

# **Administration of the Economic Security Strategy Payment**

**AN EXAMINATION OF THE IMPLEMENTATION,  
MONITORING AND REVIEW OF THE SCHEME**

**November 2009**

Report by the Commonwealth Ombudsman,  
Prof. John McMillan, under the *Ombudsman Act 1976*

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## Reports by the Ombudsman

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## EXECUTIVE SUMMARY

The purpose of this report is to highlight for all government agencies how the administration of payments which are developed and delivered within tight time frames, such as the Economic Security Strategy Payment (ESSP), might be improved. The report considers how the eligibility criteria and timing of payments should be communicated to the public, and how inappropriate outcomes might be anticipated, identified, reported and acted upon.

On 14 October 2008, the Government announced a \$10.4 billion ESSP. The purpose of the package is:

to do everything possible to keep our economy growing. To do everything possible to create new Australian jobs. To do everything possible to build new Australian homes. To do everything possible to help those in greatest need. To do everything possible to prepare for the future.<sup>1</sup>

This strategy includes a payment, described as:

a down payment to Australia's four million pensioners, carers and seniors—providing them with immediate financial help in the lead up to comprehensive reform of the pension system.<sup>2</sup>

Payments to families are 'not just to help families with the extra costs that they are incurring, but also importantly, to support growth in the economy'.<sup>3</sup>

The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) is responsible for the ESSP legislation and policy, while payments are delivered by Centrelink. The majority of payments were made in the fortnight commencing 8 December 2008. The Ministers for Families, Housing, Community Services and Indigenous Affairs, Veterans' Affairs, and Education, Employment and Workplace Relations are empowered under the ESSP legislation to effect an administrative scheme to address inappropriate outcomes of the legislation.

The scale of the ESSP is immense, and the time frame for the bulk of implementation short. During December 2008, payment was made to 7.7 million people. The scope of the payment is unusual, but it has much in common with bonuses announced in federal Budgets and payments made in response to natural disasters and other unforeseen circumstances. Common factors include:

- minimal preparation time for agencies involved in development of policy and service delivery mechanisms
- reliance on a 'test date' as a key factor in determining eligibility
- comprehensive information about the operation of the payment not being available immediately, but developing over time.

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<sup>1</sup> The Hon. Kevin Rudd MP, Prime Minister of Australia, Address to the National Press Club, Canberra, 15 October 2008.

<sup>2</sup> The Hon. Kevin Rudd MP, Prime Minister of Australia and the Hon. Wayne Swan MP, Treasurer, joint media release, *Economic Security Strategy*, 14 October 2008.

<sup>3</sup> Address to the National Press Club.

## **Commonwealth Ombudsman—Administration of the Economic Security Strategy Payment**

For these reasons, and to the extent that it is likely such payments will be put in place to address circumstances in the future, it is useful for agencies to consider the challenges such payments and schemes present, and how pitfalls might be avoided.

Between 25 November 2008 and 1 April 2009, the Ombudsman's office received 156 complaints about the ESSP. They were largely about eligibility for payment and the timing of payment delivery. This report discusses two issues arising from the investigation of those complaints:

- shortcomings in communication about eligibility, resulting in misunderstanding about whether or when complainants would receive the ESSP
- the need for administrative arrangements that support the consistent identification of, and decisions on, 'inappropriate outcomes'.

The issues are highlighted by case studies drawn from the complaints the Ombudsman's office received.

Both FaHCSIA and Centrelink have been given an opportunity to respond to a draft of this report. Agency responses are reflected in the body of the report.

## PART 1—THE LEGISLATIVE FRAMEWORK

1.1 On 14 October 2008, the Prime Minister announced the ESSP as part of a strategy to ‘strengthen the Australian economy in the face of the worst global financial crisis since the Great Depression’.<sup>4</sup> The payment was to provide pensioners, veterans and families with a bonus payment which they would be encouraged to spend rather than save, thereby stimulating the economy.<sup>5</sup>

1.2 The Social Security and Other Legislation Amendment (Economic Security Strategy) Bill 2008 was introduced into Parliament on 7 November 2008 and enacted on 1 December 2008. The qualification criteria for the ESSP are defined in Schedules 1, 2 and 3 of the *Social Security and Other Legislation Amendment (Economic Security Strategy) Act 2008* (ESSP Act), which amended, among other legislation, the *Social Security Act 1991* (Social Security Act) and the *A New Tax System (Family Assistance) Act 1999* (FA Act).

1.3 The ESSP is a lump sum, tax free payment paid to people holding an eligible concession card or receiving an eligible social security payment, veterans’ payment or family assistance payment (called a ‘trigger payment’) on 14 October 2008. Families with dependent children on that date are also eligible for a payment per child, and Carer Payment recipients a payment per care receiver. A full list of trigger payments, relevant cards and rates of payment is at Attachment A.

1.4 Schedule 4 of the ESSP Act enables an administrative scheme to be established where the statutory regime for the ESSP ‘does not necessarily produce an appropriate result’.<sup>6</sup>

1.5 FaHCSIA has legislative and policy responsibility for the payment. Centrelink is responsible for delivering the payments. The vast majority of payments were delivered between 8 and 19 December 2008. FaHCSIA has advised that some payments will continue to be made until 30 June 2011.

### On the pension or ‘receiving payment’?

1.6 According to the Explanatory Memorandum for the Social Security and Other Legislation Amendment (Economic Security Strategy) Bill 2008, ‘the intention is that [to be eligible for the ESSP] the person must have received an amount of the payment for the relevant instalment period that included a daily rate of payment in respect of 14 October 2008’.

1.7 The wording of the Explanatory Memorandum indicates a clear Government intention that only those pensioners who are eligible to receive some amount of pension on or for 14 October 2008 should receive the ESSP.

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<sup>4</sup> The Hon. Kevin Rudd MP, Prime Minister of Australia, media release, *Economic Security Strategy*, Parliament House, Canberra, 14 October 2008.

<sup>5</sup> The Hon. Kevin Rudd MP, Prime Minister of Australia, ‘Opening Remarks’, presented at the Corio Community Cabinet, Geelong, 7 December 2008.

<sup>6</sup> Explanatory Memorandum, Social Security and Other Legislation Amendment (Economic Security Strategy) Bill 2008, 7 November 2008.

