**National Welfare Rights Network (NWRN)**
**Supplementary Submission to**
**Senate Community Affairs Committee Inquiry into the**

**SOCIAL SECURITY AND VETERANS' ENTITLEMENT LEGISLATION AMENDMENT**
**(SCHOOLING REQUIREMENTS) BILL 2008**

**24 October 2008**

## 1. Introduction

NWRN appreciates the opportunity to provide a supplementary submission to the Senate Inquiry into the Social Security and Veteran's Entitlement Legislation Amendment (Schooling Requirements) Bill 2008. In it, we analyse the Department of Education, Employment and Workplace Relations (DEEWR's) submission to the Inquiry. The time available prior to our initial submission did not permit this opportunity. In light of this analysis, we also seek to highlight the main deficiencies and shortcomings of the Bill which we believe will make it unworkable in practice and place "at risk families" at greater jeopardy.

NWRN concurs with the view that early intervention and help to ensure that all children attain good education qualifications and outcomes will divert people from pathways that lead to long-term unemployment and involvement in the criminal justice system. These are some of the objectives at paragraph 4 of DEEWR's submission. However, at no point does the DEEWR submission provide evidence that the sanctions in the Bill will produce the intended results and on our examination of the Bill we do not believe that this will be achieved through the framework proposed.

On the contrary, NWRN fears that the complex and punitive nature of these measures will undermine its intended objectives and exacerbate poverty. In our view, it also has the real potential to push some families outside the safety net of the Social Security system. The disproportionate effect that these measures are likely to have on Indigenous families is of particular concern. The research already shows that where financial penalties are imposed on Indigenous people they turn to their family and community for financial support and often do not return to the Social Security system for an extended period of time, even when they become eligible for payments again.[1]

[1] William Saunders, Unemployment Payments, the Activity Test and Indigenous People, the Australian National University, Centre for Aboriginal Economic and Policy Research, Research monograph no.15 (Cambridge: University Press, 1999) p.99

NWRN believes that the proposed framework designed to improve educational outcomes is fundamentally flawed and ignores the complex reasons for poor levels of school engagement. Tying a family's primary source of income support to such outcomes is not only undesirable but extremely risky. Despite public assurances that payments will only be suspended as a "last resort" and cancelled in "the most extreme cases", such legislative protections have not been enshrined into the Bill.[2] Added to this risk, is the inter-relationship of school and community and community and that of teachers, students and parents, and also the intended relationship between Centrelink, the school, and the income recipient and how that is managed. Further, because of the unprecedented role of schools in the Social Security decision making process, the imposition of sanctions is likely to occur inequitably and differentially depending on the prevailing attitudes of the school principal, governing bodies or respective State and Territory governments. None of these matters are canvassed let alone adequately addressed by DEEWR in its submission to the Inquiry.

Despite the claims made by DEEWR in its submission at page 4 that there are "some Australian precedents for linking benefits to conditions to promote desirable parenting behaviours", these intended measures are both 'far reaching' and 'unprecedented'. Likening the measures in the Bill to the requirements for Maternity Immunisation Allowance (MIA) and Baby Bonus payments is not only inaccurate but misleading. For example, the MIA is a single incentive based payment of $243.30. It is not an income support payment but is available to all Family Tax Benefit recipients. Moreover it is not only available to all Family Tax Benefit recipients who meet the immunisation requirements as it is also paid to recipients who have a 'conscientious objection' to having their child immunised.

Further at paragraph 26, of its submission, DEEWR states that "payment conditions requiring labour market participation have a long established history in the Australian social security system" implying that there is a precedent for these provisions. However, Social Security payments have never been conditional on a third party meeting activity test requirements. Moreover, there is no acknowledgment in DEEWR's submission that these provisions contravene a well enshrined protection in Social Security law. The Bill abrogates the principle of inalienability which ensures that an individual qualified for a payment receives that payment.

NWRN is dismayed at the way in which this 'far reaching' and 'unprecedented' piece of legislation has been tabled in Parliament without any real and genuine opportunity for community consultation and debate on its implications and how it will impact on the Social Security system as a whole. It is unclear upon what basis the assumption is made that people receiving income support payments are more likely to have children who fall foul of schooling requirements. That assumption of course underlines the Bill and the DEEWR submission.

