

Chair
COVID-19 Response Inquiry Panel
Submitted by electronic submission
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Submission to the Commonwealth Government COVID-19 Response Inquiry

About Economic Justice Australia

1. Economic Justice Australia (EJA) is the peak organisation for community legal centres providing specialist advice to people about their social security issues and rights. Our members across Australia have provided people with free and independent information, advice, education and representation in the area of social security for over 30 years.
2. EJA provides expert advice to government on social security reform to make the system more effective and accessible. Our law and policy reform work:
 - strengthens the effectiveness and integrity of our social security system
 - educates the community
 - improves people's lives by reducing poverty and inequality
3. EJA welcomes the opportunity to make a submission to the Commonwealth Government COVID-19 Response Inquiry. This submission is largely limited to observations regarding the provision of financial support delivered through the social security system, including important ways in which it intersected with other areas of Commonwealth responsibility. It makes a number of key observations regarding the operation of the social security safety net during the COVID-19 pandemic based on the experience of our members who saw thousands of individual clients during the period COVID-19 related social security provisions were in place.

The Essential Role of the Social Security Safety Net

4. EJA commends the Government for the speed with which it responded to the evolving Covid-19 pandemic, addressing fears around financial security by loosening social security policy and introducing targeted payments. This was accomplished at a time of fear and physical restriction, with the number of JobSeeker Payment and Youth Allowance (Other) recipients doubling from around 820,000 in December 2019 to 1,640,000 in late May 2020. By the end of June 2020, some 2.2 million social security payment recipients were receiving the newly devised Coronavirus Supplement, making a critical difference to the economy and to the lives of many millions of individual Australians.
5. Payment types, payment rates, income testing, waiting period policies, claims processes and conditions of payment evolved throughout the pandemic. The Government is to be congratulated on the iterative nature of the social security response, adapting to address consequences of the pandemic as they emerged.
6. Although not the focus of this submission, we note these strategies were supplemented by the introduction of JobKeeper Payment (also referenced below). Described as 'a subsidy for small business',

it effectively became a second arm of income support for people who were unable to work or work their regular hours. Judging by the long lines of people waiting outside Services Australia in the first days of shutdowns, division of responsibility for income support between Services Australia and the ATO may well have saved Services Australia from collapse. However, its administration was not without issues, including access barriers, minimal targeting, expecting individual business owners to act as gatekeepers, and non-recovery of overpayments.

7. Further review and analysis of the JobKeeper system is outside the scope of EJA and our members. However, we recommend scrutiny and detailed analysis of the success of this strategy given the significance of government financial support for individuals being provided via a system not subject to the principles and safeguards built into the established social security system - particularly appeal rights.
 - **Lesson Learned** The social security system is a fundamental arm of the pandemic response.
 - **Lesson Learned** It is essential to have systems of governance and administration in place that enable a timely, innovative and iterative social security response to an evolving pandemic.
 - **Lesson Learned** Effectively moving Commonwealth funded financial support to individuals (through JobKeeper Payment) outside the protections of the social security system can deliver benefits but also create significant issues. This model requires detailed consideration as a possible system for providing effective financial support.

Rapid Drafting and Use of Legislative Instruments¹

8. The multi-billion dollar economic support package introduced through the *Coronavirus Economic Response Package Omnibus Act 2020* (Cth) (Omnibus Act) introduced changes to the social security system, including granting greater Ministerial power to enable timely response to a rapidly evolving epidemic. Consequent amendments to social security law via legislative instruments allowed the Government to expedite the introduction of new social security payments, expansion of eligibility requirements for existing payments, and increase in payment rates.
9. While overall we commend the Government's social security policy response to the pandemic, it is important to recognise that several related issues contributed to a sense of panic and chaos among EJA member centres' clients, undermining the effectiveness of well-intentioned provisions:
 - Hastily drafted regulations created ambiguity, with successive instruments (apparently) required to address problematic language in earlier drafts.
 - Delays in the publication of decisions made it difficult to establish certainty, and consequently our members' solicitors were unable to provide clear legal advice to people who were often in quite desperate straits.
 - Uncertainty meant expert staff within Services Australia and Department of Social Services were unable to provide clarity through EJA's communication regular channels.
10. For example, COVID-19 Disaster Payment was announced on 3 June 2021 for people who 'were unable to earn their usual income' as a result of a lockdown per the [Financial Framework \(Supplementary Powers\) Amendment \(Home Affairs Measures No. 2\) Regulations 2021](#). After a series of amendments, the [Framework \(Supplementary Powers\) Amendment \(Home Affairs Measures No. 4\)](#) expanded eligibility