## Changes in care, FTB, and ESSP

1.8 Families who claim their Family Tax Benefit as a lump sum through Centrelink or through Medicare at the end of the tax year are not eligible to receive an ESSP until their income for the 2008–09 tax year is assessed. In this report we refer to those people as ‘lump sum FTB’ claimants.

1.9 In situations where parents are separated, share the care of their children, and qualify for FTB, legislation provides that the FTB amount paid to each parent is split between them based on their individual percentages of care.<sup>7</sup> The ESSP legislation provides for apportionment of the ESSP in the same way.

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<sup>7</sup> A parent who has less than 35% care of the children is generally not eligible to receive any FTB and the full amount goes to the parent with the higher percentage.

## PART 2—THE INFORMATION CAMPAIGN

2.1 People who have contacted the Ombudsman's office about the ESSP have complained largely about their ineligibility for payment (112 complaints); or if eligible, about when they would be paid (35 complaints, of which 22 are from lump sum FTB recipients). Upon investigation, we have found that underpinning these issues have been:

- a lack of timely or accessible communication of the details about the payment, particularly for those who might have assumed they were eligible, but were not
- a delay in providing information about the timing of payments to FTB recipients.

2.2 There was extensive publicity about the ESSP. The information campaign included numerous media releases, interviews across a variety of media, brochures, website content and fact sheets, letters to recipients and training materials for Centrelink staff. A timeline of the release of relevant media releases, advertising and reference material is at Attachment B. Key elements of the information campaign included:

- the announcement of the ESSP by the Prime Minister in a joint media release with the Treasurer on 14 October 2008. A background briefing was held for journalists. The Prime Minister's media release indicated that the ESSP would be made available to 'four million pensioners, carers and seniors—providing them with immediate financial help'.<sup>8</sup> The ESSP would also 'provide immediate financial support to around 2 million Australian families'<sup>9</sup>
- additional media releases issued by the Prime Minister jointly with the Treasurer and the Minister for Families, Housing, Community Services and Indigenous Affairs on the ESSP in relation to pensioners, seniors and carers<sup>10</sup> and families<sup>11</sup>
- FaHCSIA's advertising campaign, including print and radio, from 30 November 2008 through December 2008
- a FaHCSIA brochure, which was sent out on request from 1 December 2008. FaHCSIA received 3,166 requests for the brochure
- FaHCSIA fact sheet outlining eligibility for the ESSP, which was published on its website on 25 November 2008
- letters from the Minister for Families, Housing, Community Services and Indigenous Affairs and the Minister for Human Services or the Minister for Education, Employment and Workplace Relations and the Minister for Human Services which were sent to 5.94 million people who would be receiving the

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<sup>8</sup> *Economic Security Strategy* media release.

<sup>9</sup> *ibid.*

<sup>10</sup> The Hon. Kevin Rudd MP, Prime Minister of Australia, the Hon. Wayne Swan MP, Treasurer and the Hon. Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, joint media release, *\$4.8 billion down payment to help Pensioners, Seniors and Carers*, 14 October 2008.

<sup>11</sup> The Hon. Kevin Rudd MP, Prime Minister of Australia, the Hon. Wayne Swan MP, Treasurer and the Hon. Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, joint media release, *Australian Families to receive \$3.9 billion in Rudd Government Support*, 14 October 2008.



payment, as well as their nominees, from 8 December 2008 to 7 January 2008

- families-specific information posted on the Family Assistance Office website on 21 October 2008
- information on Centrelink's website, which included, from 16 October 2009, links to the Prime Minister's media release on the Economic Security Strategy<sup>12</sup> and the Minister for Human Services media release on Centrelink's role;<sup>13</sup> further information posted on 23 October 2008; an ESSP fact sheet posted on 30 October 2008.

2.3 Some of the above pieces of information that are no longer currently publically available can be found in the list of online references at the end of this report and can be accessed via the Commonwealth Ombudsman website at [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

2.4 FaHCSIA has advised the Ombudsman that 'due to the extremely tight deadlines attached to the development of this campaign, FaHCSIA was unable to carry out developmental market research', instead relying on 'existing research with the target audience and concept testing results'.

2.5 Many of the 156 complaints to the Ombudsman's office have related to the complainants' failed expectation that they would be eligible or paid in December 2008. It appears that the tone, content, targeting and timeliness of the information campaign led to these erroneous assumptions. The main issues arising from elements of the information campaign are discussed below.

## Communication issues—ESSP ineligibility

2.6 Pensions are paid once a fortnight in arrears in respect of the days making up that fortnight. Many pensioners receive earnings from casual work and other sources that affect their rate of payment if they are over the limit specified by the relevant income test. They report their earnings, if any, to Centrelink on a fortnightly basis.

2.7 If a pensioner's earnings are consistently over the allowable limit and their payment rate is reduced to nil for a period of time, their payment will cancel. More commonly, earnings are sporadic and while a pensioner's rate may be reduced to nil or suspended for some fortnights, payment will resume when they satisfy the income test.

2.8 Under the varied rules applying to income received while on an age or disability support pension, pensioners can be current but unpayable for as little as a fortnight, or as long as two years, depending on their payment type.<sup>14</sup> However, regardless of the length of time they have received the pension, it is their status on 14 October 2008 which determines whether they are eligible to receive the ESSP. A

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<sup>12</sup> *Economic Security Strategy* media release.

<sup>13</sup> Senator the Hon. Joe Ludwig, Minister for Human Services (formerly), media release, *Centrelink working to deliver bonus payments to Australians*, 15 October 2008.

<sup>14</sup> Disability support pension (DSP) recipients can remain 'current' for a maximum of 12 weeks during which their income has reduced their DSP payment to nil. If the nil rate continues, DSP can be suspended due to excess income for up to two years, so long as the person remains otherwise qualified. If an age pensioner's income from earnings take their total income (including income from investments) over the threshold beyond which part payment can be made, payment will automatically suspend for a maximum of 13 weeks.

person who was unpayable, that is, not ‘in receipt of payment’ on that date is not eligible to receive the ESSP.

2.9 As described in paragraph 1.6, to have ‘received payment’ has a particular meaning under the ESSP Act. It is different to what might commonly be termed as being ‘on a payment’ or ‘on the pension’. The difficult distinction was not addressed by the information campaign for customers. Internal documents more clearly refer to people who ‘received an instalment’ of the pension for that period. The information published on the Centrelink website on 23 October 2009<sup>15</sup> (see list of online references) stated that:

Centrelink customers will receive the following additional payments between 8-19 December 2008.

