



**Submission by the
Commonwealth Ombudsman**

THE PENSION REVIEW

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INTRODUCTION AND SUMMARY

The Australian Government has invited submissions for its investigation into measures to strengthen the financial security of seniors, carers and people with disability as part of its broader inquiry into Australia's Future Tax System. The comments and observations set out in this submission involve thematic issues about the disability support pension (DSP) and carer payment (CP) as identified from the complaints the Ombudsman's office has received.

Some of the DSP thematic issues include:

- administrative issues that reduce the likelihood of the grant of the DSP to people who may be suffering from acute or terminal illnesses
- a potential structural gap in the current social security system that prevents sufferers of acute illness from readily accessing a greater level of financial and practical support.

Some of the CP thematic issues include:

- the number and frequency of reviews conducted by Centrelink on both carers and care receivers to ensure continuing entitlement to CP and/or carer allowance (CA)
- the difficulty in transitioning CP (child) to CP (adult) when the care receiver turns 16 years, but the level of care he or she requires remains unchanged.

BACKGROUND

The office of Commonwealth Ombudsman is established by the *Ombudsman Act 1976* to investigate administrative actions by Commonwealth agencies. The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government agencies by:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- developing policies and principles for accountability, and
- reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

The Ombudsman's office received about 40,000 approaches and complaints in 2007-08. As well as cases generated by complaints, the Ombudsman's office conducts investigations on an 'own motion' basis into wider systemic issues in public administration. The office has extensive investigation powers, but prefers to investigate with less formality and greater efficiency where possible.

Given the nature of the Ombudsman's role, the comments and observations in this submission relate to the issues the office has identified through the complaints it has received. These observations might usefully inform the Review's deliberative processes, particularly with regard to the appropriate levels of income support and allowances, and the structure and payment of concession and other entitlements that would improve the financial circumstances and security of recipients.

RESPONSE TO TERMS OF REFERENCE

Disability support pension issues and acute illnesses

In recent years the Ombudsman's office has received complaints from people experiencing acute illness who have complained that the current social security system does not provide them with adequate support, either financially or administratively. Our investigation of these matters has identified two main issues.

The first issue concerns qualification and grant requirements that reduce the likelihood of the grant of the disability support pension (DSP) to people who may be suffering from a terminal illness. The second issue deals with the consequences in terms of the levels of financial and practical support available under DSP as compared to alternative forms of support.

Qualification and grant issues

In recent years, and particularly since the introduction of the Welfare to Work reforms in July 2006, the office has received many complaints from people suffering serious or acute illness (such as advanced or aggressive cancers) and who have been refused DSP.

In many cases these people were either undergoing aggressive treatment or recovering from the side effects of previous treatment(s) and as a result, were unable to work. They were also unable to satisfy the qualifying criteria for the grant of DSP that their condition was 'permanent'. The term 'permanent' is defined in Schedule 1B of the *Social Security Act 1991* for the purposes of DSP qualification as a medical condition that is formally diagnosed, fully treated and stabilised, and expected to continue for more than two years.

The majority of these people were granted an alternative payment to DSP, such as newstart allowance (NSA), youth allowance (YA) or sickness allowance (SA). However, there are arguably some structural issues relating to the definition of a condition as permanent.

In some instances this resulted in people being subject to onerous activity or reporting requirements during a time that was already extremely challenging for the individual and their families. The aggressive medical treatment their condition required, or its long-term effects, made it difficult for them to comply with the reporting requirements for those payments. DSP imposes fewer ongoing requirements than NSA, YA or SA. For example:

- DSP customers are generally only subject to medical review every two years whereas customers who qualify for NSA, YA or SA on the basis of temporary incapacity are usually required to lodge a new medical certificate at least every 13 weeks.
- DSP customers are automatically exempted from any activity testing requirements. However, NSA, YA or SA customers who are unable to work for fifteen hours or more per week due to their medical condition are not granted an exemption from activity testing if they are assessed as being able to participate in programs such as the 'Personal Support Program', 'Job Placement, Employment and Training' or the Job Network.
 - They may also be required to attend a job capacity assessment if it is determined that they could benefit from, and be able to participate in such a program.
- DSP customers do not have regular reporting requirements, while some incapacitated NSA, SA and YA customers may still be expected to lodge continuation forms (albeit less frequently than those with activity test requirements).

We are aware that the DSP qualification criteria were deliberately set to restrict access to DSP payments by customers who are able to work, and would be better off doing so. The strictness of the criteria and the accompanying rigidity with which they are applied has, in our view, meant that vulnerable and disadvantaged members of the Australian community have been unable to access support that they need at a traumatic time in their lives.