to people receiving income support (28 July 2021). Two categories were created – a higher rate for people who had lost ‘20 hours or more’ employment/week, and a lower rate for those who had lost ‘between eight hours and 20 hours’ (noting 20 hours appears under both categories). Almost immediately, our members began to receive enquiries from people who had heard the Prime Minister promise support to people who ‘had lost a day’s work’ but who had been advised by Centrelink staff that they were ineligible as they’d lost, for example, a 7.5 hour day in retail or a nursing shift of less than eight hours (noting an eight hour day is no longer a common definition of ‘a day’s work’ in many professions). Department of Social Services staff were unable to answer our request for clarification.

11. Shortly after, the [*Financial Framework \(Supplementary Powers\) Amendment \(Home Affairs Measures No. 7\) Regulations 2021*](#) was passed, clarifying that the lower rate could be applied to people who had lost ‘between eight and less than 20 working hours, or a full day of work’ (a ‘full day’ never being defined). It is unclear whether our efforts to seek clarity regarding this issue informed that reform, however, our members saw how this support was critical to many who had lost a day/week employment income upon which they relied as an essential supplement to their social security income support.

- **Lesson Learned** While the speed of the Government’s response to evolving circumstances is to be commended, it is vital that drafting and administrative systems remain robust, retaining checks and balance to ensure clarity of legislation and policy.

The Adequacy of Income Support Payments

12. The most striking feature of the social security response during Covid-19 was the impact of the Coronavirus Supplement (and the introduction of JobKeeper Payment), which set income support above the poverty line. Introduced in April 2020, the \$550 Coronavirus Supplement effectively doubled social security income support for many, providing a basic standard of living that brought hundreds of thousands of households out of poverty while stimulating the economy through their spending.
13. Our members’ clients reported significant changes in the way they lived - being able to afford three meals a day, heating, medical care and prescribed medication, clothing, school supplies and, for the first time in years, clearing some debt. These anecdotal reports have been backed up by research, which found people used the Coronavirus Supplement to meet basic needs². It is important here to stress the significant psychological benefit these resources had during a time of considerable anxiety, and the positive impact the provision of resources to parents and caregivers had on children.
14. EJA has long advocated for the level of income support provided in Australia to be consistent with the right to social security and to provide an adequate standard of living in compliance with Australia’s obligations under Articles 9 and 11 of the *International Covenant on Social, Economic and Cultural Rights*. We will continue to advocate for the rate of working age income support payments to be raised to a level that affords basic dignity.

- **Lesson Learned** Setting income support above the poverty line allows people, including parents and other caregivers providing essential resources for their children, to meet basic needs. This strategy reduced individuals’ sense of social exclusion, enhancing wellbeing while also stimulating the economy - findings that have implications beyond pandemic settings.

