the service's social worker supported him to do this. After five months, Paul faced a final obstacle: he could not afford to see the specialist. Three weeks later Centrelink decided to schedule an appointment with their own doctor, for an assessment. Our member then wrote to Centrelink summarising all Paul's evidence, and submitted that he was eligible for DSP. After eight months, Paul was finally regranted DSP.

People with acquired brain injury

32. People with acquired brain injury are often unable to complete the tasks required to obtain medical evidence to support their claim for DSP, or collect further evidence for appeals. For the same reasons (e.g. impaired organisational ability, or disordered thought), people with an acquired brain injury can struggle to comply with JobSeeker Payment mutual obligations, and may be unable to clearly convey the reasons for this to their Job Network Provider. Job Network Providers need to be able to access expert guidance regarding particular impairments on a claimant's capacity to work, including the impact of particular types of brain injury; and DSP claim and assessment processes need to be simplified and streamlined to ensure accessibility for people with an acquired brain injury.

Case study – Barry: Barry has cognitive impairment due to a brain injury and was unable to afford the specialist fees to get the reports he needed for claiming DSP. He was struggling on Newstart Allowance. After over 10 months of assistance and advocacy provided by our member centre, Barry was referred to a specialist directly by the JCA, who was then paid by Centrelink to prepare a report. Barry was granted DSP based on his severe cognitive impairment. The referral by JCAs to specialists, or use of specialists in JCA assessments, can address the barriers to accessing DSP faced by this cohort. However, if Barry had not sought advocacy, he would likely still be on JobSeeker Payment, struggling to comply with mutual obligations.

Case study – Mario: Mario was 48 when he approached our member for assistance. He had suffered extensive injuries when he was run over by a car at high speed, including a brain injury. Despite six months in hospital followed by intensive rehabilitative treatment, Mario was left with significant disability due to brain function deficit, with memory loss and inability to concentrate. He was in need of the ongoing support of his family and support worker. Mario claimed DSP but was rejected on the grounds of insufficient recent specialist opinion. Mario sought our member centre's assistance, and the advocate devised questions based on the Impairment Tables for his neurologist to provide an updated opinion in support of his appeal. The neurologist was 'too busy', however, and unable to provide any written information or a report. With the help of Mario's support worker, our member centre was able to identify older reports, already provided to Centrelink, which detailed the extent of Mario's impairment. This was brought to the attention of Centrelink and nine months after Mario claimed DSP, the Centrelink Authorised Review Officer decided that Mario was qualified.

People with psychiatric disability

33. The DSP claim and assessment process can be extremely onerous for clients with psychiatric disability and can exacerbate distress associated with a mental health condition. Many people with long-standing and severe psychiatric conditions in this situation can end up on JobSeeker Payment long-term, facing ongoing difficulty meeting the mutual obligation requirements and trying to avoid suspensions and penalties.

34. With a view to identifying any structural or systemic barriers to accessing DSP for people with psychiatric disability, and better understanding issues faced by JobSeeker Payment recipients with psychiatric disability, EJA and WRC NSW collaborated with the University of Notre Dame Australia (UNDA) in a research project examining the experiences of people with psychiatric disability applying for the Disability Support Pension (DSP), or appealing refusal. The recently released project report, *Barriers to Disability Support Pension access for people with psychiatric impairments and their experiences on jobseeker payment*[7], is available here.

35. As noted in the UNDA report, a review by WRC NSW of client intake data reveals a significant demand for assistance from people who have a psychiatric impairment or mental health condition. In the period 16 December 2018 to 16 December 2020, 47 per cent of WRC NSW clients had a disability; and of those with a disability, 37 per cent had a psychiatric impairment

[7] Dr Louise St Guillaume and Jasmine Robertson, The University of Notre Dame Australia, in collaboration with Economic Justice Australia and the Welfare Rights Centre New South Wales July 2021. Available at https://www.ejaustralia.org.au/wp/general/barriers-to-disability-support-pension-access-for-people-with-psychiatric-impairments-and-their-experiences-on-jobseeker-payment/

or other mental health condition. Over that period 31 per cent of all WRC NSW clients seeking advice about claiming DSP had a psychiatric impairment or other mental health condition.

36. EJA member centres, and Legal Aid services, are inadequately resourced to meet the demand for advice and representation regarding DSP claims and appeals, especially given the high support needs of people with psychiatric disability.

37. Removal of the TDR as part of the claim process has placed people with psychiatric disability at particular disadvantage when claiming DSP. Clinical depression, anxiety, PTSD, bipolar disorder, schizophrenia or alcohol/other drug dependency can severely affect capacity to plan and organise, and deal with frustration. The task of seeking out reports from treating doctors is often beyond the capacity of claimants with psycho-social disability, and our members report that many clients are unable to follow through with claims or appeals. Lack of insight into the presence, seriousness and extent of psychiatric impairment can also undermine proper assessment of impairment and work capacity – especially where the person is unable to secure the support of treating doctors and issues are raised as to whether their condition has been 'fully' diagnosed, treated and stabilised.

