

14 February 2020

Committee Secretary
Senate Community Affairs Legislation Committee

By email: community.affairs.sen@aph.gov.au

Dear Committee Secretary,

NSSRN submission in relation to the Social Services and Other Legislation Amendment (Simplifying Income Reporting and Other Measures) Bill 2020

1. The National Social Security Rights Network (NSSRN) is the peak community organisation in the area of income support law, policy and administration. Our members are community legal centres across the country that provide free and independent legal assistance to people experiencing issues with their social security and family assistance payments. The NSSRN draws on this front line experience in developing this submission and policy positions.
2. The Social Services and Other Legislation Amendment (Simplifying Income Reporting and Other Measures) Bill 2020 is intended to give effect to the 2019-20 Budget Measure Changing the Social Security Income Assessment Model, which changes the way people report employment income to Services Australia (Centrelink). This Bill seeks to amend the Social Security Act 1991 so that employment income is assessed once it is paid to a social security payment recipient avoiding the current need for people to estimate their income for a reporting period.
3. In a factsheet published shortly after the measure was announced in the Budget, the NSSRN warned that lessons learned from the online compliance initiative, 'robodebt', needed to be addressed before any new automation to the social security system was implemented, including the need to:
 - properly invest in fully developing the automated system, rather than only seeing it as a cost-saving measure,
 - rigorously test the automated system to ensure that it works reliably to generate data to support accurate decision-making,
 - ensure there is a fair and accessible mechanism for challenging the accuracy of any decisions made in reliance on the automated system, and
 - effectively consult with people receiving income support payments, and community organisations working with them, to fully understand how the automated system will impact disadvantaged and vulnerable people, and the stress that interacting with the system may cause.
4. The factsheet identified that 'robodebt' unfairly shifted the administrative burden to the income support recipient to prove they did not have an over payment, when previously the onus would have been on the Department to prove the overpayment existed before a debt was raised. We advised that any new measures relying on automation should ensure that the onus remains with the Department to take into account and use its powers to obtain all data necessary to make accurate decisions.

RECOMMENDATIONS

5. We broadly support the measure and the passing of the bill as we welcome any changes which simplify the income reporting requirements for people receiving Centrelink payments and reduce the number of social security overpayments resulting from misreported employment income. We believe that the sharing of income data between the Australian Taxation Office (ATO) and Services Australia has the strong potential to achieve these aims, but must be implemented in a way that heeds the lessons from 'robodebt'.
6. In summary, to ensure the achievement of the Bill's aims we recommend that:
 - a. Further consultation be undertaken with people affected and the organisations representing them to identify gaps in the new reporting process and transitional arrangements;
 - b. Sufficient time and resources are invested to ensure effective communication of the new reporting process and transitional arrangements to those affected;
 - c. Sufficient support is provided to people who may have difficulty understanding the new reporting process and transitional arrangements; and
 - d. Consideration be given to shifting the weight of information-gathering responsibilities onto government where it is better placed than income support recipients to obtain the correct income information, particularly given the complexity of the system and vulnerability of many recipients.

Consultation

7. We received an email from the Department of Social Services (DSS) on 28 January 2020 alerting us to the Government's release of an exposure draft ahead of the Autumn 2020 sitting period, to support engagement with stakeholders. Our organisation appreciated the opportunity to receive a briefing from the DSS, Services Australia and the ATO on 3 February 2020. However, these tight timeframes, including the deadline to respond to this Senate Committee's inquiry by 14 February 2020, do not enable sufficient time to consult our members and provide the full benefit of our frontline experience.
8. For example, there may be additional issues, such as the treatment of salary sacrifice arrangements, which do not appear to us to have been addressed in the Bill.
9. Until our members are able to see the income reporting screens which are proposed to be used, it will be difficult to provide comprehensive feedback on the practical implications of the legislation. A further briefing and consultation is being organised for our members with the relevant departments via webinar for either early March or early April, however this will not provide insights in time for this Senate Inquiry.
10. We understand from the briefing we attended that a focus group of 10 people in Brisbane will be invited to user-test the prototype of the new reporting system. We are concerned that that this small sample will not provide the level of diversity of perspectives required to ensure that the system will work well for everyone, particularly those most vulnerable.
11. It appears that the new reporting process relies heavily on a presumption that most Centrelink payment recipients will have online access and the level of IT proficiency required to effectively

engage with the process. Our member centres' experience suggests there will remain a cohort of people without the necessary IT access or proficiency to use the new reporting process. Careful consideration of how this cohort will report their employment income is necessary in the design and implementation of the new process.

12. Trust in the use of automation in the social security system has been eroded by the so-called 'robodebt' program's reliance on income averaging to raise debts without a legal basis. As the next significant and visible use of technology across a large number of Centrelink payment recipients, it will be important to demonstrate that this program is carefully implemented with adequate consultation, effective communication and beneficial impact on vulnerable members of the community.