**Australian pensioners, seniors and carers**

The Government will deliver a \$4.8 billion down payment to Australian pensioners, carers and seniors. The down payment for pensioners will be made available through an additional payment of \$1,400 to single pensioners and \$2,100 to pensioner couples which will benefit: [those receiving an eligible payment or concession card].

2.10 This concept of a ‘down payment for pensioners’ arguably reinforced the misapprehension by unpayable pensioners that they would receive the ESSP.

2.11 The ESSP fact sheet posted on the Centrelink website from 30 October 2008 gave more specific information about the eligibility criteria for the ESSP, but did not clarify the ineligibility of those people who were unpayable on the relevant fortnight (see list of online references) except to the extent that it referred to the need to have been ‘eligible to receive’ a trigger payment on 14 October 2008. From 1 December 2008, the fact sheet referred to ‘People who, on 14 October 2008, received one of the’ trigger payments.

2.12 A joint media release by the Treasurer and Minister for Families, Housing, Community Services and Indigenous Affairs on 12 December 2008 said ‘Australia’s four million pensioners, carers, seniors and veterans will receive a massive \$4.8 billion in immediate financial assistance. For the first time, these lump sum payments are being extended to include Disability Support pensioners’. It went on to say that ‘the payments would support lower and middle income families—the backbone of the economy—along with pensioners and carers whose budgets were stretched by the rising cost of living and the impact of the global financial crisis’<sup>16</sup>.

2.13 The ESSP information as a whole, and the advertising campaign in particular, created an expectation of payment that was not contradicted by direct communication with those, like Mr O in the case study that follows, who acted on the expectation to their detriment. No ministerial or other letters about the ESSP were sent to those who, while not cancelled from their trigger payments, did not receive a payment in that fortnight. The information campaign instead focused on those who would receive the ESSP.

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<sup>15</sup> The same wording was repeated when the online material was updated on 30 October 2008.

<sup>16</sup> The Hon. Wayne Swan MP, Treasurer, and the Hon. Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, joint media release, *Economic Security Strategy Payments Start Today*, 8 December 2009.

**Case study: Working with disability**

Mr O was current on DSP for the period including 14 October 2008. In that fortnight, he did some casual work as a relief teacher. As his earnings for that period were above the allowable limit for DSP, his payment was set to a nil rate in respect of a number of days, including 14 October 2008.

In December 2008, when the ESSP was paid to most eligible recipients, Mr O was advised that he would not be paid because he was not in receipt of a portion of DSP in respect of 14 October 2008. Mr O was aggrieved that he did not qualify as he understood from all the information about the ESSP in the media that those 'on a trigger payment' on 14 October 2008, as he was, would qualify, and he had budgeted on the basis of that expectation.

2.14 The Ombudsman's office accepts the view expressed by FaHCSIA in response to an earlier draft of this report that 'it is not common practice to provide information to customers that they are not eligible to receive a payment', and that 'in the case of the ESS payments, there were some who missed out for a variety of reasons (not on targeted payment, on nil rate, commenced payment after 14 October etc)'.

2.15 This office does not recommend that a mass communication campaign should attempt to address all possible misconceptions of those who are ineligible for payment for any reason. However, we believe that the ESSP communication campaign should have taken into consideration those pensioners and allowees who, while 'on the pension' or a trigger payment, are not eligible to receive the bonus because they did not receive payment within the legislative definition as discussed above, for 14 October 2008. This confusion, we believe, was foreseeable, and the group to whom it applied was substantial.

2.16 We recommend that for future payments of this kind consideration be given to identifying those significant groups of people who are likely to hold a mistaken belief that they are eligible for a payment or benefit. Genuine attempts to address such misunderstandings should be made as early as possible, either through direct or indirect communication, targeted on the identified group.

## **Communication issues—ESSP timing**

2.17 FTB can be paid to people in a number of different ways. Most commonly, it is paid as a fortnightly instalment that is based on an annual family income estimate. At the end of a given financial year, Centrelink reconciles this estimate with the person's actual family income. If a person's FTB entitlement—based on their actual income—is less than the amount they have received based on their estimated income, a debt will be raised for the amount of FTB to which they are not entitled for that year.

2.18 Some people lodge an FTB claim with Centrelink, but elect to receive no FTB payment until their actual income is known and their tax return complete. In this way, they avoid the chance of overpayment, and of a debt being raised against them. While they do not receive a payment throughout the year, depending on their estimated income, these people are 'eligible to receive FTB'.

2.19 A third option is to claim FTB as a lump sum through Centrelink at the end of the financial year. People who choose this option are not considered to be current Centrelink customers, but rather lump sum FTB claimants. Although receiving the payment in this way, particularly on the basis of receiving FTB in previous years, they may well identify themselves as 'FTB recipients'.

2.20 Centrelink's 30 October 2008 web posting advised that:

The Government will invest \$3.9 billion to provide **immediate** financial support to help around two million Australian families. The support will be delivered to families through an additional payment of \$1,000 for each eligible child in their care. [Emphasis added]

2.21 The 'Economic Security Strategy Payment for pensioners, seniors, carers and families' fact sheet published on Centrelink's website on the same date clearly explained that lump sum claimants would receive their ESSP when their claim for FTB was processed. According to the ESSP print advertisement run between 30 November and 19 December 2008, 'Families will receive a lump sum payment if, on 14 October 2008, they were entitled to Family Tax Benefit Part A'. This message, in its various forms, created confusion for many families.

2.22 The Ministerial letter described at 2.2 was largely standardised. It advised recipients how much they would be paid in relation to each eligibility criterion, child or person for whom they had caring responsibilities. It was not in the nature of a payment statement and it did not give a total amount to be paid or an exact date of payment. The letter gave only general advice about apportionment of the ESSP in shared care arrangements (see list of online references). It was not sent to lump sum FTB claimants.

