

National Report on Social Protection for the Unemployed: Australia

A Constitutional and Legal Framework

1. Within Australia's federal structure, legislative power is divided between the Commonwealth and six State parliaments. Whereas each of the States has general legislative power, the federal constitution grants power to the Commonwealth over a limited range of topics. In the event of conflict between Commonwealth and State laws, the Commonwealth laws override inconsistent State laws.

In the area of social protection for the unemployed, the most important constitutional provisions empowering the Commonwealth are those granting power to make laws with regard to:

- The provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services...benefits to students and family allowances (s 51(xxiiiA));
- Conciliation and arbitration for the prevention of industrial disputes extending beyond the limits of any one State (s 51(xxxv));
- Foreign corporations and trading or financial corporations within the limits of the Commonwealth (s 51(xx));
- External affairs (s 51(xxix)).

The relevant Commonwealth legislation in this area made pursuant to these constitutional provisions is the *Social Security Act 1991*; *A New Tax System (Family Assistance) Act 1999*; *Health Legislation Amendment Bill 1983*; and the *Workplace Relations Act 1996*.

The first three pieces of legislation establish a range of social security provisions in the areas of unemployment assistance, family allowances and health insurance. Under the *Workplace Relations Act* and industrial legislation

in most of the States, a series of tribunals with powers to conciliate and arbitrate in industrial disputes and to certify agreements effectively regulate conditions of employment. At the Commonwealth level, the relevant tribunal is the Australian Industrial Relations Commission. Tribunals regulate through creating a legally enforceable instrument known as an 'award' or by certifying agreements concluded by the parties. Awards may apply to entire industries at a national level, or to parts of an industry in specific regions; certified agreements apply to individual enterprises.

1. Australia has ratified the following relevant international standards:

International Convention on Economic, Social and Cultural Rights;

ILO Convention (No 2) concerning Unemployment;

ILO Convention (No 88) concerning Organisation of the Employment Service;

ILO Convention (No 122) concerning Employment Policy;

ILO Convention (No 150) concerning Labour Administration: Role, Functions and Organisation;

ILO Convention (No 158) concerning Termination of Employment at the Instigation of the Employer;

ILO Convention (No 173) concerning the Protection of Workers' Claims in the Event of the Insolvency of the Employer.

- B Income relief provided by severance pay paid by the employer or out of a fund made up of contributions paid by the employer or both the employer and the worker

3. In Australia, the term 'severance pay' refers to compensation for the loss of non-transferable credits and inconvenience and hardship imposed upon employees in the event that they are made redundant from their employment. An entitlement to severance pay is normally additional to payment in lieu of notice of termination of employment.

4. Under Australian law, there is no entitlement at common law to severance pay in the absence of a contractual entitlement, or an entitlement arising under statute or an industrial award or agreement. In limited circumstances, the Australian Industrial Relations Commission has a statutory power to order an employer to pay a severance allowance where an application has been made.
5. An entitlement to severance pay arising under an industrial award or agreement would normally be funded by the employer, and not by contributions from workers.

A problem arises where companies fail and do not leave sufficient funds to meet severance pay obligations. As a result of pressure arising from the collapse of some major employers over the last two or three years, the Commonwealth government introduced the Employee Entitlements Support Scheme in February 2000. This has since been replaced by the General Employee Entitlements and Redundancy Scheme (GEERS). GEERS covers employees made redundant on or after 12 September 2001, due to company insolvency. GEERS is fully funded by the Government, and severance pay is limited to a maximum of 8 weeks. There is a maximum salary figure to be used in the calculation of severance entitlements. If a worker was earning in excess of \$75,200.00 per annum, then calculations will be made on the basis of that figure and not the greater salary amount.

In addition to GEERS, trade unions in certain industry sectors have endeavoured to have applicable enterprise bargaining agreements provide for an industry-based and primarily employer-funded scheme for meeting employee entitlements in the event of corporate collapse. For example, in 2001 the Australian Manufacturing Workers Union (AMWU) has campaigned to join employers up to Manu-Safe, a self-funded, industry-wide long service leave and severance pay scheme. To date, the AMWU has been unsuccessful in persuading employers to agree to the scheme.