Case study - Harriet: Harriet is a trained registered nurse with intermittent work history due to crippling and increasingly frequent bouts of depression. When she was referred to the member centre by her support worker, Harriet clearly satisfied the 'severe impairment' rating for Impairment Table 5 (the Table for assessing psychiatric impairment), as she was unable to complete daily tasks such as meal preparation, washing and cleaning without support from mental health workers. However, Harriet's condition would fluctuate and there were periods where she could undertake the kinds of activities that would give her an assessment of 10 points under the same table. Given these fluctuations, throughout the prior 10 years Harriet was unable to sustain employment due to regular, severe episodes of depression. Harriet's applications for DSP had been rejected based on assessments of short periods when she was well.

Case study – Chris: Chris was in his late 40s when he sought the advice of our member centre. He had been diagnosed with Dissociative Identity Disorder and PTSD many years ago, and has a long treatment and management history. He was under the ongoing care of his psychiatrist and GP. He had also had recent serious cardiac and circulatory issues. He was not on any Centrelink payments - he had been employed for a couple of months before making contact with the legal service, and had been seeking out information about what payments he may be eligible for. Chris advised that he had not applied for DSP up until this point - his psychiatrist had advised him to apply and offered to write a report, but his GP had told him not to bother as 'no one gets DSP any more'. Our member centre advised Chris to claim DSP and let them know of the outcome. When the service checked in with Chris a couple of months later, he stated that he had not yet managed to finish his application as he disassociates every time he is reminded that he has not yet completed the DSP application. His GP was still discouraging him from applying as 'no one gets on payment anymore'. He also had not applied for any other social security payment as he was concerned of further disassociating if he has any contact with Centrelink.

Case study - Samir: Samir is socially isolated and has a severe mental health condition. When he contacted our member centre, he had been rejected for a medical exemption from mutual obligations on the grounds that his mental health condition is permanent rather than temporary. Samir was very distressed at the risk of losing his JobSeeker Payment if he could not meet his mutual obligations. He

had also applied for DSP, but had withdrawn his application due to difficulty communicating with Centrelink. Although Samir had accessed Centrelink Social Workers in the past, he was unable to access ongoing support. Due to his social isolation and complex mental health condition, Samir sought the assistance of a community disability support worker for his everyday interactions with Centrelink. Eventually Samir was able to gain a medical exemption from mutual obligation requirements as it was accepted that he was temporarily incapacitated due to a permanent condition. Samir continues to be isolated, vulnerable and at risk without stable support.

38. In most cases, where a person is applying for DSP due to a severe mental health condition, the long process of applying for a DSP is harrowing and, in our member centres' experience, for many people the process exacerbates their condition. As found in the UNDA report[8], people with severe psychiatric conditions can also face challenges accessing and pursuing online information and claim processes, and often require a great deal of support and assistance to make a successful claim.

39. People in these situations present to our member services in obvious great need. It is common for such clients to be relying on ad-hoc assistance from third parties, such as an elderly parent. Our members have assisted clients with psycho-social disability who have been hospitalised because of severe illness, only to have their Newstart/JobSeeker Payment cancelled due to mutual obligation breaches.

40. In EJA members' experience, many DSP claimants with long-standing psychiatric conditions diagnosed some time ago are asked by Centrelink to obtain a new report confirming the current diagnosis, and advised that this report must be from a psychiatrist or clinical psychologist. Where the person is no longer under the care of the diagnosing psychiatrist or clinical psychologist, it can be impossible to obtain a report confirming diagnosis; or a report regarding a fresh diagnosis based on one appointment with a new psychiatrist or psychologist - assuming the person is able to access or afford one. Often multiple sessions are needed for a medical professional to be able to provide a report to support a DSP application that is acceptable to Centrelink. This can result in great difficulties.

41. Our members also report cases where the claimant may have been engaged with a particular professional for some time, but the practitioner has a 'policy' that they do not provide DSP reports. The person's only option is to try to engage with an entirely new practitioner, and form a relationship, in order to be able to obtain a report. This can take a considerable amount of time and the fact that a person with a long-standing psychiatric condition has engaged with a new psychiatrist or doctor can complicate Centrelink's assessment of whether the person's condition has been 'fully' diagnosed, treated and stabilised.

42. There are some cases where claimants for DSP with PTSD have been undergoing long-term treatment under the care of their GP, but cannot locate an affordable clinical psychologist or psychiatrist to confirm the diagnosis of PTSD. These vulnerable clients should be referred by Centrelink for either a Specialist JCA assessment, or assessment by a Government Contracted Doctor, to potentially fill any gaps on missing evidence.

[8] *Barriers to Disability Support Pension access for people with psychiatric impairments and their experiences on jobseeker payment*. Ibid.

43. As the system now stands, people with psychiatric disability face hurdles that can bar their access to DSP, placing extremely vulnerable people at great risk.

Case Study - Anil: Anil is a 52 years old woman with PTSD, who was a victim of child abuse followed by horrific domestic violence over a long period. When she contacted our member centre, Anil had experienced periods of homelessness, and was itinerant. She was having difficulties maintaining her Newstart Allowance due to inability to comply with mutual obligation requirements, and had spent periods of time without income support. Anil's DSP claim had been rejected on the basis that she had not provided a recent psychiatric report. Anil explained that most of her medical records were in other states, where she received psychiatric treatment during the time when she was experiencing domestic violence. The welfare rights advocate suggested that she ask her current psychiatrist for a report, explaining this history. She lodged the new report with her appeal and was told by Centrelink that she needed to reclaim DSP. Anil did so, and DSP was granted.