2.23 People who spoke to a Centrelink or Family Assistance Office staff member were able to access information that made it clear when payment for lump sum FTB claimants would be made. It was also referred to in a limited number of ministerial communications. However, it is important to note that a number of key communications discouraged making contact, for example the Minister for Human Services, in his 15 October 2008 media release, said 'I'd like to remind customers they don't have to contact Centrelink to receive these one-off payments' and 'Centrelink is well versed in delivering one-off payments and expects all six million eligible Australians to receive their bonus as scheduled'.<sup>17</sup> The FaHCSIA advertisements placed in various media advised families 'You do not need to do anything to receive your payment'. In some media, this was followed by 'in most cases, it will be automatically paid to your bank account during the fortnight 8–19 December 2008'. Supplementing that message was advice in FaHCSIA's advertisement that 'if you do not receive your payment by 22 December 2008 and you think you may be eligible, call Centrelink' (see list of online references), and the inclusion in fact sheets, brochures and letters from ministers that those wanting further information should check the Centrelink website or call the normal '13' telephone number for their payment area.

2.24 FaHCSIA has advised the Ombudsman that the statement 'you do not need to do anything to receive your payment' applied to lump sum FTB claimants on the basis that having completed their tax returns for the 2008/09 year, any entitlements to FTB and ESSP would be paid automatically. Certainly many thousands of otherwise lump sum claimants understood the Prime Minister and Treasurers' message that 'Families who receive their lump sum at the end of the financial year will receive their additional payment when they make their claim. They

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<sup>17</sup> Senator the Hon. Joe Ludwig, (then Minister for Human Services), media release, *Centrelink working to deliver bonus payments to Australians*, 15 October 2008.

responded by lodging claims for fortnightly payments in order to receive their ESSP sooner.<sup>18</sup>

2.25 However, complainants to the Ombudsman's office did not understand that, as lump sum customers, they would not receive a payment until either they opted for fortnightly payments, or their tax return for the financial year had been processed. This led to situations such as Ms H's in the following case study.

**Case study: Stimulating the economy at Christmas**

Ms H has in the past claimed FTB through the Australian Taxation Office at the end of each financial year. Having heard through the general media that the ESSP was to be paid to FTB recipients, she expected to receive a lump sum payment in December 2008. In the expectation of this, she spent a considerable amount on Christmas presents in November 2008, planning to use the ESSP to pay bills arising in December 2008.

She learnt in early December 2008 that she would not receive an ESSP until she lodged her tax return at the end of the 2008/09 year. Ms H advised that she was unable to pay her bills around the Christmas period. She stated that had there been more advice about when lump sum FTB recipients would receive the ESSP, she would have made different financial decisions in the lead-up to Christmas.

Even if Ms H was in a position to estimate her annual income and lodge a claim to become a current FTB customer, significant processing delays caused by the number of people taking up this option would have meant it was highly unlikely that she would have received her payment by Christmas.

2.26 In summary, it is clear that lump sum FTB claimants had options about the timing of their payment. The first option was to wait until the end of the financial year, lodge their tax return, and have it assessed; the ESSP would then be paid if they were FTB eligible. The second option was to lodge a claim with Centrelink for FTB (as described in paragraph 2.17), and if they were eligible based on their income estimate, the ESSP would be paid as soon as their FTB claim was assessed.

## Communication issues—care arrangements and the ESSP

2.27 It seems that some lump sum FTB claimants did not appreciate the importance of choosing between these two options. Some of the information provided to the public accurately stated the position, but there were also mixed messages that appear to have given rise to some confusion.

2.28 The Ministerial letter described at 2.2 noted that payments were to be made to 'all Australians who were entitled to Family Tax Benefit Part A on 14 October 2008'. Nevertheless, in the following sentence, without reference to that test date, it said 'If you share the care of a child, the amount you receive will be based on your shared care percentage of Family Tax Benefit'.

2.29 Although many of the more detailed information products discussed how the ESSP was to be apportioned in shared care situations, FaHCSIA's print advertisement referred to 'families' receiving a lump sum payment. In fact, the member of the family in whose name FTB was paid on 14 October 2008 received the payment according to the proportion of FTB they received on that day. Mr A's case,

<sup>18</sup> FaHCSIA has advised the Ombudsman that 'the number of new FTB claims jumped from 8,000 in the week before the announcement to almost 13,000 the next week and remained in the 10–13,000 range throughout November and December 2008'. The influx created a backlog, which was cited by Centrelink to this office as a factor affecting their capacity to conduct non-ESSP related reviews for FTB customers.

*Getting paid for the kids v caring for the kids*, illustrates the confusion for those whose care arrangements changed between 14 October 2008 and the date of payment. Mr A's case is particularly challenging because the children were, in effect, in his care at all times, although in respect of 14 October 2008, the FTB was paid in his wife's name.

**Case study: *Getting paid for the kids v caring for the kids***

Mr and Ms A are married, but shortly after 14 October 2008 they separated. Their children stayed with Mr A. As he had full care of his children, he received the family's full entitlement of FTB.

However, in early December 2008 Mr A learned that he would not receive any ESSP in respect of the children because \$1,000 for each of the children had already been paid to Ms A, because the family's FTB had been paid in her name on 14 October 2008, as per the arrangement before they separated.

## Anticipating and avoiding communication issues

2.30 Centrelink has advised the Ombudsman that it has received some 6,840 appeals related to the ESSP, all of which have been referred directly to an Authorised Review Officer in order to reduce pressure on the customer service network. Centrelink has instigated a strategy involving telephoning customers who have appealed in order to reassure them that their appeal is being attended to as quickly as possible, and to provide an opportunity to give a comprehensive explanation of the eligibility requirements. Since the provision of this better explanation, approximately one quarter of customers have withdrawn their appeal—a result which illustrates the benefits to customer and agency of good communication. The number of appeals and the resource-intensive response also illustrates the effect of delays in effective communication.

2.31 It is challenging, but nonetheless essential, for government to give ready access to information to those people who are affected positively or negatively by a scheme or payment such as the ESSP. Because the positive aspects of the payment were so widely communicated, in the Ombudsman's view, it was incumbent on FaHCSIA in this instance to do more to inform those groups of people it might have predicted would conclude, wrongly, that they would receive a payment in December 2008. The confusion arising from the distinction between receiving a benefit, and having received an instalment of a benefit on the trigger date, could have been foreseen. Timely communication of that sort would have mitigated the losses of those who acted on their expectation to their disadvantage, and the associated costs to agencies in dealing with their complaints and unsuccessful reviews.