Some relatively clear examples of people who struggle with regular reporting requirements include those who:

- have suffered a stroke
- have suffered a serious heart attack
- are suffering organ failure or recovering from an organ transplant
- are recovering from brain injury
- are undergoing, or recovering from aggressive cancer treatments.

For many of these people their doctor (and, in turn, Centrelink) cannot readily be satisfied that there will be no significant improvement in their condition in the following 24 months. The doctor will, however, generally be able to provide an estimate of the minimum period during which the patient will be completely unable to participate in work. The lack of certainty about the 'permanence' of the claimant's condition disqualifies them for DSP under the current criteria. The person may nevertheless remain too ill to satisfy the reporting (or other) requirements accompanying NSA, YA or SA, even if the requirements are reduced in recognition of their condition.

Levels of financial and practical support

DSP differs from other income support payments such as NSA, SA and YA in a number of ways that may be of particular importance to a person suffering from an acute illness. The financial advantages of DSP include:

- DSP rates are generally higher than those payable to SA, NSA or YA customers. For example, from 20 September 2008 the basic rate of DSP for a single customer over the age of 21 without children was \$562.10 per fortnight. By contrast, the basic rate for the same customer on NSA or SA was \$449.30 per fortnight.
- DSP attracts the more generous income and assets tests that apply to pensions.
- DSP claims are not subject to a liquid assets waiting period. On the other hand, customers claiming NSA, SA or YA may have to wait for up to 13 weeks before being paid if they have liquid assets (such as savings) of more than \$2,500 for a single person.

Complaints to the Ombudsman's office suggest that, for a customer suffering from an acute illness, DSP provides a greater sense of financial stability and security. It also permits a recipient to focus on dealing with the physical demands of attending treatment and its side effects, as well as providing the recipient with an improved capacity to handle the emotional impact their illness may have on their and their family's well-being.

A possible solution

It is commonly accepted that people experiencing acute illness, even if not terminally ill, will require extra support – including financial assistance – to improve their well-being. Prevailing community standards would seem to suggest that this support and assistance should be provided to the extent reasonably possible. Recipients of NSA, SA and YA benefits should not be prevented from focussing on their treatment and recovery. Legal and policy settings that necessitate their ongoing compliance with activity testing or reporting requirements appear, in the context of their condition, to be onerous and may jeopardise their recovery.

There may be some merit in considering a new social security payment that would provide similar rates and concessions to DSP but have a shorter medical review cycle. This would provide those customers with the increased financial assistance they need to meet medical and other expenses, while limiting the period during which they would be exempt from the activity or reporting requirements associated with NSA, YA and SA.

Like DSP, any new payment would need to be subject to stringent qualification criteria to ensure it is available only to those people whose condition warrants increased assistance and reduced activity and reporting requirements. An appropriate measure might be to enumerate a range of conditions and stages of illness that would automatically qualify a claimant for the new payment. A precedent of this kind exists with carer payment (child).

Such measures would ensure that strict qualification criteria could be retained, preserving the integrity of the income support system, while also ensuring that those

in need of short to medium term assistance are able to access appropriate support during the period they cannot work.

Carers' issues

In July 2008 the Ombudsman's office provided a submission to the Standing Committee on Family, Community, Housing and Youth for its inquiry into Better Support for Carers. As the Pension Review is concerned, at least in part, with carers and the carer payment (CP), it is appropriate to reiterate some of the matters touched upon in that submission.

The complaints we receive from carers usually relate directly to their carer roles, and invariably involve the income support payments they receive from Centrelink. The issues consistently raised with this office, and which are relevant to the Pension Review terms of reference include the number and frequency of reviews conducted by Centrelink on both carers and care receivers to ensure continuing entitlement to CP and/or carer allowance (CA). A second theme goes to the difficulty in transitioning CP (child) to CP (adult) when the care receiver turns 16 years, but the level of care he or she requires remains unchanged. These themes are expanded upon below.

Number and frequency of reviews

Centrelink conducts reviews on all its customers in receipt of any income support payment or pension to ensure their continuing entitlement. Often these reviews involve examination of income and assets, or living arrangements. In order for a carer to continue receiving CP, a recipient must satisfy a number of requirements including that:

- the care receiver must be sufficiently disabled in order to warrant constant care and attention
- there must be verified circumstances in which the carer is providing fulltime care – generally, the carer must be able to verify that he or she is living with the care receiver.