People with multiple conditions/impairments

44. The burden on claimants who have multiple conditions, and need to provide updated specialist reports on each of their conditions in the form required by the DSP assessment processes, can be overwhelming and difficult to satisfy.

Case study - Jack: Jack has a degenerative hip condition and was advised to have two total hip replacements. He also has a psychiatric disability. On contacting our member service, Jack had applied for DSP twice and been rejected each time, on the grounds that until both hip replacements were completed his medical condition was not 'fully treated'. After his first hip replacement, Jack's fear of further surgery and poor quality of life meant that his mental health quickly degenerated to the point he was unable to function. The member service assisted Jack to seek review of the rejection of his DSP, on the grounds that his psychiatric condition should have been assessed at claim, and that his poor mental health prevented him from having any further surgery. The member service assisted Jack to obtain reports from specialists who assessed his mental health condition as the highest severe category under the DSP Impairment Tables. The service then advocated for Jack for a further three months before a decision to grant the DSP was finally made, more than 14 months after Jack originally applied.

Case study - Fatima: Fatima is a refugee who has suffered long term domestic violence and abuse. She was 56 when she sought the member centre's assistance. She had been diagnosed with PTSD, associated with being held captive during the Iraq war and later experiences living in a refugee camp. Fatima received psychological counselling by a Specialised Trauma Counselling Service for Refugees which confirmed her attendance at more than 80 counselling sessions. In addition, Fatima had received ongoing support and counselling from refuges and women's health services. Fatima has never worked in Australia and was being put under pressure to attend appointments with Employment Service Providers, with suspensions of her Newstart Allowance when she was unable to attend. She had applied for DSP twice. Her first claim was rejected as she was assessed as rating less than 20 points on Table 5 – Psychiatric Impairment. She applied again and appealed, without success. Fatima advised that she felt the whole DSP assessment process ignored her plight and serious long-term PTSD, and also her physical limitations.

People in regional, rural and remote communities

45. Navigating DSP assessment processes and the appeals system, and obtaining necessary medical reports, can be particularly difficult or impossible for people outside metropolitan areas. DSP claimants from regional and rural areas face limited access to specialists for treatment, let alone to obtain copies of reports to support DSP claims. Pressure on specialists practising in regional, rural and remote areas is such that they can be unable or unwilling to provide a report required for DSP purposes, especially if the applicant is not fee paying.

46. Although Services Australia Job Capacity Assessors may attempt to locate a specialist within a certain driving distance from the applicant's home to assist with DSP assessment, many applicants are still not able to attend these appointments due to transport issues or mobility restrictions associated with their disability. Services Australia often attempts to accommodate for this by providing alternative phone and/or video appointments with the relevant assessor, but the person needs to have access to the technology and skills to facilitate video conferencing as an alternative.

47. Our member centre, Welfare Rights and Advocacy Service WA, for example, notes that there is extremely limited access to specialists, especially psychiatrists, in rural and remote regions of WA[9]. Although the Assisted Travel Scheme can assist people with the cost of travel and accommodation so that they can see a specialist in Perth, there are limitations: the scheme will not cover the cost of a support person; and people from remote communities can fear travelling to Perth on their own, and may not attend the specialist appointment unless they have a support person. Telehealth is not always an option for clients with mental illness.

Case study – Kylie: Our member centre was recently contacted by a Kylie who lives in remote NSW. Kylie had recently applied for a medical exemption from JobSeeker mutual obligations, on the grounds of temporary incapacity, but had been rejected due to her conditions being permanent rather than temporary. Following the rejection, Kylie had an Employment Services Assessment, and she was told they could take public transport to get to job seeking appointments. Kylie lived over 200kms from a major town, and 50kms away from the nearest small town. There is no public transport in her local area. An employee from Kylie's employment service provider only visited the client's nearest town every six weeks. After some time, Kylie's medical exemption from mutual obligations was approved, as it was accepted that she was temporarily incapacitated by a permanent condition. The client is considering applying for Disability Support Pension, but has not yet begun the application process due to limited access to appropriate treating specialists to prepare reports.

Aboriginal and Torres Strait Islander people in remote communities

48. Navigating DSP assessment processes and the appeals system can be impossible for people in remote First Nations communities[10]. Many claimants who need specialist care are not under the care of a specialist and for those who are, specialists only visit infrequently. Our member

[9] See https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/mentalhealth/report/c06

[10] See https://www.ejaustralia.org.au/wp/social-security-rights-review/locked-out-of-the-disability-support-pension-experiences-of-indigenous-australians-living-with-disability-on-newstart/

centres that provide outreach services to remote communities report seeing individuals with strong claims for DSP who have cycled through the assessment process and been rejected multiple times. Without advocacy, clients who speak English as a second, third, fourth or fifth language generally have no understanding of DSP eligibility rules and the nature of evidence requirements.