2.32 The Ombudsman acknowledges that communication in such schemes must avoid stimulating needless and resource intensive enquiry. However, the volume of complaints in relation to this payment suggests that efforts to clarify the predictable confusion about eligibility would have been justified, and may have averted effort later directed towards complaint handling and reviews.

## PART 3—ADMINISTRATIVE SCHEME

3.1 Use of the welfare and family tax benefit systems has enabled the Government to address a macroeconomic need quickly and relatively accurately, delivering payments to more than seven million Australians. However, as neither system was designed for this express purpose, there are limitations. Bonus schemes such as the ESSP rest on clear delineation of those who are eligible, how eligibility is to be determined, and when a payment will be made. It is foreseeable that some people will be disappointed by the lines that are drawn. It is possible, equally, that some who are not eligible will believe they should be eligible, and that their circumstances highlight a problem in the design of the payment. This is to be expected in a bonus scheme that promises to provide benefits to many millions of people, and that has been designed and implemented in a very short time frame. In summary, there can be unintended consequences and inappropriate outcomes.

3.2 Schedule 4 of the ESSP Act provides a ‘safety net’ to deal with unintended consequences and inappropriate outcomes. Under the Schedule a relevant minister ‘may, by legislative instrument, determine a scheme under which economic security strategy payments may be made to persons in particular circumstances’. An administrative scheme can be implemented if the relevant Minister considers that the existing legislative rules do ‘not produce appropriate results’. The scheme can deal with the circumstances in which payments are to be made, the amount of the payments, what a person has to do to get a payment, debt recovery, and administrative matters such as determination of entitlement and how and when payments will be made.<sup>19</sup>

3.3 The Ministers authorised to develop an administrative scheme under Schedule 4 are the Minister for Families, Housing, Community Services and Indigenous Affairs, the Minister for Veterans’ Affairs, and the Minister for Education, Employment and Workplace Relations. Those Ministers administer the legislation under which ESSP payments are made.<sup>20</sup>

3.4 According to the Explanatory Memorandum for the Social Security and Other Legislation Amendment (Economic Security Strategy) Bill 2008, ‘the primary economic security strategy payments provisions are intended to cover all the known situations in which payments should be made’ and

... a scheme would be made only to cover unusual and unforeseen situations that come within the spirit of the economic security strategy payment measures but are not strictly covered by the primary legislation. It would be impractical to include such situations in primary legislation.

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<sup>19</sup> Schedule 4 of the ESSP Act, 1(3).

<sup>20</sup> The Minister for Education, Employment and Workplace Relations has responsibility under the Social Security Act and the FA Act for Austudy, Mature Age Allowance, Newstart Allowance, Sickness Allowance, Mobility Allowance, Parenting Payment, Widow Allowance, Partner Allowance and Youth Allowance, child care benefit, child care tax rebate, child care services and registered carers. The Minister for Families, Housing, Community Services and Indigenous Affairs has responsibility for other elements of the Social Security Act, and for the A New Tax System (Family Assistance) Act. The Minister for Veterans’ Affairs has responsibility under the *Veterans’ Entitlements Act 1986* for service pensions, income support supplements, carer service pension, Veterans’ Affairs gold card, Veterans’ Children Education Scheme and the Military Rehabilitation and Compensation Act Education and Training Scheme.

3.5 The Memorandum notes ‘the very slight use made of similar scheme-enabling provisions in the past’<sup>21</sup> and that ‘any future use is unlikely and would be small in scale’.<sup>22</sup>

### Recognising ‘inappropriate outcomes’

3.6 Where there is legislative capacity to address ‘inappropriate outcomes’, as in Schedule 4, care needs to be taken to ensure that reliable evidence about outcomes is gathered to support that decision making. At the inception of the scheme or payment, consideration should be given to how and by whom that information will be collected so that, from the outset, feedback can be systematically recorded and analysed.

3.7 Complaints about the ESSP have provided information about possibly inappropriate outcomes experienced by an individual or class of individuals. Complaints to the Ombudsman’s office are one measure of the considerable dissatisfaction in the community with the ESSP rules. Dissatisfaction with the ESSP has also been brought to the attention of various politicians,<sup>23</sup> including the Prime Minister and the Minister for Families, Housing, Community Services and Indigenous Affairs, and to FaHCSIA. Centrelink received 2,592 complaints to its Customer Relations Unit by 26 February 2009. Other options for complaining or providing feedback to Centrelink include an access point that has been actively promoted during public affairs events and radio talkback (‘email Hank’), a ‘send a message to the CEO’ online facility, and ministerial correspondence.

3.8 While Centrelink and FaHCSIA have handled feedback on the ESSP as part of their normal complaint-handling procedures, there appears to have been little or no systematic analysis of complaints data.<sup>24</sup> Centrelink has not recorded the reasons for complaints about the ESSP, nor has it recorded against the ESSP any possible complaints received through ministerial correspondence, ‘email Hank’ or ‘send a message to the CEO’. Despite this, FaHCSIA has advised the Ombudsman that complaints have been monitored, and that it has liaised with Centrelink and provided information and advice the Minister for Families, Housing, Community Services and Indigenous Affairs about people who do not qualify for the ESSP, including a range of specific cases. Further, it has provided advice to the Minister for Families, Housing, Community Services and Indigenous Affairs about an option for an administrative scheme.

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<sup>21</sup> A similar administrative scheme was established in 2004 to address inappropriate outcomes relating to the one-off \$600 FTB bonus paid to families under the *Family Assistance Legislation Amendment (More Help for Families One-off Payments) Act 2004*. Under that Act, only FTB customers already assessed and current at 11 May 2004 were able to receive the bonus. Through the additional administrative scheme, 268,000 people who later established that they had been entitled to FTB A in respect of a period in the 2003/04 financial year (through the Australian Taxation Office in July 2004) were paid the bonus.

<sup>22</sup> Ibid.

<sup>23</sup> As noted in comments during parliamentary committee hearings, including Senate Standing Committees Considering Additional Estimates 2008-09; Standing Committee for Finance and Public Administration, 24 February 2009, pp 132–133 Standing Committee for Community Affairs, 26 February 2009, pp 12–15.

