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NEW WELFARE CONDITIONALITY IN AUSTRALIA: RECENT DEVELOPMENTS

The receipt of social security payments, and other forms of social welfare, has always been subject to conditions, and whilst some argue that welfare should be «universal»¹, most people agree that the imposition of certain conditions limiting eligibility or payment amount is appropriate². However, objections are being raised by commentators in Australia at the present time because the conditions being placed on social security recipients are becoming increasingly «behavioural» and racialised in nature. In addition to satisfying residence, means and assets conditions, social security recipients are now being required to make different lifestyle decisions, under threat of sanction for non-compliance. This paper will outline and evaluate those recent changes.

I - «OLD» CONDITIONALITY IN AUSTRALIAN SOCIAL SECURITY LAW

Under Australian social security law, a distinction is made between «payments» and «pensions»³, both in terms of qualification requirements and payment amounts. The «pensions» are the age pension and Disability Support Pension. These are paid at higher rates than «payments» which include unemployment benefits (Newstart Allowance for adults and Youth Allowance for young people), parenting payments and carer payments.

A residence requirement applies to all social security benefits, and most income support payments have either a two or a four year waiting period for newly arrived residents⁴. Exceptions may apply in some circumstances, for example for single parents and refugees⁵. In addition to the residence requirements, all income support payments are means tested, that is, they are paid only to those who are on low incomes and have limited assets. These tests have been described as «tightly arithmetic»⁶, in the sense that those whose income or assets exceed a set value limit do not qualify for payment, and a flat rate is payable. Means and assets tests also apply to the pensions, but payment amounts are scaled, and calculated using a specific formula which takes into account their income and assets, and some assets are exempt⁷.

- 1 D. Beland, P. Blomqvist, J. Goul Andersen, J. Palme and A. Waddan, «The universal decline of universality? Social policy change in Canada, Denmark, Sweden and the UK», *Social Policy and Administration*, 2014, 48(7), p. 739.
- 2 T. Eardley, P. Saunders and C. Evans, *Community attitudes towards unemployment, activity testing and mutual obligation*, Social Policy Research Centre Discussion, Paper no. 107, 2000; C. McIntyre, «From entitlement to obligation in the Australian welfare state», *Australian Journal of Social Issues*, 1999, 34(2), p. 103.
- 3 Collectively, they are referred to as «social security benefits»: See *Social Security Act 1991* (Cth) s23.
- 4 On 1st January 2019, the waiting period was increased from two to four years for most income support payments: *Social Security Act 1991* (Cth) ss 7(4A), 23(1), 623A-623B.
- 5 *Social Security Act 1991* (Cth) ss 7(6), 500X(3).
- 6 T. Carney, «Social security law: What does the politics of “conditional welfare” mean for review and client representation?», *Australian Journal of Social Issues*, 2011, 46(3), p. 233.
- 7 That is the «Pension Rate Calculator»: *Social Security Act 1991* (Cth) s 55.

A person applying for the Disability Support Pension must also be assessed as having a disability (or a combination of disabilities) which results in them having a continuing inability to work for no more than 15 hours a week⁸. To qualify, a person must «score» at least 20 points under «the Impairment Tables»⁹. The Impairment Tables are governed by Ministerial Determination, which means they can be changed at any time by the relevant Minister, without the scrutiny of Parliament¹⁰. The last time they were altered, in 2011, it was estimated that around four in ten recipients would become immediately ineligible¹¹. Over the past few years, there has been a significant reduction assessed as eligible for the Disability Support Pension¹². Indeed, it was reported last year that more than 60% of people who apply for Disability Support Pension are rejected¹³. Those who are found ineligible for Disability Support Pension are forced to rely on the unemployment payment, Newstart Allowance, which means they receive a much lower payment amount¹⁴, and they are subject to strict «participation requirements».

II - WORK-RELATED CONDITIONS AND THE JOURNEY FROM «OLD» TO «NEW» CONDITIONALITY

It has long been the case that strict work-related conditions have been imposed on those receiving unemployment benefits in Australia¹⁵, but there has recently been a significant increase in number and complexity of work-related conditions on the receipt of unemployment benefits. Failure to comply with «participation requirements» such as attending job interviews, contacting Centrelink and accepting all «suitable» job offers, can now result in non-payment periods of four to six weeks, payment reductions or payment cancellation for persistent non-compliance¹⁶. If a person demonstrates that they had a reasonable excuse for failing to comply, they may be entitled to back-pay, however the suspension of a person's payment for a period of weeks can have serious consequences in the short-term that are not easily reversed, such as a deterioration in their physical and mental health, and tenancy breakdown¹⁷.