Case study - Warren: Warren is an Aboriginal man with a cognitive impairment from a remote community. He has limited English and literacy skills. On contact with our member centre's outreach service, his previous DSP claims had been rejected due to lack of medical evidence. It was only when our member centre assisted Warren with the claim process that DSP was granted. Centrelink and Warren's Employment Services Provider had been aware of Warren's cognitive impairment, and the significant language and cultural barriers he faced in navigating the DSP process, for many years; however, Centrelink did not have medical evidence in their possession to support this and repeatedly placed the onus on Warren to obtain and provide such evidence. Warren struggled to understand what was required of him and failed to provide the requisite evidence. Warren's inability to provide the medical evidence and navigate the process is related directly to his cognitive impairment, together with his status as an Aboriginal man living in a remote Aboriginal community whose first three languages are not English.

Case study - Elinor: Elinor is an Aboriginal woman from a remote community. She has limited English and literacy skills, and a long history of substance abuse, of which Centrelink has been aware of for many years, with medical records confirming this in its possession. On contacting our member centre Elinor had applied for DSP on numerous occasions but had been rejected due to failure to provide proof of identification and/or medical evidence. On one occasion, Centrelink referred Elinor to their contracted doctor for a medical assessment. The contractor made three attempts to contact Elinor and Centrelink, and then rejected the claim. Eventually, largely as a result of assistance from our member centre, Elinor was granted the DSP on the basis of her substance abuse.

49. The consequences of not being placed on the DSP from an earlier date for both these clients included being subjected to onerous and inappropriate mutual obligation requirements. This led to penalties being imposed and their Newstart Allowance being cancelled. As a result, both clients were without income support for many weeks.[11]

50. Another barrier to accessing DSP for people in remote communities is that programs of support (POS) may be unavailable or not accessible. The POS requirements for people who have high impairment ratings overall means that people in remote communities with multiple chronic health conditions who cannot meet JobSeeker Payment mutual obligation requirements either remain indefinitely on JobSeeker and incurring regular suspensions and penalties, or drop out of the social security system. This is a major issue for people with disability in remote communities, especially for people with cognitive impairment or mental health issues which make meeting mutual obligations impossible. Better engagement is essential for ensuring that people in remote communities whose payments are suspended or cancelled as a result of mutual obligation/activity breaches are actively assisted to re-engage with Centrelink and secure ongoing income support.

[11] For discussion of these issues, see https://www.ejaustralia.org.au/wp/social-security-rights-review/locked-out-of-the-disability-support-pension-experiences-of-indigenous-australians-living-with-disability-on-newstart/

51. Our members advise that even where a person is known to be struggling with mutual obligations due to cognitive/psycho-social impairment, and Centrelink staff have suggested claiming DSP, they can be lost to the system – at times despite the best efforts of Centrelink staff.

52. EJA, its member centres, and Aboriginal and Torres Strait Islander community-controlled health organisations have highlighted these issues in consultations and in response to inquiries for many years. However, while there are efforts to address some of the systemic access barriers via policy guidelines, resource development and targeted outreach, these deep-seated barriers to access persist.

53. Last year EJA was pleased to be able to provide input to Services Australia on actions needed to meet its commitments under the *Services Australia Indigenous Servicing Strategy 2018–22*. Services Australia's focus on how best to enhance service delivery in remote communities is very welcome but improvement will be impossible without substantial targeted funding, including for: expanding Remote Servicing Teams; training of staff in cultural competency; development of accessible resources explaining DSP in community languages; and increased funding for community legal centres serving remote communities, to enable provision of community education, advice and advocacy regarding DSP claims and appeals.

People with a terminal condition

54. The introduction of the Disability Medical Assessment[12] (DMA), whereby a Government-contracted Doctor or clinical psychologist conducts certain assessments, appears to have increased delays in processing claims from people with a terminal medical condition[13]. Clients with terminal conditions can be dismayed that despite submitting medical reports stating that their condition is 'terminal', they have been denied DSP because ongoing or potential further treatment is considered to indicate that the condition has not been 'fully' treated or 'fully' stabilised.

55. The discontinuation of the TDR in respect of all new claims lodged from 1 July 2015 - requiring people to provide the raw medical evidence even where their treating doctor managing their condition might be able to summarise that evidence in a concise report - makes the process unnecessarily onerous and distressing for claimants who are likely to have grounds to be regarded as manifestly eligible for DSP.

Case study – Sandrine: Sandrine has a rare type of bone cancer. With the help of her husband, she applied for DSP because she was too fragile and weak from intensive chemotherapy and other treatments to satisfy Newstart Allowance job-seeking requirements. Her payments had been stopped many times. The member centre advocate contacted Sandrine's specialist, who after some time

[12] See https://www.servicesaustralia.gov.au/individuals/services/centrelink/disability-support-pension/how-we-assess-your-claim/disability-medical-assessment

[13] See https://www.theguardian.com/australia-news/2021/may/20/some-130-people-died-of-a-terminal-illness-before-centrelink-granted-disability-support-pension

provided a report which stated that her condition would not improve with further treatment, and that the treatment was merely keeping her alive. Sandrine's claim for DSP was subsequently granted. Sandrine's husband felt frustrated and distressed that it took so long for Centrelink to understand the severity of his wife's condition.