## 2. DEEWR's submission:

[2] Hon Julia Gillard MP, Second Reading Speech, Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) Bill 2008, Hansard, 27 August 2008

NWRN offers the following analysis:

### 2.1 The effectiveness of the proposed measures and the impact on children and families:

DEEWR asserts its intention to address the question of the effectiveness and impact of the proposed measures, which is central to the Inquiry's terms of reference but then fails to do so. The former is glossed over and the latter not addressed at all.

Education is the province of this Department and yet it adduces no evidence that any type of truancy, let alone persistent truancy, is readily within a parent's ability to address. There is also no evidence provided as to what support the parent will have. In addition, there is no apparent understanding that some parents feel powerless to interact with a school and that some other children in certain circumstances can be difficult to control. The DEEWR submission admits that even the threat of prosecution in the United Kingdom has not reduced the truancy rate (paragraph 25). That evidence should indicate that the solution to persistent truancy is not a blunt instrument be it the threat of prosecution or in this case the loss of income support payments for a family.

The submission also attempts to discredit a paper authored by Professor Larissa Behrendt and Ruth McCausland entitled 'Welfare payments and school attendance: An analysis of experimental policy in Indigenous education' on the basis that it assumed that income management was to be the tool used under the "Improving School Enrolment and Attendance through Welfare Reform Measure" (SEAM). However it fails to acknowledge that the rationale for the National Income Management categories of school enrolment and school attendance introduced pursuant to the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* was to 'require parents on income support to ensure their children are enrolled at, and regularly attend, school. The measures provide for income management arrangements to apply for parents who fail to ensure the enrolment, or sufficient school attendance, of their children.'[3]

Although it has been more than 12 months since the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* was passed, the National Income Management categories are still yet to come into effect. The explanation for why this regime has not come into effect is according to the Northern Territory Emergency Response Board because:

"The Board understands the complex legal and administrative issues particularly relating to flow of data between the governments, linking education benchmarking to income management and holding families responsible for teenage school

[3] Explanatory Memorandum, Social Security and Other Legislation Amendment (Welfare Payment Reform) Bill 2007 p.4

attendance, led the Rudd Government to develop a different approach to that formulated by the previous Government."[4]

However, both approaches intrinsically link income support payments to the requirement of school enrolment and attendance. Moreover, the two models are similar in substance with the only major difference being the consequence of non compliance. The flow of data between governments, and between schools and Centrelink, the holding of families responsible for teenage school attendance are features of both models.

Notwithstanding the acknowledged complex legal and administrative difficulties, no explanation has been forthcoming as to why the Government has elected instead to adopt a much riskier model of income suspension and cancellation.

The submission purports to measure the impact of the Bill on families from paragraph 36 onwards and implies that overall only a few families will be affected. No estimates are provided as to the number of people who are expected to be affected by the Bill. This is a serious flaw in the submission because there is no way to assess the potential impact in communities. We are justifiably concerned that the numbers are likely to be much higher than DEEWR predicts. This is because there are serious flaws in the safeguards that DEEWR asserts will be in place prior to the suspension or cancellation of payment (see our analysis below, Lack of adequate safeguards and protections).

DEEWR's submission also fails to acknowledge the detrimental impact that falling foul of this regime will have on families. Much is made of the fact that a person will be fully back paid if they comply within 13 weeks (see paragraph 49). However, suspension of a single fortnight's pay can be enough to cause dire consequences, including illness (for example, where essential medicines can not be bought) and homelessness. It should be noted that in some states falling into rental arrears by as little as fourteen days, can result in eviction, even from public housing.

Also, at paragraph 41 of its submission, DEEWR seeks to reassure the Inquiry, by stating that during a period of suspension under this Bill, Family Tax Benefit payments and Rent Assistance remains payable. It is said that "this provides families with continued access to financial resources". However Family Tax Benefit is not a primary income support payment. It is a payment which is made in addition to a person's wage and/or social security income support payment in recognition of the extra costs of raising children. Withdrawal of the primary income support payment for a family with two children aged 12 and 7 would leave a sum of just $241.08 per fortnight ($151.34 FTB Part A and $89.74 FTB Part B) to live on.