<sup>24</sup> As noted, by June 2009 Centrelink had received 6,840 requests for review of ESSP decisions. From Centrelink’s appeals data we can say that approximately 24% of requests for review have come from DSP recipients, 23% from FTB recipients, 13.5% from Age Pensioners, 15% from those on Youth and Students payments, and 10% from carers.



3.9 Appeals can also be a valuable source of information about inappropriate outcomes under legislation. Of the 6,840 requests made to Centrelink for review of ESSP decisions, 497 have subsequently been appealed to the Social Security Appeals Tribunal and 51 to the Administrative Appeals Tribunal.<sup>25</sup>

3.10 However, Centrelink has no formal register of complaints in relation to the ESSP, no systematic analysis of complaints received within or across channels and no assessment of their relevance to a potential administrative scheme. The Ombudsman has been provided with copies of advices provided to the Minister for Families, Housing, Community Services and Indigenous Affairs in support of the establishment of a scheme, but these highlight cases which have been brought directly to the Minister's or Prime Minister's attention via email, not through 'normal complaint handling'. This absence leaves any decision on an administrative scheme—whether to put one into effect or not—without a strong evidentiary base.

3.11 In its response to a draft of this report, Centrelink has advised the Ombudsman that it supports the recommendation that it improve collection and analysis of feedback and provide this to the relevant government departments to consider when deciding whether to implement an administrative scheme.

## Arguably inappropriate: individuals and groups

### *One of a class*

3.12 In FaHCSIA's view, Schedule 4 of the ESSP Act is a safety net provision to be used, for instance, to deal with situations arising from a particular trigger payment having been inadvertently omitted from the legislation. The department does not believe that the Schedule 4 option is intended to address outcomes in individual cases, other than when the individual represents a class of people in similar circumstances. Rather, those who would not be considered part of a 'class' would be more properly dealt with under act of grace provisions.

3.13 There is a sense of relative injustice in some of the complaints, because ESSP has been paid to others who complainants believe do not have a stronger claim to this particular benefit. For example, ESSP has been paid to some age pensioners who live permanently overseas,<sup>26</sup> to the estates of customers who died prior to 14 October 2008 but whose relatives were receiving a bereavement payment, and to recipients of FTB A in respect of a child who died up to 14 weeks prior to 14 October 2008. That is not to say that ESSP should not have been paid in those circumstances, but rather that the full spectrum of eligibility is relevant in considering if the results in some cases warrant consideration of an administrative scheme under Schedule 4.<sup>27</sup>

3.14 The bulk of complainants to this office have been from that class of people who were current on a pension or allowance but not payable on 14 October 2008. They included DSP recipients, age pensioners, and Youth Allowees. It is conceivable

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<sup>25</sup> Of the 349 cases decided at the time of writing (2 September 2009), only 13% were set aside or varied. This does not diminish the potential value of those cases in illustrating inappropriate outcomes.

<sup>26</sup> FaHCSIA advice to the Community Affairs Legislation Committee on 1 June 2009 was that nearly 80,000 ESSP recipients were overseas.

<sup>27</sup> In the same vein, where payments were made to those who were later found to have been ineligible, Centrelink staff were instructed that no debt was to be raised, except in the case of fraud or false information having been knowingly provided (ESSP Staff Reference Material, Call Centre Network, 24 February 2009).

that some people would have lost in the ESSP more than they had earned through employment. Neither FaHCSIA nor Centrelink are able to advise how many pensioners or allowees are in this position. Given the Budget emphasis on supporting pensioners to participate in the paid workforce, their numbers may be significant.

3.15 Payments under the ESSP scheme are largely complete, but not entirely so. Because of the operation of FTB legislation, some payments will still be made up until 2011. The scheme is still, therefore, in operation. In that context, the Ombudsman believes it is not too late for the Ministers to consider, on their policy departments' advice, whether there are inappropriate outcomes that should be addressed by an administrative scheme under Schedule 4 of the ESSP Act.

### **Action in individual cases**

3.16 Centrelink instructions to staff about ESSP note that a claim under the Scheme for Compensation for Detriment Caused by Defective Administration Scheme (CDDA) may be considered where a customer has incurred expenses as a result of incorrect advice (such as bank or cancellation fees). A CDDA claim is not to be used to substitute for an ESSP payment. The instructions do not refer to the possibility of act of grace claims, which FaHCSIA has identified as a more appropriate mechanism for dealing with anomalous outcomes in individual cases.

3.17 According to the Department of Finance and Deregulation (Finance) Circular on Discretionary Compensatory Mechanisms, 'the act of grace powers under section 33 of the FMA Act [*Financial Management and Accountability Act 1997*] allow the Finance Minister and his or her delegates to authorise one-off and periodic payments to individuals'<sup>28</sup> and may be appropriate where losses have occurred as a direct result of 'the application of Commonwealth legislation, where the application has had an unintended, inequitable or anomalous effect on the claimant in his or her particular circumstances (including in cases where the agency has acted correctly in administering the legislation involved)'.<sup>29</sup> The act of grace power is generally used as a last resort<sup>30</sup> and its use is not preferred over a sound administrative scheme.

3.18 Act of grace claims are usually investigated in liaison with the relevant agency before a decision is made by Finance.<sup>31</sup> Finance has advised the Ombudsman that it has received seven claims in relation to the ESSP; six originating from Centrelink and one from an individual. Of the six from Centrelink, five were for people receiving an ongoing act of grace payment equivalent to a pension. They have now been paid. The sixth claim is still under consideration. It relates to a DSP recipient who appears to have been continuously entitled to receive the pension for more than seven years prior to 14 October 2008, except for a three-day period that included 14 October 2008. The final, undetermined individual claim concerns payment in relation to a foster child.

3.19 The case study *Remanded in custody* illustrates further how people in a rare or unique combination of circumstances can experience anomalous outcomes under the ESSP.

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<sup>28</sup> Department of Finance and Deregulation, Finance Circular 2006/05, paragraph 13.

<sup>29</sup> Ibid. Attachment B paragraph 21.

<sup>30</sup> Ibid. Attachment B paragraph 22.

<sup>31</sup> Ibid. Attachment B paragraph 10.

**Case Study: Remanded in custody**

Mr R was remanded in custody from 6 February 2008 to 28 October 2008. During that time his DSP was suspended, as required by social security law. On 28 October 2008 Mr R was acquitted of all charges and, upon release, his DSP was restored.