Case study – Bob: Bob has terminal cancer and claimed DSP while receiving chemotherapy. Centrelink rejected his claim for DSP and Bob could not comprehend why. On appeal he was successful but Bob's view that it should not be so onerous for people with a terminal cancer prognosis to qualify for DSP is valid. He told his welfare rights advocate that 'it's bad enough battling the disease … coping with this whole new experience (i.e. claiming DSP) is overwhelming in itself'.

➢ ***Recommendations:***

1. *That Departmental policy guidelines be developed regarding grant of DSP to people who are manifestly eligible to enable manifest grants to people whose primary condition is psychiatric*
2. *That Services Australia consult with national disability peaks to facilitate its implementation of the Fifth National Mental Health and Suicide Prevention Plan*
3. *That Services Australia develop targeted information resources on DSP eligibility criteria for people with disability, in accessible formats that take into account barriers experienced by people with particular impairments*
4. *That Services Australia consult with community peaks to ensure that DSP resources and communications for Aboriginal and Torres Strait Islander people and people from CALD communities are accessible, and available in Easy English as well as community languages*
5. *That Services Australia consult with People with Disability Australia to develop processes to ensure that appropriate community referrals are made for people in need of disability support or advocacy to claim DSP, and regarding mutual obligation requirements for JobSeeker or other income support payments*
6. *That Services Australia develop targeted actions for implementation of the Indigenous Servicing Strategy toward enhancing access to social security entitlements for people in remote communities, focussing on people with disability and carers. Actions should be informed by consultations with NACCHO, disability advocacy services working with remote communities, and community legal centres providing advice and advocacy to people in remote communities. Actions should include:*
    a. *Substantial boost to funding for Services Australia Remote Servicing Teams, ensuring that each Team has delegates with expertise on DSP*
    b. *Development of structures to support effective liaison between Services Australia, DESE and Employment Services Providers operating in remote communities*
    c. *Development of processes to ensure that people with disability known to be vulnerable to dropping out of the system are actively assisted, connected with local community supports and legal help and where appropriate, supported in claiming DSP*
7. *That additional funding be provided to community legal centres serving remote Aboriginal and Torres Strait Islander communities, to enable provision of specialist legal advice and representation regarding social security issues*

8. *That additional funding be allocated to community legal centres providing advice and representation on social security issues.*

KEY SYSTEMIC ISSUES THAT NEED TO BE ADDRESSED

Requirement that a condition be 'fully' diagnosed, treated and stabilised

56. As outlined in the case studies above, the requirement under the DSP Impairment Tables that a condition be 'fully diagnosed', 'fully treated', and 'fully stabilised' to be assessed, is central to many appeals against DSP rejections and the source of considerable confusion among claimants, treating doctors, Centrelink delegates and AAT members alike. Claimants can provide reports from their GP and specialists definitively attesting to their diagnosis of a particular condition, the treatment regime and prognosis, only to have a Job Capacity Assessor or Government-contracted Doctor/Clinical Psychologist effectively question their own GP's and specialists' diagnoses and assessments.

57. In the experience of our member centres, the Job Capacity Assessment (JCA) is often an ineffective means of assessing eligibility for DSP, particularly for people with psychiatric and other cognitive disability. The criteria that a medical condition be 'fully' stabilised and 'fully' treated for an impairment rating to be assigned is often misapplied by decision makers, with JCA assessors at times re-interpreting medical reports in ways that were unintended by the health professionals writing them, prompting unnecessary appeals and delays.

Case study – Fred: Fred claimed DSP providing medical reports which clearly indicated that that his condition was permanent, stabilised and unlikely to improve with further treatment. However, one doctor noted in a report that she had discussed the possibility of ameliorative treatment with Fred, including referral to a pain clinic. The JCA determined that these comments indicated that the condition was not 'fully' treated. After Fred's DSP was rejected on this basis, he organised further medical reports to clarify that what was being recommended by his doctor was only ameliorative, and that the health professional considered the condition to be stabilised and fully treated.

58. We propose that the word 'fully' be removed as a qualifying adjective before diagnosed, treated and stabilised, as it creates ambiguity and uncertainty in assessing medical evidence, for reasons including that:
    - The concept of diagnosis is an absolute – a condition has either been diagnosed, or a diagnosis is pending, or a diagnosis accounting for a person's symptoms has not been possible
    - Diagnoses in the light of particular symptoms may change - e.g. bipolar disorder with psychosis, to schizophrenia with psychosis; or bipolar disorder to borderline personality disorder - but the change does not necessarily mean that the current or former diagnosis was invalid or incomplete. Diagnosis of the underlying condition causing physical impairment may also change, e.g. for people with chronic fatigue syndrome, or multiple sclerosis
    - Treatment for a particular condition may arguably be less than 'full' where, for example a person with severe psychosis with delusions and paranoia, or depression, cannot or will not adhere to a treatment regime; or where the

person's physical or psychiatric condition is resistant to treatment, and new treatment strategies are tried from time to time
- 'Full' stabilisation of symptoms associated with a condition may be impossible, especially where instability of symptoms, or the episodic nature of symptoms, is a feature of the condition.
- Any clarification as to whether a condition has been or is being treated should be sought from the applicant's treating doctor(s), as should information regarding planned, viable treatment options
- Only the applicant's treating medical professionals are in a position to make an assessment as to prognosis.