Exclusion from the social security safety net

Residency Status

15. Special Benefit is a discretionary social security payment 'of last resort' that can only be paid in cases of financial hardship where a person is ineligible for other income support payments. During the pandemic EJA members and other community organisations saw many clients in severe financial hardship who, despite having resided legally in Australia for some time (often years), were ineligible for social security income support – including Special Benefit - because their visa sub-class precluded eligibility. Many had lost employment and could neither work due to public health restrictions nor leave Australia for financial and practical reasons, including travel restrictions and closed borders. These were people our members could not assist despite many living in poverty and facing homelessness, relying on ad hoc charitable relief amidst uncertainty about how long lockdowns and travel restrictions would last. This included people on Bridging visas and:
 - New Zealand citizens living in Australia, many of whom had lived, worked and paid tax in Australia for years, having effectively settled here. (New Zealanders continue to be particularly harshly treated by Australia's social security system as a byproduct of the default Special Category Visa through which they enter Australia.)
 - People on Student Visas and Temporary Graduate Visas, who had been invited to study in Australia, bolstering our tertiary sector, but now found themselves unable to work or return home.
 - Temporary Resident (Skilled Employment) Visas and Pacific and Seasonal Worker Visas, many of whom were encouraged to live and work in Australia to address labour shortages, and who pre-pandemic were self-supporting, contributing to the economy over many years.
16. Alternative models should be considered including those from Canada, the UK, and New Zealand's Emergency Benefit, which was paid to eligible holders of temporary work, student and visitor visas. Additional to the genuine grief and distress experienced by individual people, short-sighted, dismissive policy appears to have done long term reputational damage to Australia's international education sector, with broad ranging flow on effects to the economy.
 - **Lesson Learned** The denial of social security to specific cohorts of people stuck in Australia caused individuals genuine hardship and long-term reputational damage to various sectors of the Australian economy, particularly the international education sector. Further work is required to develop a model social security response with capacity to assist all people in Australia affected by a future pandemic, including people on bridging visas, student visas and skilled/seasonal work visas.
 - **Lesson Learned** Particular attention is required to address the plight of long-term residents with New Zealand citizenship; an issue that may be best addressed through more foundational reform of the social security system beyond pandemic planning.

Compensation Preclusion Periods

17. The pandemic highlighted a long-standing need for policy reform regarding operation of the compensation preclusion period (CPP). From mid-2020, our members saw an increase in requests for assistance from people in hardship with no means of support, who had been refused social security income support because they had received a compensation lump sum and were subject to a CPP.

18. Social security law recognises the need to enable access to income support for people in hardship due to premature expenditure of compensation lump sums, by providing for waiver of the whole or part of a person's CPP in 'special circumstances'. However, decision-makers – both within Centrelink and at the Administrative Appeals Tribunal (AAT) – regularly failed to take account of the impacts of COVID-19 when considering waiver or were reticent to consider the consequences of the pandemic as 'special' given 'everyone was going through it'. This left some people destitute.

- **Lesson Learned** Greater attention is required to the impact of Compensation Preclusion Periods on people who had expended all funds before the period ended, with an emphasis on acknowledging the special circumstances brought about by the Pandemic.

The intersection of complex systems and required expertise to inform strategy

19. The social security system is inordinately complex, also intersecting with numerous other areas of Commonwealth responsibility; however, limited consideration appears to have been given to these intersections, perhaps as the result of the pace at which measures were being introduced.

Taxation

20. Introduction of the \$1500/fortnight JobKeeper wage subsidy was an effective lifeline for business and for individuals who would otherwise have lost their employment due to COVID-19. The division of administrative responsibility between Services Australia and the ATO may have been resource effective but it quickly became apparent to EJA member centre staff that most people did not clearly understand the demarcation between social security (JobSeeker) and ATO based (JobKeeper) payments; an issue confounded by the payments' similar nomenclature.
21. Our members also saw clients who had claimed JobSeeker before JobKeeper was introduced, resulting in payment of both for a number of weeks. After JobKeeper was established as the appropriate payment for their circumstances, they had attempted to contact Centrelink to make arrangements to repay JobSeeker only to be told they did not have a debt. Coinciding with publicity regarding Robodebt, this caused considerable confusion and stress. On investigation, our member centre staff were able to explain the complexity of Centrelink's income assessment models and how they interacted with JobKeeper. That is, they did not have a debt because it was not a matter of being allowed to receive only one payment or the other. Instead, JobKeeper Payment was considered 'income' for Centrelink purposes, and they had established Working Credit or credit in their Income Bank from which they could draw. At no time did our members identify information produced by government clarifying this issue.
22. Also confusing was that both JobKeeper Payment and Coronavirus Supplement were taxable income, an issue lost on many social security recipients who were caught off guard regarding lodgement of a tax return. Further, these payments had flow on effects to people's annual income estimate for Family Tax Benefit (FTB), reducing individual FTB rates and resulting in FTB overpayments. Despite Coronavirus Supplement being payable to all people receiving eligible income support, Services Australia lacked the infrastructure to update their FTB systems and address the issue at systemic level.