Mr R did not qualify for the ESSP because he did not receive an instalment of DSP for the fortnight including 14 October 2008. Mr R complained to the Ombudsman's office that, as he was acquitted, this outcome was unfair.

3.20 The Social Security Act is clear that people on remand are not eligible to receive social security payments. Neither are they eligible to receive back payments if acquitted. This is a policy which is intuitively sensible when need is considered. However, the ESSP is not 'need based'.

3.21 Another area of difficulty that an administrative scheme or an individual-based compensatory mechanism could address concerns families affected by the 'one date' determinative mechanism. In some families, a parent might have had care of FTB children for all but a short period that covered 14 October 2008, while in some other families a parent might never have had care of the children except during the eligibility period. It can be difficult to determine where an individual's circumstances do, or do not, indicate a class of similarly affected people. We see in the case study *Getting paid for the kids v caring for the kids* that a parent who had his children before, during and after 14 October 2008 did not get the ESSP because, on the key date, the family's FTB was paid to his former partner. The Ombudsman does not have the means to determine whether this case is unusual or unique and apparently nor do FaHCSIA or Centrelink.

3.22 It is for government to decide whether the examples given in this report constitute inappropriate outcomes, and if so, whether an administrative scheme or some other action is warranted to deal with them. It is in the nature of all entitlement schemes that the criteria for eligibility will benefit some rather than others, and that redefining the boundaries may benefit some, but continue to or newly disadvantage others. However, given that Schedule 4 has been included in the ESSP scheme as a way of addressing anomalies and inappropriate results, it is important that the administration of the scheme is attuned to that option. There should be a means of gathering, analysing and advising on the issues addressed in complaints and elsewhere. Such information should inform the development of advice to ministers on the administrative scheme option. In this case, all the Ministers who have the power under the ESSP legislation to effect a scheme should have received the advice. On the information available to the Ombudsman's office, this did not occur to the extent that it could have in relation to the ESSP scheme.

## PART 4—KEY FINDINGS, RECOMMENDATION AND AGENCY RESPONSE

4.1 This report has been prepared in response to complaints received by the Ombudsman's office, following the measures implemented by the Government after October 2008 to make an Economic Security Strategy Payment to more than seven million Australians.

4.2 Some of the complaints received by the Ombudsman's office have come from people who mistakenly believed they would qualify for a payment but in fact do not qualify. Other complaints have come from people querying the fairness of the criteria for deciding who qualifies for a payment.

4.3 The investigation of complaints by the Ombudsman's office has identified shortcomings in the communication about eligibility. This has resulted in misunderstanding by some claimants about whether and when they would receive the ESSP. The Ombudsman's office has reached the opinion that more thought could have been given to the option of using a mechanism in the ESSP Act for a legislative instrument to be made to determine a scheme that would produce a more 'appropriate result' for unsuccessful claimants.

4.4 The Ombudsman's office acknowledges that the scale of the ESSP payment scheme is immense and that there was a short time frame for implementation. However, in the Ombudsman's view there are lessons arising from this investigation that can benefit all agencies faced with the similar pressure to develop a complex and extensive scheme that will benefit some but not others. In particular, four lessons can be drawn from this report of which all agencies should take note when developing or administering a scheme similar to the ESSP scheme. Agencies should ensure that:

- information is available to members of the public about payment eligibility that is sufficiently accessible, clear, and targeted to minimise any misunderstandings regarding eligibility
- where there is a class of people who can be anticipated to misinterpret their eligibility for a payment or benefit, specific and targeted information should be made available to those people to minimise the impact of that misapprehension
- deliberate consideration is given to the inclusion and use of legislative provisions (such as the ESSP's Schedule 4) to provide a mechanism to efficiently address inappropriate outcomes
- complaint and other feedback data is systematically gathered, recorded and analysed in order to support decision making in relation to administrative schemes.

4.5 The Ombudsman makes one recommendation applying to FaHCSIA in relation to the ESSP.

***Further investigation/action***

**Recommendation**

The Ombudsman recommends that FaHCSIA:

- conduct a rigorous analysis of complaint data in response to the findings in this report
- bring to the relevant Ministers' attention the Ombudsman's view that insufficient consideration and advice have been given to the option of putting an administrative scheme into effect under Schedule 4 of the ESSP Act.

## ATTACHMENT A

### Payments and cards that attract ESSP and associated rates

- Age pension
- disability support pension (DSP)
- wife pension
- widow B pension
- service pensions
- income support supplement
- carer payment
- partner allowance
- widow allowance
- bereavement allowance
- parenting payment (if age pension age)
- special benefit (if age pension age)
- Austudy payment (if age pension age)
- ABSTUDY (if age pension age and receiving a living allowance)
- Commonwealth seniors health card
- Veterans' Affairs gold card (if also eligible for seniors' concession allowance)

People are also eligible for an ESSP where they:

- received carer allowance on the relevant date (although they may not have claimed it until after that date but claimed subsequently and had payment backdated)
- received family tax benefit part A (FTB)
- had a dependent child who attracted or received an amount of:
- youth allowance
- ABSTUDY living allowance, or
- an education allowance under the Veterans' Children Education Scheme or the Military Rehabilitation and Compensation Act Education and Training Scheme on the relevant date.

### ***Rates of payment***

Legislated rates of ESSP:

- \$1,400 for single people, and \$1,050 for members of couples
- \$1,000 for each person cared for to those eligible for Carer Allowance
- \$1,000 per each Family Tax Benefit (FTB) child for FTB A recipients (with some provision for pro rating where care was shared)
- \$1,000 for each dependent children receiving Youth Allowance, ABSTUDY living allowance, or an education allowance under the Veterans' Children Education Scheme or the Military Rehabilitation and Compensation Act Education and Training Scheme.