➢ ***Recommendation:***

9. *That the preamble to the DSP Impairment Tables be amended so as to delete references to 'fully' as a qualifier to 'diagnosed', 'treated' and 'stabilised'*

The program of support requirement

59. In EJA members' experience, people with significant disability and little or no work capacity are excluded from DSP as a result of the POS requirement and effectively consigned to serve a waiting period on JobSeeker Payment. In our view the POS requirement creates an unfair barrier to accessing DSP, particularly for older people with numerous chronic health conditions where it is the effect of the conditions combined that limits or precludes work, rather than any single condition assessed in isolation. For these people, the POS requirement constitutes a hidden criterion that by definition they are only privy to once they have applied for DSP, had an assessment under the Impairment Tables, and been rejected.

60. For people who have received DSP for many years and are reviewed, and then have their DSP cancelled (on medical review, due to partner income, or due to absence overseas), the POS requirement can represent a CATCH-22. If they appeal and are found to have an impairment rating of more than 20 but do not score at least 20 under a single table, they need to meet the POS requirement. However, they will not be able to meet the POS requirement at that point because they have been on DSP for the last three years; and they are likely to benefit from participation in a POS. Several EJA member clients in this position have been advised by Centrelink to claim JobSeeker Payment, start engaging in a POS, obtain medical evidence that the program will be of no benefit, apply to exit the program, and once exited then reapply for DSP – all while they proceed with appeals. This is clearly a convoluted solution, and not in the best interests of the client, their doctor, the Employment Services Provider, or Centrelink.

61. There is also no clear POS pathway to DSP for people who are not entitled to JobSeeker Payment because of personal or partner income. People in this position can potentially seek to engage in a POS but this option, and how to proceed, is in our members' experience rarely conveyed to people who are refused DSP.

62. We question why there is effectively an extra gate to accessing DSP for people with very high total impairment ratings, and minimal or no capacity for work, just because they fail to score

at least 20 points on a single table. EJA understands from consultations with DSS that only about 3% of DSP claims are refused because of failure to meet the POS requirement, and that half of these people are granted DSP on appeal. As such, it would seem that the requirement is merely delaying qualification for DSP for a small number of people, many of whom are caused great distress trying to juggle appeals and program requirements. Adding to the confusion is that there is no clear and transparent way of seeking such an exemption from the POIS requirement, or of seeking a review where such a request is refused.

63. In our experience new claimants for DSP generally have no idea that the POS requirement will apply unless they score 20 points under a single Impairment Table, and that despite significant incapacity failure to meet the requirement may effectively delay eligibility for DSP for up to three years from the date of claim. This means that many people proceed to both appeal against the rejection of their claim, and try to obtain medical evidence to secure a 20 point rating under one of the Impairment Tables; and/or obtain medical evidence to support a request to exit their POS, then reapply for DSP. Most people remain on JobSeeker Payment – and face a range of issues attempting to meet the POS requirement.

64. In practice, chronically ill people on JobSeeker Payment are often permitted to lodge multiple medical certificates exempting them from the need to participate in a PoS which creates its own problems as illustrated in the following example.

Case study – Michael: When he contacted our member centre, Michael had been in receipt of Newstart/JobSeeker Payment for five years. Prior to this he was primary carer for his mother who was terminally ill. Michael suffered from multiple health problems. When he applied for the DSP his conditions were assigned 35 points under four separate impairment tables. Michael also suffered from other conditions which were not assigned an impairment rating because they had not been fully diagnosed and treated. His application for DSP was rejected because none of his conditions was assigned a 20 point rating and he had not fulfilled the PoS requirement. A review of Michael's medical evidence was undertaken by his GP, with assistance from our member centre. On the evidence it appeared that the JCA assessment was correct given that Michael had three moderate impairments and one mild.

Michael was engaged with a Disability Employment Service job network provider for the entire period in which he was in receipt of Newstart/JobSeeker payments, and was granted ongoing exemptions from mutual obligations because of his chronic health problems. This was reasonable because the medical evidence made it clear that Michael was unable to work. However, it also served as a barrier to Michael ever being granted DSP.

Michael obtained a referral to another DES. The new provider was supportive of his application for the DSP. At the member centre's suggestion, the new provider organised for Michael to be exited from the PoS after he had been engaged as a participant in the PoS for a month. Michael was fortunate that his provider facilitated his exit from the PoS. Michael now receives DSP. If his caseworker had not been cooperative he would have been stuck in a program which could not be of benefit to him, and unable to access DSP because of his inability to engage in the PoS.

65. Our member centres have represented many clients in similar situations who have been on Newstart/JobSeeker Payment for years, with regular if not ongoing medical exemptions, but have not been exited from their PoS despite it being clear that they cannot participate and will not benefit from engagement. There is a flawed logic loop in this situation as many long-term

DSP recipients have impairment levels that preclude participation in a PoOS and there is no purpose to be served by requiring that they enroll in a POS and then go through the process of exiting.