[4] Peter Yu, Marcia Ella Duncan and Bill Gray, "Northern Territory Emergency Response: Report of the NTER Review Board", October 2008 p.29

DEEWR has not taken into account the likely short and long term impacts of withdrawing a family's primary source of income support. Research by the former Department of Family and Community Services found that in one year period 45% of single parents had a diagnosed mental health condition.[5] The removal of significant amounts of income from families is likely to exacerbate this existing disadvantage. We are also concerned that it has real potential to escalate conflict and tension within families already under significant pressure. In the post Welfare to Work environment where parents are already doing it tough through reduced payment rates and increased activity test requirements, Government policies which are untested and untried should not be countenanced.

### 2.2 Lack of adequate safeguards and protections:

#### 2.2.1 Lack of specificity:

The DEEWR submission does not carefully define the type of parent behaviour that will be deemed compliant when it comes to the issue of school attendance. The following phrases are used interchangeably in the submission to describe how suspension could be avoided: "…they are doing their best" (paragraphs 15 and 37), "….engages with the school" (paragraph 16), and "… deliberately not complying" (paragraph 42). These phrases are not defined and clearly have different meanings.

Most importantly there is a dearth of detail to explain how Centrelink and school bodies are to determine whether a parent has "engaged" with a school or "done their best" or how the exercise of the discretion will be guided to minimise recipients or minority groups being treated unequally or against a standard which they can not meet.

At paragraph 47, DEEWR explains that "any excuses provided by a parent for non-compliance will be assessed by Centrelink prior to a suspension being imposed on the customer and their validity can be reconsidered at any point during suspension if the parent provides further information." It is a failing of DEEWR's submission that no detail is provided as to how 'special circumstances' will be dealt within the relevant legislative instrument. In the absence of this detail, we can only conclude from their statement at paragraph 47 that the onus will be placed on the parent to provide the reasonable excuse rather than a duty imposed on Centrelink to properly investigate a parent's circumstances. This approach will fail because it assumes that a parent will be able to adequately present their circumstances to Centrelink and fails to acknowledge that this is often not the case for a myriad of reasons including

[5] Butterworth, P. Estimating the prevalence of mental disorders among income support recipients: Approach, validity and findings, Department of Family and Community Services, Policy Research Paper Number 21, 2003.

fear or difficulty disclosing problems to Centrelink, distrust of government, lack of insight into personal circumstances and domestic violence.

DEEWR's lack of detail regarding how key concepts that underpin the regime will be defined and applied makes comprehensive analysis of the proposed arrangements impossible.

The NWRN would also point out the extreme nature of the "special circumstances provision" put forward at paragraph 48. If a natural disaster prevented a child from attending school, then truancy clearly is not involved. In such a case, the matter should never have reached the stage when there was even any consideration of suspending income support payments.

#### 2.2.2 Role of Centrelink social workers and other support/ case management services:

The DEEWR submission relies heavily on Centrelink social workers playing a crucial role in giving effect to the alleged 'protections' that underpin the model. However Centrelink's social workers are already overstretched – particularly in regional and remote areas. There is no mention in DEEWR's submission that there will be increased funding to employ additional social workers or that social workers with specific training and expertise in dealing with truancy issues will be recruited.

In any event, NWRN also has serious reservations with respect to the role proposed for Centrelink social workers in the administration of the proposed arrangements. For some time, NWRN has been apprehensive about the changing nature of the role of social workers within Centrelink (as have Centrelink social workers themselves). Most members of the public (and the overwhelming majority of Centrelink clients) assume that Centrelink social workers' primary role is to provide support in time of significant personal crisis. But these lines have become blurred as Centrelink social workers are increasingly being required to take on more punitive roles and decision making responsibilities, such as determining Crisis Payment and Unreasonable to Live at Home (ULTAH) claims. The consequences of negative determinations inevitably lead to Centrelink clients losing confidence, trust and faith in the social worker and are often left in crisis, with nowhere to turn for assistance.

The Bill carries with it the risk that the caring, supportive and nurturing role that could be expected of a social worker, will be undermined in the minds of the very individuals who are in need of their assistance and support. In our initial submission to the Inquiry, we pointed out that the changes proposed in the Bill were likely to undermine community and parent's confidence in forging and maintaining open, honest and trusting relationships with schools. There is also the real risk that if the proposals are implemented the generally positive relationship that vulnerable and at risk parents have with Centrelink social workers will be seriously undermined.