In conjunction with these requirements, often the care receiver is on an income support payment such as DSP and is separately required to undertake entitlement reviews. Often the carer is a nominee for the care receiver and must organise and participate in these reviews. As a result, carers may have to undertake biannual carer circumstance, care receiver health professional assessment and DSP medical reviews for the care receiver, as well as an annual mobility allowance review for the care receiver.

The frequency of these reviews can be excessive. For example, where a person loses qualification for CP for a time due to their partner's income and subsequently regains it, the person is required to participate in some of these reviews again, even if they may have done so recently. This would appear unnecessary, as Centrelink would already have current relevant information about their specific circumstances.

Transitioning from CP (child) to CP (adult)

There are currently two categories of CP. Those caring for a person less than 16 years of age may receive the CP (child) benefit, while those caring for a person 16 years or older receive the CP (adult) benefit. Different medical qualification criteria apply to each. This difference has led to complaints about the process of transferring between CP (child) and CP (adult), which can in some instances result in the carer losing qualification for CP. Clearly this can have an adverse impact on well-being and levels of income support and financial security.

The medical qualification criteria for CP (child) are more generous than for CP (adult). As a result, carers can cease to be qualified for CP when the care receiver reaches 16 years of age. A typical example occurs where a parent is the carer for a child who has had an illness since birth. When the child turns 16 years the parent's CP may be cancelled under the CP (adult) criteria if the care receiver no longer requires the same level of care and attention.

Such outcomes occur notwithstanding that in reality the carer is not providing any less care than before. The only material change is that the care receiver is now a day older. While we appreciate that numerous laws and policies are premised upon specific age-based criteria, in some instances the effect of these settings can seem arbitrary and unjust. This is particularly the case if there is no discretion for a decision-maker to take into account factors in addition to age. In the case of carers, it seems that the focus on age has come at the cost of a considered appreciation of the level of care that the receiver in fact requires.

We understand that carers play a vital role in sustaining Australia's current system of community-based-person-centred care. However, as fulltime carers are primarily supported financially by the social security system, it is important that that the system has settings that do not cause unnecessary disadvantage. Appropriate levels of support need to be provided to carers to ensure that they continue to be able to provide adequate care and assistance.

Other Issues

There are other issues, based on observations from complaints we received, which are also worth noting. Even though the issues raised in these complaints were generally not investigated, because of our awareness of existing policies, they are still worthy of consideration in relation to the broader review of the pension program.

DSP – Mental Illness

We have noted high levels of undiagnosed mental illness, often with no self awareness, among people on NSA payments. Such people are often unable to comply with their activity agreements; nor are they readily able to acquire sustainable work without high levels of support. The undiagnosed, untreated illness excludes such people from DSP. They typically also have difficult relationships both with their Job Network Provider and Centrelink, and absorb a high level of administrative resources trying to assist them with receiving any income support payment.

Links with Tax System – Complexity issue

DSP is not taxable to pensioners who have not reached age pension age. When they reach pension age their pension becomes taxable regardless of whether they

transfer to AP or remain on DSP. It can be argued that when they reach AP age, there are a number of tax concessions for retirees that come into effect.

However, the taxation of other payments which are often linked to DSP, such as CP or wife pension (WP), depend upon the taxation rules that apply to the payment of the person whom they care for. For example, if the care receiver is of AP age, then the CP or WP is taxable. However, if the care receiver is on DSP (non-taxable) then the CP or WP is also non taxable – regardless of the age of the care provider.

Maximum rate pensioners more disadvantaged

Generally maximum rate age pensioners do not benefit from the tax concessions as they generally have little or no savings and consequently do not pay tax.

Similarly maximum rate pensioners (AP, DSP & CP) do not benefit from the pension income test withdrawal rates, which have been changing over past years to benefit pensioners who have other sources of income. It is now the case that a married couple can have an income of approximately \$66,000 per year before pension is no longer payable (the cut off point for a single person is \$39,494).

Non-homeowners disadvantaged

From an asset testing point of view, homeowners are advantaged over non-homeowners because the value of the principal home is not regarded as an asset – regardless of its value.

Although the non-homeowner asset limits are higher to take account of the fact that they do not own a home, the adjustment amount for that is \$97,500 for a single person and \$124,500 per couple. Given current housing prices these figures (or this approach) should be reassessed.

AP & DSP (Blind) inequities

AP and DSP (blind) are not means tested. People with disabilities which incur much higher costs, such as quadriplegics, paraplegics, dialysis patients, or expensive medication not covered by the Pharmaceutical Benefits Scheme argue that they are treated inequitably. There are also many other forms of state & local government and community-based supports available for blind pensions (rather than others with disabilities) such as access to discounted taxi fares and free public transport.