## ATTACHMENT B

### Timeline for release of information products for ESSP

<b>Timeline for information and announcements in relation to the ESSP</b>	
<b>14 October 2008</b>	<p>Prime Minister's media release announces the Economic Security Strategy. One component is the Economic Security Strategy Payment (ESSP).</p> <p>Minister for Families, Housing, Community Services and Indigenous Affairs issues media release explaining the treatment of lump sum claimants.</p>
<b>18 October 2008</b>	<p>FaHCSIA: Wide media coverage, including opinion piece by the Minister.</p>
<b>21 October 2008</b>	<p>Information on the ESSP is posted on the Family Assistance Website, including information on treatment of lump sum and shared care customers.</p>
<b>23 October 2008</b>	<p>Centrelink publishes ESSP information on its website. The information does not explain that people only qualify for ESSP if they were eligible to receive a trigger payment on 14 October 2008. It does not explain when people will receive ESSP if they claim FTB as a lump sum at the end of the tax year. It does provide links to the Prime Minister's media release on the Economic Security Strategy and the Prime Minister's website and to the Minister for Human Services' media release on Centrelink's role in delivering the payments.</p>
<b>30 October 2008</b>	<p>Centrelink updates the information on its website, which includes a link to an ESSP fact sheet. The fact sheet states that in order for people to qualify for the ESSP, they must have been 'eligible to receive' a trigger payment on 14 October 2008'.</p> <p>The fact sheet also explains that those people who generally claim a lump sum payment at the end of the tax year will receive their ESSP at that time.</p>
<b>11 November 2008</b>	<p>Centrelink publishes online a Q&amp;A document, which explains that people need to be eligible to receive a trigger payment on 14 October 2008 in order to qualify for ESSP. It explains also when those people who claim FTB as a lump sum through Medicare or Centrelink will receive the ESSP.</p>
<b>18 November 2008</b>	<p>Centrelink's online Q&amp;A document is updated. It uses the wording 'one-off payment' rather than "Economic Security Strategy payment'.</p>
<b>25 November 2008</b>	<p>FaHCSIA publishes online two Q&amp;A fact sheets. One is directed to pensioners, carers and veterans; the other is directed to families. The first explains the qualification in terms of whether a person received an eligible pension or allowance or held an eligible card on 14 October 2008. It is very similar to the Centrelink fact sheet. The second explains that lump sum FTB lodgers will not be paid the ESSP in December 2008.</p>
<b>28 November 2008</b>	<p>Centrelink's online Q&amp;A document is updated to include a paragraph on appeal rights.</p>

Commonwealth Ombudsman—Administration of the Economic Security Strategy Payment

<b>30 November 2008</b>	FaHCSIA runs a print advertisement for ESSP in major newspapers. The ad is run frequently until 21 December 2008. It does not mention when lump sum FTB claimants will receive their payment.
<b>30 November 2008</b>	FaHCSIA runs a radio advertisement on a number of stations nationwide. It does not mention any qualification criteria for ESSP and states that in most cases it will automatically be paid into accounts. The advertisement refers to 'eligible families, pensioners, people with a disability, carers, veterans and Commonwealth Seniors Health Card holders'. It refers people to a 1800 phone number to request a brochure or to the Australia.gov.au website.
<b>1 December 2008</b>	The Centrelink fact sheet is updated. It states that in order for people to qualify for the ESSP, they must have 'received one of the following payments [trigger payment]' on 14 October 2008. It emphasises that 'you do not need to do anything to receive your lump sum payment'.
<b>1 December 2008</b>	Centrelink's online Q&A document is updated. It explains that the ESSP payment should coincide with normal pension payday. A link to the ESSP online fact sheet is added.
<b>1 December 2008</b>	FaHCSIA produces a brochure that is available through a 1800 telephone number. The brochure states that people who qualify for ESSP are 'people who, on 14 October 2008, received one of the following [trigger] payments'. It emphasises that 'you do not need to do anything to receive your lump-sum payment'. It explains that lump-sum lodging FTB customers will receive ESSP when they lodge through Centrelink or Medicare.
<b>8 December 2008</b>	<p>The Minister for Families, Housing, Community Services and Indigenous Affairs and Treasurer issue a joint media release advising that payments commence from this date.</p> <p>The media release states that 'Australia's 4 million pensioners, carers, seniors and veterans will receive a massive \$4.9 billion in immediate financial assistance'. It does not specify that pensioners on a nil rate for 14 October 2008 will not receive ESSP.</p> <p>It states also that 'From today, 2 million families eligible for FTB A, 3.9 million children will begin receiving lump sum payments'. It does not clarify that those people who receive FTB through Centrelink as a lump sum at the end of the tax year will not receive ESSP in December 2008.</p>
<b>15 December 2008</b>	FaHCSIA's online fact sheet is updated on advice from Centrelink to include some questions and answers about whether the payments could be used for debt recovery.
<b>19 December 2008</b>	A Minister for Human Services media release states that Centrelink has completed delivery of the bulk ESSPs. It states that anyone who believes they are entitled to an [ESSP], but hasn't received one, should contact Centrelink.



## LIST OF ONLINE REFERENCES

The following documents can be accessed electronically via the Commonwealth Ombudsman website ([www.ombudsman.gov.au](http://www.ombudsman.gov.au)).

1. FaHCSIA's advertising campaign copy, including print and radio, from 30 November 2008 through December 2008.
2. FaHCSIA's ESSP information brochure.
3. FaHCSIA's online fact sheet outlining eligibility for the ESSP published on its website on 25 November 2008.
4. Letters from both the Hon. Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs and Senator the Hon. Joe Ludwig, Special Minister of State (formerly the Minister for Human Services) or the Hon. Julia Gillard MP, Minister for Education, Employment and Workplace Relations and Senator the Hon. Joe Ludwig, Special Minister of State (formerly the Minister for Human Services), which were sent to people who would be receiving the payment, as well as their nominees, from 8 December 2008 to 7 January 2008.
5. Information published on the Centrelink website on 23 October 2009.
6. ESSP fact sheet posted on the Centrelink website on 30 October 2008.

## ACRONYMS AND ABBREVIATIONS

AP	Age Pension
ATO	Australian Taxation Office
CDDA	Scheme for Compensation for Detriment Caused by Defective Administration Scheme
DEEWR	Department of Employment and Workplace Relations
DHS	Department of Human Services
DSP	Disability Support Pension
ESS	Economic Stimulus Strategy
ESSP	Economic Security Strategy Payment
ESSP Act	<i>Social Security and Other Legislation Amendment (Economic Security Strategy) Act 2008</i>
Explanatory Memorandum	Explanatory Memorandum for the Social Security and Other Legislation Amendment (Economic Security Strategy) Bill 2008
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
FTB	Family Tax Benefit