On several occasions (see for example, at paragraph 9), DEEWR refers to the interconnection between welfare conditionality and case management. However, this Bill seems to stand without such services. Also, in NWRN's experience, real problems emerge where parts of the Social Security system are dependent on the co-ordination of external services. In our initial submission, to the Inquiry we highlighted at sections 2.8 and 2.9 the difficulties faced by young people where there has been a breakdown in family relationships and it is no longer feasible for the young person to live at home. Currently, Centrelink rejects around one in three claims for Youth Allowance under the UTLAH provisions, which equates to around 7,500 rejections each year. Despite policies being in place, on rejection of a claim, very limited follow up occurs by Centrelink, to see how the young person is faring and whether they are linked to appropriate support services.

#### 2.2.3 Use of suspension powers:

At paragraph 12 of its submission, DEEWR states that "Centrelink currently uses payment suspensions when people fail to undertake requested actions, such as responding to requests for information. In most cases people comply within a few days and the payment suspension is lifted."

This infers that the process happens quickly. However this has not been our experience. Under the current compliance regime, Centrelink's National Participation Solutions Team was 'blocking' or 'suspending' payments in excess of eight weeks pending a decision as to whether an eight week non payment period should be imposed. In some cases, payments were 'suspended' up to 10 or 11 weeks, until the decision was made. This practice only ceased on it being exposed to the media and Centrelink finally conceding that it was unlawful. However, what must be understood is that the decision making process, is analogous to that proposed by this Bill, in that Centrelink will be required to determine whether there has been non compliance and then whether a reasonable excuse exists. Yet, the experience is that significant delays in suspensions being lifted occur within that decision making paradigm.

Also, NWRN members see unacceptable delays in payment suspensions being lifted in 'member of a couple cases'. In some cases, payments are suspended indefinitely. Centrelink's misuse of the suspension powers in these cases are often the subject of complaints to the Commonwealth Ombudsman.

## 3. The Bill: specific concerns

### 3.1 Schooling requirement child

The proposed arrangements will apply to a person who has a schooling requirement child.

It is proposed that 'schooling requirement' child will be defined as:

### 124B Schooling requirement child

*Schooling requirement child*

(1) For the purposes of this Act, a person (the ***first person***) is a ***schooling requirement child*** of another person at a particular time if:

(a) …….

(b) all of the following conditions are satisfied:

(i) that time occurs during a schooling requirement period;

(ii) under a family law order, or a registered parenting plan or parenting plan (within the meaning of the *Family Law Act 1975*), that is in force during the schooling requirement period, the first person is **supposed to live or spend time with the other person (our emphasis)**;

(iii) assuming the family law order, registered parenting plan or parenting plan were complied with during the schooling requirement period, the first person would have been in the other person's **care for at least 14% of the period (our emphasis)**.

As we highlighted in our initial submission, we are greatly concerned that parents will be at risk of losing their income support payments in circumstances where they could not be reasonably expected to have responsibility for ensuring that their children are attending school for example, because the child is not in their actual daily care or the parent has care of a child primarily on the weekend.

### 3.2 School enrolment and attendance – notices

Before the sanctions of payment suspension or cancellation can be imposed, the Bill requires that notice be given to the recipient (see proposed sections 124F and 124K), however it does not mandate the notice to be in writing.

In our view, the importance of written notice as a baseline requirement can not be underestimated. The postal system is generally more reliable than other forms of communication. Using the postal system results in a more accurate and reliable record of what information was provided than the alternative of 'file notes' by Centrelink officers, who unavoidability must interpret and paraphrase conversations. Such file notes are inherently vulnerable to the possibility of error and inaccuracy.

However we also agree with the joint submission by CAALAS and NAAJA where at page 10 they state that "written notices alone are not appropriate communication for people who do not have English as a first language and/or are not literate" and in these circumstances additional protections are required. In this regard, we endorse Recommendations 9 and 10 of their submission.

Whilst the provisions mandate what is to be included in the notice, it does not stipulate that the notice is void if the requirements have not been met. This may result in payment suspension in circumstances where the notice has not for example, detailed the consequence of non compliance or explained how to comply with the notice.