66. WRC NSW notes that a major issue reported by NSW community workers assisting DSP claimants was clients becoming 'trapped' by the POS requirement. Community workers reported cases of clients who were clearly unable to work due to multiple medical and psychiatric conditions being forced to endure 18 months of POS activities before they could qualify for the DSP.

67. In EJA's view, the culling effect of the POS requirement is iniquitous and excludes many people with disability from accessing DSP purely because they cannot meet the rigors of the processes. The result is that there is an expanding pool of people with disability on JobSeeker Payment who are unable to comply with mutual obligation requirements for the very same reasons they lack the wherewithal to pursue DSP claims and appeals.

68. EJA is unaware of any detailed cost/benefit data analysis regarding this culling effect. However, it is reasonable to assume that there are significant costs associated with administering JobSeeker Payment and other activity-tested entitlements to people with disability who have been refused DSP due to the POS requirement, and then struggle with mutual obligation requirements long-term. These payments involve close monitoring and implementation of a complex compliance regime by Services Australia and Employment Services Providers. That significant administration and compliance cost may actually negate any savings achieved by having a person would be on DSP if not for the POS requirement, on a lower rate activity-tested payment.

69. If Services Australia and the Department of Employment Skills and Employment (DESE) were to undertake and report on such modelling, EJA suggests examining the costs of maintaining a person with disability of 50 years of age on activity-tested JobSeeker Payment for 18 months, compared to the cost of granting a person Disability Support Pension without a POS requirement.

70. The modelling could examine scenarios along the lines of the following, estimating cost where indicated:
    a. Person A, who has chronic clinical depression and kidney disease claims DSP on 1 July 2019, and is assessed with 40 points under the impairment Tables – but is not given 20 points under a single Table, so is refused DSP on the grounds of failing to meet the POS requirement.
        - Person A seeks ARO Review and the decision is affirmed (costing of ARO review of a DSP refusal)
        - The person remains on JobSeeker Payment and is referred to a POS (costing provider engagement)
        - They then reclaim DSP with new medical evidence
        - The new claim for DSP is also refused
        - The person seeks ARO review

- The second DSP claim refusal is affirmed by the ARO (costing)
- The person appeals to the AAT against refusal of his first claim
- The AAT Tier 1 affirms the DSP refusal (costing of AAT1 DSP appeal)
- The person appeals to the AAT General Division (GD), and applies to Legal Aid. Legal Aid is granted (costing)
- The AAT GD sets aside the decision and person A is granted DSP from 1 January 2020, 18 months after his first DSP claim, with back-pay to 1 July 2019 – being the difference between DSP payable and JobSeeker Payment paid over that period (costing)
- During the 18 months since person A's first DSP claimed, he has been actively engaged with a Disability Employment Service (costing)

b. Person B has the same conditions and impairments, and like person A is refused DSP on the grounds of failing to meet the POS requirement
   - Person B does not seek review or appeal
   - Person B is referred to a DES provider and after three years accrues 18 months of active engagement with a POS (costing)
   - Person A reclaims DSP and is granted from 1 January 2020.

c. Person C has the same conditions and impairments but is assigned 20 points on a single Impairment Table. Her claim DSP claim of 1 July 2019 is approved and she is granted DSP from date of claim – being the difference between DSP payable and JobSeeker Payment paid over that period (costing, and comparison with costings for person A and person B.

➢ ***Recommendations:***

10. That section 94 of the Social Security Act be amended so as to remove the program of support requirement; ***OR****, in the alternative, amend section 94 so as to include exemption criteria.*

11. That Services Australia and the Department of Employment Skills and Employment (DESE) undertake and report modelling examining the costs of maintaining a person with disability on activity-tested JobSeeker Payment, compared to the cost of granting a person Disability Support Pension without a POS requirement.

Evidence requirements

71. Removal of the mandatory Treating Doctor Report (TDR) from 2015 has disadvantaged DSP applicants, and created significant barriers to access, especially for people in vulnerable cohorts.

72. EJA's January 2018 report, *Disability Support Pension (DSP): A snapshot of DSP client experiences of claims and assessments since the 2015 changes*[14], examines data from our member centre, Basic Rights Queensland (BRQ). This report notes that the removal of the TDR has caused significant delays, and that in 77% of 22 DSP rejection cases for which BRQ provided assistance at the AAT, the appeal was successful due to provision of information that a TDR would likely have covered. The evidence required was only obtained by the claimant after seeking legal advice, with BRQ eliciting the evidence from the treating health professional by requesting responses to a questionnaire tailored to the DSP eligibility requirements and impairment table guidelines (acting as a replacement TDR).

73. Unless a person has previously claimed DSP, new claimants and doctors generally have no guidance as to which reports to provide in support of a claim, no means of highlighting or drawing attention to the most pertinent evidence, and no practical means of explaining why, e.g., a three year old psychiatrist's report should be accepted as evidence of diagnosis of an ongoing psychiatric condition. At a recent community legal education session about Centrelink payments for carers and people with disability run by the Welfare Rights Centre NSW, community workers reported that they were consistently seeing people who were stressed and confused by the DSP claim process. Many clients faced great difficulty proving the severity of their disability using the Impairment Tables, including meeting the cost of medical reports and dealing with inconsistency between the language of medical and health experts and the language of Centrelink.