C Protection provided by an unemployment insurance scheme

Australia does not have an unemployment insurance scheme. Instead, the Commonwealth administers a non-contributory scheme of unemployment assistance, outlined in section D, below.

D Non contributory benefits for unemployed wage-earners

14. A national, taxation-funded system of social assistance is the principal means of providing income support for people not in work in Australia. Eligibility categories cover those not expected to work (retired people, lone parents and carers), unable to work (people with disabilities and the sick) or unable to find work (the unemployed). Additional payments are available to those who pay rent in the private rental market and to people with dependant children. Payments are made fortnightly, in arrears. Social security payments are not time-limited and are paid subject to the claimant satisfying eligibility requirements. Payment rates and conditions of eligibility are consistent across all States and Territories of Australia.

The historical focus of Australian social security has been on poverty relief and income redistribution objectives rather than income maintenance. Income support payment rates are therefore determined not by previous earnings, but by a person's family situation, income and other factors related to need. Benefits are subject to income and assets tests, but these tests are generous compared to the means tests applying to social assistance in other OECD countries and it is possible in certain circumstances to combine receipt of income support with part-time or intermittent work.

An unemployed person can claim Newstart Allowance or, if under 21 years of age, Youth Allowance. The person must satisfy an 'Activity Test' by actively seeking work and/or undertaking an activity designed to improve his or her employment prospects. He/she must also accept offers of suitable employment. The person must enter into a 'Preparing for Work Agreement'

which may include referrals to specialist assistance or employment services or other activities that may help the person looking for work. Non-compliance with the terms of an Agreement attracts financial penalty in the form of a reduction in benefit, to the point of non-payment for eight weeks for the third and subsequent breaches.

Persons claiming Newstart Allowance for an extended period and who are under 40 years of age may be required to undertake a 'mutual obligation' requirement in addition to regular job search. This can include literacy or numeracy training or a compulsory work program.

People over 60 years of age (and under Age Pension age) who have been in receipt of a social security payment for at least nine months and who have no recent workforce experience can claim Mature Age Allowance. The major difference between Mature Age Allowance and Newstart Allowance is that the person does not have to satisfy the Activity Test.

A single person receiving Newstart Allowance with no supplementary payments for children or rent assistance is paid at a flat rate around 25 per cent of average weekly earnings. With supplements in the case of a married person with three children renting in the private rental market, the rate rises to around two-thirds of average weekly earnings.

E Other

16. The Commonwealth administers a national health insurance scheme, Medicare, which is financed partly through a special tax levy (with exemptions or reductions for low-income individuals and families), partly from the Commonwealth Government's general revenue, partly by State governments and partly by contributions from patients. Medicare provides universal coverage, free public hospital accommodation and treatment, assistance towards the cost of medical services provided under private care in hospital (75 per cent of the schedule fee) and assistance towards the cost of

out-of-hospital medical services (85 per cent of the schedule fee). The Commonwealth government also subsidises the cost to patients of a wide range of prescription medicines through its Pharmaceutical Benefits Scheme.

State governments have responsibility for the planning, provision and administration of publicly-owned and operated health care clinics and domiciliary care services. Most acute care beds are in the state-run public hospital system. States are also responsible for the provision and financing of child and maternal health programs.

17. There is a system of supplementary payments for families with children. This includes direct cash assistance for around 80 per cent of all families, with higher levels of assistance for those receiving unemployment benefits or other social security payments or in low paid jobs. The government also provides a maternity allowance and assistance with childcare costs.
18. As noted, eligibility for social security payments is determined not by previous earnings or employment status but by the reason claimants are unable or not expected to support themselves through paid work. These reasons are illness or disability, parenting or caring responsibilities, age or unemployment, and participation in full-time education or long-term training. Payments therefore cover people with no previous employment history, such as school leavers and women who have undertaken caring and home duties.