### 3.3 Failure to comply with requirements

#### 3.3.1 School enrolment

The proposed new 124G sets out the consequence of failing to comply with an enrolment notice. Under subsection 124G(1) where a person has failed to comply with the requirement to provide evidence about a child being enrolled at school then a person's payment will cease to be payable. The proposed subsection 124H(2) mandates the Secretary to suspend a person's payment on non compliance unless there is a reasonable excuse or special circumstances exist.

In our initial submission, we set out our concerns regarding the approach to leave fundamental concepts such as 'reasonable excuse' and 'special circumstances' to legislative instruments, which are not subject to Parliamentary scrutiny. We are also concerned that the use of 'must' rather than 'may' on alleged non compliance will increase the likelihood of payments being suspended. As previously stated, this decision making paradigm is analogous to the current compliance regime. Our experience of the current compliance regime is that in practice the focus is inevitably on whether the requirement has been met rather than a thorough consideration of whether there are grounds for not imposing the penalty. This tends to occur only after the original decision is made.

#### 3.3.2 School attendance

The proposed new subsection 124K sets out the circumstances where the school attendance provisions will apply to a person. These will apply where a person responsible for the operation of the school gives the Secretary written notice that the person is failing to take reasonable steps to ensure that their child attends school to the responsible person's satisfaction.

In NWRN's opinion, this proposed legislative approach is problematic because the provisions that could ultimately lead to a sanction are invoked by a third party, namely the school.

The grounds on which the school is to determine whether such a notice should be issued is not defined by the legislation. Also, it is unclear how Centrelink will determine whether the notice has been properly issued and if so, whether it has been complied with.

The proposed legislative provisions, mandating the suspension of payment are couched in similar terms to the school enrolment provisions. See our concerns which are outlined above. Additionally once suspended, section 124N provides that payments only become payable after the school provides the Secretary with written notice that the child is attending school or on reconsideration by the Secretary.

We are justifiably concerned that reliance on the school providing the notice will become the default position. Given that schools are already overstretched and income support matters are not their core business, there is a real risk that payments could remain suspended for long periods after compliance.

### 3.3 Suspension and cancellation provisions:

The proposed legislative provisions relating both to school enrolment and school attendance, empowers the Secretary to cancel a person's payment after 13 weeks. If a payment has been suspended for a total period of 13 weeks or more, the Bill requires that the Secretary either suspend or cancel their payment.

However, in the absence of any criteria to inform when a further suspension should apply as opposed to a decision taken to cancel the payment, we are concerned that cancellation will become the default position. This would be an unacceptable situation, given the dire consequences of cancellation.

Also, of concern is that the 13 weeks need not be a continuous period. Nor is the time period limited. In our opinion, such punitive provisions are not appropriate or necessary.

A further problem relates to a recipient's entitlement to arrears. Where a person has been suspended for a period of less than 13 weeks the decision that a person's payment is payable will take effect from the last date of non compliance. That is, the date of the most recent suspension decision. This will allow for arrears of payments back to that date.

However, where a person has been suspended for more than 13 weeks, whether this is a continuous period of 13 weeks or made up of a number of periods that are not necessarily continuous, arrears will only be payable from the date that the Secretary has reconsidered the decision or an earlier date if appropriate in the special circumstances of the case as determined in accordance with the schooling requirement determination. The removal of an automatic right to arrears, is not consistent with the purported aim of the Bill of encouraging school requirement and will deny already at risk families money to discharge essential expenses that have accumulated during the non payment period. Additionally of concern is that there will be discretion for any arrears payment to be made in installments rather than in one lump sum as occurs currently.

## 4. Conclusion:

There is no empirical evidence that increased school engagement can be achieved through removing the livelihood of parents. The DEEWR Submission to the Inquiry does not set out an evidence base for the proposed Bill. It is also of concern that DEEWR has suggested the purpose of this Bill is to provide them with an evidence base to support the use of these measures to increase school engagement. .

Despite the assurances that the withdrawal of income support payments will only occur as a last resort, this is not borne out by the legislative machinery of the proposed Bill.

For the reasons outlined in our submissions to the Inquiry, we strongly urge the Committee to recommend that the Bill is withdrawn.