Until recently, those with disabilities and those with caring responsibilities had been exempt from participation requirements, however that is no longer the case. In 2014,

8 *Social Security Act 1991* (Cth) s 94(1).

9 *Social Security Act 1991* (Cth) s 26.

10 Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2011.

11 S. Lunn, «Gillard tightens disability pensions», *The Australian*, 30 July 2011.

12 National Welfare Rights Network, «Hundred lose pension as Impairment Tables changed», 2017, 1(3) *Welfare Rights Review* 1; Parliamentary Budget Office, *Disability Support Pension: Historical and Projected Trends*, Parliament of Australia, Report no. 1, 2018.

13 J. Norman, «New Disability Support Pension recipients down by almost 60,000, due to Gillard-led crackdown», *ABC News*, 21 Feb 2018.

14 \$AUD274 per week, compared with \$AUD448 on the Age Pension: ACOSS, «Disability Support Pension cuts bad news for people affected», Media Release, 21 February 2018.

15 T. Walsh and G. Marston, «Benefit overpayment, welfare fraud and financial hardship», *Journal of Social Security Law*, 2010, 17(2), p. 100; T. Carney, «Welfare to work: Or work discipline revisited», *Australian Journal of Social Issues*, 2006, 41(1), p. 27.

16 *Social Security (Administration) Act 1999* (Cth) ss 42AA-42AP.

17 T. Eardley, J. Brown, M. Rawsthorne, K. Norris and L. Emrys, *The Impact of Breaching on Income Support Customers*, Social Policy Research Centre, 2005; S. Schooneveldt, «Do mutual obligation breach penalties coerce compliance with government expectations?», *Australian Journal of Social Issues*, 2004, 39(2), p.155.

Disability Support Pension recipients were required for the first time to enter into a «participation plan», which requires them to engage in compulsory employment-related activities such as job search, work experience, education and training¹⁸. In 2013, «welfare to work» participation requirements were imposed on all single parents of children as young as eight, and partnered parents of children as young as six¹⁹. And in 2016, the Parents Next program was introduced, which imposes compulsory participation requirements, including attendance at library «story time sessions», swimming lessons and playgroup, on parents whose youngest child is between six months and five years of age²⁰.

III - «NEW» CONDITIONALITY: BEHAVIOUR-RELATED CONDITIONS

In addition to the unprecedented expansion of work-related requirements, recent years have seen the introduction of numerous conditions that may be described as «behavioural» in nature – that is, their goal is to force social security recipients to conform to certain social norms, or comply with certain «onerous lifestyle conditions»²¹, under threat of non-payment. In particular, reforms have focused on parental behaviour, justified by concerns for the welfare of children in particular disadvantaged areas, particularly Indigenous communities²².

The most significant suite of reforms embedding this «new» conditionality into Australian social security law was those associated with the 2007 Northern Territory National Emergency Response²³. One of the measures introduced was «income management», whereby a proportion of a person's income support payment (usually 50% or 70%) is quarantined for the purchase of goods considered to be «priority needs». This portion of a person's payment is placed on a direct debit card, known as the «BasicsCard», which can only be used in certain stores for certain goods and services, and cannot be spent on tobacco, alcohol, gambling or pornography²⁴. Income management was first limited to a distinct number of Aboriginal communities in the Northern Territory which were considered particularly dysfunctional, but many of these measures have since been expanded or rolled-out. Under current legislation, a person can be subject to compulsory income management if: they are considered to be «disengaged youth» or a «long-term welfare payment recipient»; they are «vulnerable» because of a mental health condition, or because they are homeless; they have been reported to child protection authorities; or they have children who are not enrolled in or have not been regularly attending school²⁵. The number of «trial» sites in which these measures apply has steadily expanded since 2010 and all indications are that the number of sites in which they apply will continue to increase.