F Employment promotion policies

19. (a) The Commonwealth government established a Commonwealth Employment Service ('CES') in 1945. Since May 1998 the CES has been effectively disbanded and replaced by a network of over 200 private, and community sector providers (the 'Job Network'), operating from 2000 sites, who have contracted with the Commonwealth to deliver a range of job brokerage and employment assistance services, including intensive assistance to the long-term unemployed and those at high risk of becoming long-term

unemployed. The granting of contracts is determined by a periodic competitive tender process. The Commonwealth Department of Workplace Relations and Small Business pays Job Network organisations a fee for every person the organisation places in employment according to a differential fee scale whereby those job seekers who are classified as most difficult to place attract a higher fee.

Although providers can deliver job brokerage services to people not accessing government unemployment benefits, the bulk of their work is the provision of employment assistance to those on government benefits. With regard to these clients, the Job Network providers are effectively responsible for administering the terms of the *Social Security Act 1991*, especially policing compliance with the Activity test. A government agency, 'Centrelink', maintains a National Vacancy Database and undertakes initial registration and classification of those claiming income support payments.

(b) Private employment agencies have always co-existed with the CES. Private agencies are growing in importance and labour market influence, especially in the placement of skilled-white collar positions. In some instances a person is engaged either as an ongoing, fixed term or casual employee of an agency and is then on-hired by that agency under a commercial agreement to another business that then controls the conduct of that employee's work for its own ends. There is no formal employment relationship between the worker and the user or host enterprise. This arrangement is predominantly referred to as 'labour hire' in Australia. Many agents conduct both recruitment and labour hire activities from the one business, as it is the hourly margin from temporary placements, rather than the exclusive recruitment of permanent staff, that enable many agents to survive

The legal regulation of private employment agencies in Australia remains rudimentary and fragmented. A Commonwealth *Trade Practices Act* prohibits conduct that is liable to mislead persons seeking employment as to the availability, nature, terms or conditions of, or any other matter relating to,

such employment. Provisions relating to representations concerning the 'seeking' of employment are replicated in various State fair trading legislation. New South Wales, Queensland, South Australia, Western Australia and the Australian Capital Territory each also has a statutory scheme for the licensing of agencies. In all cases the legislation establishes a compulsory licensing system, with mechanisms for appeal against refusal or cancellation of licence. A register of all licences and renewals is kept by the licensing body. Generally, obligations are imposed on licensees to maintain appropriate records and provision is made for the inspection of records and premises. All the States mentioned, bar South Australia, limit the charging of fees to those charged to employers. In South Australia, fees can be charged to job seekers but must not exceed those charged to an employer. Only in the case of Western Australia does the scale of fees charged by agents need to be approved by the licensing authority. It would appear that only the licensing scheme of the Australian Capital Territory extends to cover intermediaries engaged solely in labour hire activities. Most anti-discrimination legislation extends to cover the activities of employment agencies.

20. Since the accession of the Liberal/National Party coalition government in 1996, the Commonwealth has reduced spending on longer-term training, wage subsidy and job creation programs.

The Commonwealth contracts with Job Network members to provide Intensive Assistance to certain categories of unemployed job seekers (see 19(a), above) and members are able to deliver such assistance in the form of subsidies to employers who hire clients. However, Job Network members are paid fees by the Commonwealth on the basis of employment outcomes and are not obliged to offer any particular form of assistance or report their spending patterns in detail. Apart from this, the Commonwealth government currently funds and/or administers a limited range of labour market programs directed at vulnerable categories of workers.

Severely disadvantaged job seekers who are not ready to participate in Intensive Assistance through the Job Network due to numerous personal barriers (such as very poor literacy or numeracy, drug or alcohol addiction, homelessness etc) may be eligible for the Community Support Program. Community Support Program organisations — which are drawn from the private, public and community sectors — may provide services directly or help participants access counselling, rehabilitation programs and so on.