Ownership of information gathering and reporting obligation

13. The impression that many people have following the announcement of the 2019-20 Budget Measure, Changing the Social Security Income Assessment Model, and subsequent communications about its implementation, is that the sharing of Single Touch Payroll (STP) data by the ATO to Services Australia will replace need for people to check and report their income.
14. This Bill and its accompanying explanatory notes make clear that this impression is incorrect, and that people receiving Centrelink payments will still bear full responsibility for their reporting.
15. We understand that, subject to the passage of legislation, later in 2020 the Australia Taxation Office will begin providing employment income details to Services Australia if available through STP, where a person has been established as a mutual client. This STP data will then be used to pre-fill employment details for Centrelink payment recipients to check. Importantly, we understand that if the person believes that the income data is incorrect and edits the employment income amount, it will be the Centrelink recipient's edited amount that will be taken as final.
16. We note that this is not consistent with the practice of Services Australia when it comes to calculating and raising debts, where it exercises its power to obtain and assess evidence such as payslips and relies on this evidence, rather than relying primarily on the Centrelink recipient's own reporting of income to ensure that a debt calculation is correct.
17. Given the increasing complexity of the system, the vulnerability of many income support recipients, and how well government is placed to access accurate information about a person's income from the ATO, we recommend that consideration be given to shifting the weight of information-gathering responsibilities from income support recipients to government. The onus should rest on government to take into account and use its powers to obtain all data necessary to make accurate decisions.
18. At the very least, if the bill is passed in its current form, the government should use the employment income information it has to alert a Centrelink payment recipient where it has made an assessment that the information the person has provided in response to the pre-filled information is incorrect and alert the recipient that this may give rise to a possible overpayment and potential criminal penalties if the information they supply is found to be incorrect. Ideally this alert would be accompanied by an offer of support from Centrelink to ensure that the discrepancy between the pre-filled information and what the payment recipient believes to be the correct employment income information. This would maximise the benefit of the legislation in avoiding overpayments due to unintentional incorrect reporting of income and allow any possible errors in reporting to be resolved in real time.

19. We understand that the current bill does not intend to cover estimates of annual income for Family Tax Benefit (FTB) purposes. Given the level of confusion and numerous Centrelink debts that arise from recipients confusing their separate reporting obligations, further expansion of the use of STP data for FTB purposes would be very welcome. If and until STP is expanded to Family Assistance payments, there is a potential for STP to further exacerbate the confusion around recipients reporting obligations. We therefore emphasise the need for clear messaging to recipients about how their information will and will not be used.

Effective communication to those affected

20. Given that the Bill as it currently stands maintains the burden of income reporting obligations on people receiving Centrelink payments to provide the correct employment income information, communication of this fact will be as important as communication of the new income reporting processes.
21. Currently, Centrelink payment recipients with employment income report the gross amount they have earned during their fortnightly entitlement period. This can require multiple calculations based on the number of shifts worked in a given fortnight and the gross hourly rates for those shifts.
22. The Bill proposes that, from 1 July 2020, Centrelink payment recipients will report the gross amount their employer has already paid them, as it appears on their payslip.
23. We welcome this change and agree that it will make accurate employment income reporting easier, especially when the ATO begins sharing employment income details of mutual customers to Services Australia through STP and this data is used to pre-fill employment details.
24. However, we are concerned that this pre-filling of STP data will give people the impression (or reinforce an existing impression) that the responsibility now rests with government to provide this income information. The communication of the new process needs to effectively explain that the Centrelink payment recipient will still have the ability to review, edit or add additional employment income before finalising their report to Centrelink, and that *any edited or additional information they provide will supersede the pre-filled STP data*.
25. The transitional arrangements also appear to be very confusing and we have concerns about potential for errors during the transition period. We understand that for the fortnight during which the commencement date falls (1 July 2020 if the Act receives the Royal Assent before 15 May 2020, people will need to deduct any amounts they have already reported from the amount they are reporting that fortnight according to the new reporting process. With the best of intentions on the part of Centrelink payment recipients, reporting errors will still likely be made.
26. User-testing is vital to ensuring communication of the changes are effective, and needs to take into account broad feedback from diverse and most vulnerable groups. For this purpose, a focus group of 10 people in Brisbane is unlikely to capture for example people of different ages, culturally and linguistically diverse backgrounds, regional and remote and Aboriginal and Torres Strait Islander communities.

Support to those affected

27. We understand that people finding it difficult to understand the new reporting process, particularly during the initial transitional period, will be encouraged to call Centrelink.
28. The experience of our members assisting people with Centrelink issues is that calling Centrelink is difficult at the best of times, with long wait times and variable quality of service depending on who they speak to once they reach a customer service officer. While we understand from Services Australia that preparations are being made to respond to the potential spike in calls during the transition, we would emphasise that an effective response is likely to require additional resourcing for the Centrelink phone lines, both staff numbers and staff training in how to assist people with the new reporting process.

Conclusion

29. Minimising overpayments as a result of incorrectly reported employment income data benefits everyone in the social security system. Compared with most Centrelink payment recipients, the power and resources of government to obtain accurate employment income data and compare it against reported employment income data is immense. In light of this power and resource difference, and the increasingly complexity of the social security system, it would be both more efficient and more just for the onus to rest with government to take into account and use its powers to obtain all data necessary to make accurate decisions. This has been the practice with compliance processes where government prioritises the payslip evidence it obtains over the income reported by the Centrelink payment recipient. While ownership of the reporting obligation rests with the payment recipient, this needs to be clearly communicated in a way that effectively informs all people affected, especially those most vulnerable.

Contact for this submission

The NSSRN would welcome the opportunity to provide further feedback to the Committee on our submission.

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