18 *Social Security Act 1991* (Cth) s 94A, 94B. L. Buckmaster, «Changes to Disability Support Pension: Budget Review 2014-15», 2014, Parliament of Australia.

19 *Social Security Act 1991* (Cth) s 500A, 500D.

20 Social Security (Parenting payment participation requirements - classes of persons) Specification 2016 (no. 1). This program was expanded in 2018: L. Henriques-Gomes, «Single parents forced to attend "story time" or lose Centrelink payments», *The Guardian*, 6 November 2018.

21 T. Carney, «Social security law: What does the politics of "conditional welfare" mean for review and client representation?», *Australian Journal of Social Issues*, 2011, 46(3), p. 233.

22 See particularly D. R. Taylor, M. Gray and D. Stanton, «New conditionality in Australian social security policy», *Australian Journal of Social Issues*, 2016, 51(1), p. 3.

23 *Northern Territory National Emergency Response Act 2007* (Cth).

24 *Social Security (Administration) Act 1999* (Cth) ss 123TA-123UGA.

25 *Social Security (Administration) Act 1999* (Cth) ss 123UA-123UGA.

IV - THE IMPACTS OF «NEW» CONDITIONALITY

The trend towards conditional welfare has been criticised by the social services sector on the grounds that it driven by out-dated notions of «deservingness» and «deviance», and is experienced as degrading and humiliating by those who are subject to it²⁶. They argue that conditional welfare breaches individuals fundamental rights to liberty, autonomy and self-determination²⁷. They also emphasise that conditional welfare has shown little evidence of success: the employment rate of people with disabilities has not increased, and there have been no measurable improvements to child safety without intensive family assistance services being provided²⁸.

Other negative consequences of conditionality may be more difficult to address. For example, people may be reluctant to seek help if they know that the workers they interact with will be responsible for reporting on their «progress» and level of compliance²⁹. Also, the impact of non-payment periods can be severe, and may result in criminalisation where a person feels forced to engage in criminal activities as a means of survival³⁰. This has adverse impacts not just for the person, but for any dependents they have.

Social security recipients are generally not hostile to changes in the social security system if their effect is to assist them into work, or to provide them with additional social service support. What they hope for is a system that is flexible enough to assess their individual needs and provide individualised support to address them. When asked, individuals consistently report that they merely want to be treated with dignity and respect, as a person rather than a problem, and with empathy³¹. Surely, this is the least social security recipients should expect from their government.

26 K. Soldatic and B. Pini «The three Ds of welfare reform: Disability, disgust and deservingness», *Australian Journal of Human Rights*, 2009, 15(1), p. 77.

27 A. Nevile, «Human rights, power and welfare conditionality», *Australian Journal of Human Rights*, 2009, 14(1), p. 1; S. Bielefeld, «Compulsory income management, Indigenous peoples and structural violence: Implications for citizenship and autonomy», *Australian Indigenous Law Review*, 2014/2015, 18(1), p. 99.

28 J. Rob Bray, M. Gray, K. Hand, B. Bradbury, C. Eastman and I. Katz, *Evaluating New Income Management in the Northern Territory: First Evaluation Report*, Social Policy Research Centre and ANU, 2012; K. Hand, I. Katz and J. Rob Bray, «Welfare conditionality as a child protection tool», *Family Matters*, 2016 (97), p. 16; J. Ireland, «Evidence does back claims of a blow-out in numbers receiving disability support pension», *Sydney Morning Herald*, 23 May 2014.

29 D. R Taylor, M. Gray and D. Stanton, «New conditionality in Australian social security policy», *Australian Journal of Social Issues*, 2016, 51(1), p. 3; I. Shutes and R. Taylor, «Conditionality and the financing of employment services - Implications for the social divisions of work and welfare», *Social Policy and Administration*, 2014, 48(2), p. 204; T. Carney, «Social security law: What does the politics of “conditional welfare” mean for review and client representation?», *Australian Journal of Social Issues*, 2011, 46(3), p. 233.

30 D. Roy Fletcher and S. Wright, «A hand up or a slap down? Criminalising benefit claimants in Britain via strategies of surveillance, sanctions and deterrence», *Critical Social Policy*, 2018, 32(3), p. 323.

31 A. Nevile, «Human rights, power and welfare conditionality», *Australian Journal of Human Rights*, 2008, 14(1), p. 1.