- **Lesson Learned** The naming conventions applied to JobSeeker Payment and JobKeeper Payment caused confusion and obfuscated the payments' administration by different departments.
- **Lesson Learned** More in-depth analysis was necessary to identify the impact of JobKeeper Payment on social security payments, with the findings 1. informing the system, and 2. communicated clearly to the community.
- **Lesson Learned** More nuanced and timely community facing information was needed to ensure individuals understood the full tax implications of the additional social security payments.

Immigration³

23. Suspension of the four-year newly arrived residents waiting period (NARWP) for working age payments was one of the outstanding social security policy successes of the pandemic, allowing people who had been in Australia as a permanent resident or holder of a specified class of long-stay visa for less than four years to access essential income support after losing employment due to COVID-19 shutdowns. Our member centres reviewed their casework files and re-contacted previous clients who had been advised they were not eligible for a Centrelink payment given the NARWP to advise them of this change.
24. Unfortunately, despite EJA's request, no similar process was undertaken by Services Australia regarding claims that had been rejected due to the NARWP, so it is unknown how many people relied on pre-Covid Centrelink advice and suffered through the epidemic unaware they could temporarily access payment. Similarly, despite our request prior to the reintroduction of the NARWP, Services Australia did not contact affected people on JobSeeker Payment to advise them of the need to claim Special Benefit to test eligibility, and to do so early to avoid a period without payment if eligible.
- **Lesson Learned** More care should have been taken to ensure affected people knew that specific provisions had been suspended, particularly the newly arrived residents waiting period, with assistance to transition people onto other payments where possible when it was reintroduced.

Superannuation

25. In March 2020, the Government announced that people in financial hardship could access \$10,000 from their superannuation in 2019-2020, and a further \$10,000 in 2021-21. At the same time, enormous numbers of people were claiming JobSeeker Payment unaware of the impact of the Liquid Assets Waiting Period. Effectively, a single person with no savings who accessed \$10,000 superannuation and claimed JobSeeker Payment the next day would be precluded from receiving JobSeeker Payment and Coronavirus Supplement for up to 10 weeks. If they claimed JobSeeker Payment and withdrew their superannuation the following day, their JobSeeker Payment would not be affected. Again, at no time did members identify any information produced by government clarifying this issue.
- **Lesson Learned** Analysis of the effect of superannuation on social security entitlements should have been undertaken, with the findings 1. informing the system, and 2. communicated clearly to the community.

Employment and Workplace Relations

26. Reduction in mutual obligation requirements and temporary pauses during lockdowns were an essential component of the government's COVID-19 response, however, they did not go far enough.
27. Penalties for failing to comply with mutual obligations were lifted from 24 March 2020 but people were advised by Centrelink that they needed to continue complying with Job Plans – in the middle of a pandemic. There were also different requirements for ParentsNext and Community Development Program participants, with clients contacting our member centres revealing they were unsure of their current obligations, some employment service providers giving incorrect advice. When mutual obligations were re-introduced in most jurisdictions in September, some recipients were being forced to attend face-to-face appointments and apply for jobs under threat of payment sanctions, despite genuine fears about risk of infection. Some of these people were had underlying medical conditions or disability making them particularly vulnerable.
- **Lesson Learned** The very tight reigns with which the government held 'mutual obligations' during the pandemic only highlighted successive governments' framing of unemployment in terms of individual deficiencies outside of the underlying structural economics underpinning Australia's economy. EJA welcomes the current Government's recent attempts to reframe mutual obligations and employment services systems, but it is important to recognise that more could have been done to release individuals from useless and punitive requirements during the pandemic, including requirements that put people at risk of COVID-19 infection.
 - **Lesson Learned** More effort was required to ensure employment service providers were able to clearly convey social security recipients' mutual obligation responsibilities during the pandemic, and to ensure consideration of personal circumstances in applying suspensions and penalties for non-compliance.
28. Given the above, EJA ends this submission with a call for the drafting of social security law and policy (including any urgently drafted to respond to a pandemic) to include the input of social security subject experts, noting experts can be found both within and external to the public service.
- **Lesson Learned** Drafting of social security law and policy always requires detailed consideration of the impact of proposed amendments on other elements of the social security system, intersecting areas of Commonwealth responsibility, and issues beyond. That requires input from subject experts.

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