The Commonwealth introduced a ‘Work for the Dole’ program in 1997 whereby long-term unemployed people aged 18 years to 34 years are required to participate in community-based work programs. The unemployment benefit divided by the hours of work (24 hours per fortnight for 18 to 20 year olds; 26 hours per fortnight for those aged over 21) results in an hourly rate of pay no less than the minimum wage. The aim of the program is to develop work habits in the long-term unemployed; to involve the local community in projects that cater for and assist the unemployed; and to provide communities with activities that are of value to those communities.

The ‘New Enterprise Incentive Scheme’, established in 1986, offers assistance to unemployed people to start up their own business enterprises. Eligible participants undergo six weeks of training in small business competencies. If participants’ business plans are assessed as commercially viable, participants are able to draw an allowance equivalent to unemployment benefit for a year while establishing their business.

The Jobs, Education and Training (‘JET’) program was established in 1989 to assist sole parents to enter or re-enter the workforce. It is now available also to partners of people on other income support payments. Participation is voluntary, and eligible people are targeted through an automatic mail system. The program provides return to work information and advice, referrals to services such as childcare and some financial assistance with training. A Return to Work Program was introduced in 2000 to identify the needs and assist people seeking to re-enter the workforce after an absence of two or more

years due to their role as carers of children under 16 years or of the aged or chronically ill or disabled. This program is open to those not drawing income support payments and provides career advice and training.

A Regional Assistance Program funds projects which promote small business development, general regional economic development and infrastructure, addresses skill gaps and address the employment needs of disadvantaged groups. In the past, Labour Adjustment Packages have been provided to help companies shedding labour and individuals made redundant from particular industries to gain employment in other industries. The packages provided skills training, wage subsidies and relocation assistance and in the past two decades have covered the steel industry, the textiles, clothing and footwear industry, the automotive industry, the rail industry and forestry. The Coalition government has not instigated any further packages since coming to power.

21. In spite of decreased spending on most labour market programs, the Commonwealth has increased spending for its New Apprenticeships program which covers traditional four-year apprenticeships in trades, the extension of apprenticeship-type training into new industry and occupational areas, and shorter-duration traineeships. The government provides subsidies amounting to around 5 per cent of the minimum wage to employers on the commencement of training, the progression of the apprentice between levels of training and on the completion of training

The Commonwealth government also supports the development of senior-school vocational educational programs. The Jobs Pathway program targets young people at risk of becoming unemployed, including Indigenous Australians and those with poor numeracy and literacy skills, with regions that have a high level of youth unemployment or a low school retention rate being given priority for funding.

The Adult Migrant English program provides English language tuition and advice on accessing essential services to migrants and refugees within five

years of their arriving or gaining permanent residency within Australia. Entrants under the skilled migration program are charged at the time of their visa application; entrants under the family reunion and humanitarian programs incur no charge. The Advanced English for Migrants Program is open only to those registered as unemployed and who already have a relatively high level of English.

Literacy and Numeracy Training is provided more generally to those registered unemployed job seekers assessed as having potential literacy and numeracy barriers to gaining employment. Participation in the program for those assessed is a requirement for receiving unemployment benefits and job search requirements are generally maintained during participation in the program.

For Indigenous Australians, a Commonwealth Development Employment Project scheme allows unemployment benefits to be pooled and then used to employ people on work projects of value to the local community for 16 hours per week. There is no time limit on participation in the scheme and participants are able to have significant additional income and still receive payments. The bulk of participants live in remote rural communities, although the scheme extends to Aborigines living in urban centres. The scheme is supervised and administered by the Aboriginal and Torres Strait Islander Commission, an elected body that represents the indigenous population.

Open employment services provide the disabled with vocational training, employment placement and some ongoing support in the labour market. Commonwealth funded rehabilitation services also provide vocational and career counselling and Job Clubs for the disabled and a Workplace Modifications Scheme assists with the costs of modifying workplaces for workers with disabilities.

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