74. The removal of the Treating Doctor Reports (TDR) as part of the claim process has made it more difficult for claimants and doctors to understand what information should ideally be provided to support a DSP claim. The TDR was a source of guidance for both claimants and doctors about the information needed for decision-makers to determine DSP eligibility. While Services Australia provides online information regarding the types of medical evidence required to support a DSP claim, doctors do not necessarily access this information when approached by a patient seeking support for their claim. Services Australia has recently developed a helpful set of factsheets explaining DSP qualification criteria and assessment processes. However, these factsheets are targeted to people who have been refused DSP, not new claimants and not treating doctors.

75. As a senior solicitor in one of our member centres says:

> 'Centrelink almost never explains why the person been rejected and what is missing in a way that they understand. Far too many of my clients thank me as it is the first time they have understood how the system works and what is wrong with their application. This can be after multiple applications and multiple appeals to all levels. It really does take a hour talking to a client, explaining slowly and clearly before they really understand… . No-one has explained what the problem is with their evidence. They are not given enough information to understand what steps are required to get on. They do not understand Diagnosed, Treated and Stabilised let alone that the impairment

[14] Available on the EJA website at https://www.ejaustralia.org.au/general/disability-support-pension-dsp-project-a-snapshot-of-dsp-client-experiences-of-claims-and-assessments-since-the-2015-changes/

> tables are not measuring how sick they are but rather how their day to day life is affected.'

76. Providing clients with template treating doctor letters, and templates for doctors to complete in respect of relevant Impairment Tables, is standard practice for our specialist social security member services. These are useful tools for claimants and their doctors but such tools should be part of the claim process – not just for people who have had a claim refused and manage to access specialist legal advice.

77. The removal of the TDR has meant that DSP claimants can miss out on DSP simply because they are unaware of the specific information they need to obtain from their doctors. Treating doctors may have ample specialist reports on record that would establish their patient's eligibility for DSP but they are only informed of the relevance of these reports once their patient has been refused DSP – and only if their patient understands this, and is able to pass the information on their doctor. The TDR placed claimants on an equal playing field in terms of the information they could put forward to the decision-makers. Without the TDR, claimants and treating doctors are generally ill-informed regarding the evidence to provide at the time of claim. As one service's senior solicitor puts it:

> "Most of my clients' difficulties over the years come down to removal of the TDR … both treating doctor and claimant are flying blind for lack of knowing what information is required to show. Most clients have never heard of the concepts 'fully diagnosed, treated and stabilised', 'continuing inability to work', 'impairment', 'Impairment Tables', 'program of support requirements', etc., until contacting us and many times they've conveyed their treating doctor's exasperation. A common problem is the misconception that having a long history of medical certificate exemptions (for Newstart) aids their case when often it becomes the obstacle … ."

78. The discontinuation of the TDR as part of the claim process has created a significant barrier for claimants/treating doctors with limited capacity, time or inclination to work out what evidence would support a DSP claim. It also places claimants at great disadvantage if their doctor either does not appreciate the need to provide supporting medical evidence/reports, or will not do so without payment for the report. The result is that the only way many applicants and their doctors can make their way through this process is with the guidance of a legal advocate. Another member centre solicitor with many years' experience advocating for clients in DSP cases believes that:

> 'There should be a more holistic approach to assess people's impairments and work capacity. Clearly, vulnerable people who do not have computer or literacy skills are disadvantaged and more likely to encounter greater barriers to accessing DSP. Typically, the homeless and itinerant are less likely to have access to a regular medical service and a support network. Consequently, at the time of lodging a claim for DSP they do not have all the medical evidence required and often have no resources to seek the required information. People in isolated areas, CALD and Aboriginal people are more likely to encounter barriers and difficulties in putting together the necessary medical evidence. Needless to say, anyone with serious or severe disabilities is more likely to find the whole claim process daunting and out of reach.'

➢ ***Recommendations:***

12. *Reintroduce completion of a treating doctor report (TDR) as a mandatory component of DSP claims, with the TDR pro forma part of the DSP claim package*
13. *Enable completion of the mandatory TDR to be billable under Medicare, with a Medicare item number introduced for report completion*
14. *That Services Australia develop clear guidelines for treating health professionals regarding the type of evidence required for DSP claims, and that DSP claimants be provided with those guidelines as part of the DSP claim package*
15. *That Services Australia consult with organisations including the Australian Medical Association (AMA), the Fellowship of the Royal Australian College of General Practitioners (FRACGP) and the National Aboriginal Community Controlled Health Organisation (NACCHO) regarding the most effective ways to communicate these guidelines*
16. *That Department of Social Services policy guidelines for delegates be reviewed and amended, to clarify that where a condition has been diagnosed by a psychiatrist or clinical psychologist, General Practitioner (GP) evidence which attests that the condition is ongoing, treatment is ongoing, and the condition is stabilised to the extent possible in the circumstances, should suffice.*

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