

Human Rights Commission

THE TREATMENT OF DISABLED PERSONS IN
SOCIAL SECURITY AND TAXATION LAW

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Pam Bedwell

FOREWORD

The Human Rights Commission has the responsibility of prompting the observance of the broad range of human rights recognised in the International Covenant on Civil and Political Rights and in the Declarations of the Rights of the Child, on the Rights of Mentally Retarded Persons and on the Rights of Disabled Persons.

Paragraph 3 of the Declaration on the Rights of Disabled Persons provides that disabled persons have the same fundamental rights as other citizens, of the same age, and that this implies first and foremost the right to enjoy a decent life as normal and full as possible. Social security, and taxation legislation have a particularly important role to play in ensuring that effect is given to this right, yet because of such reasons as inappropriate eligibility criteria, inadequate income support or lack of information regarding services provided, a person with disabilities may well find that the general objective of assisting him or her to lead a normal life is frustrated. The Commission asked the Australian Council of Social Services to undertake the present study so as to highlight the difficulties and discrimination faced by persons with disabilities, in current social security and taxation law.

The Declaration, as well as the other human rights instruments, can be used as a standard against which existing laws can be evaluated and to which any proposals for law reform should conform. The principles in the Declaration which may be used to assess how current social security and taxation laws conform, with the rights, of persons with disabilities include:

1. the right to a decent standard of living, [paragraph;
2. the right to economic and social security [Paragraph 7];
3. the right to appropriate medical, psychological and functional treatment [Paragraph 6];
4. the right to have their special needs taken into consideration [Paragraph 8];
5. the right to have the benefit of special measures designed to enable them to become as self-reliant as possible [Paragraph 5];
6. the right to live with their families. If a stay in a specialised establishment is indispensable, the right to an environment which is as close as possible to that of the normal life of a person of the disabled person's age [Paragraph 9];

7. the right to protection against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature [Paragraph 101; and
8. the entitlement of organisations of disabled persons to be consulted in all matters regarding the rights of disabled people [Paragraph 121.

The Commission hopes that this report will provide a basis for informed discussion about the needs and rights of people with disabilities when new legislation or reform of existing legislation in the areas of social security and taxation is under consideration. In the light of the ACOSS study, it sees a need for early action in relation to both areas. The Commission itself will be making a number of recommendations to the Attorney-General about the need for reforms.

Peter Bailey
Deputy Chairman

December 1985

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CHAPTER 1

INTRODUCTION

TERMS OF REFERENCE

- 1.1 This report was prepared by the Australian Council of Social Service (ACOSS) on behalf of the Human Rights Commission. The Human Rights Commission was set up in 1981 by the Commonwealth Government to promote and protect human rights in Australia.
- 1.2 By recognising the International Covenant on Civil and Political Rights, the Declaration on the Rights of Disabled Persons, the Declaration on the Rights of Mentally Retarded Persons and the Declaration of the Rights of the Child, the Australian Government has made a commitment to ensure that, regardless of any disabilities they may have, all citizens enjoy their fundamental rights to economic security, equal opportunity, self-determination, freedom of choice and dignity.
- 1.3 The aim of this report is 'to examine the difficulties and discrimination faced by disabled persons in the current social security and taxation law'.
- 1.4 Taxation and social security legislation are both premised on fundamental notions of social justice and equity, yet clearly many disabled people and their families suffer economic hardship and social deprivation quite contrary to the aims and underlying spirit of these laws. In practice

2.

a 'full life', including the right to live at home, to housing, to recreation, to public buildings and to the world of work, is denied.

1.5 This report could not hope to give comprehensive details on all the intricacies of the inter-relationship between social security and taxation law, nor an exhaustive study of all aspects of discrimination faced by disabled people. Such a study would be a major task-and require vast resources. Accordingly, the research was-limited to examining the major inadequacies and anomalies in current legal provisions, particularly in the area of income support. This emphasis is in accord with the concerns raised in consultations with disabled people' and the submissions received.

1.6 It should also be noted that practically none of the issues raised are new There is a wealth of evidence and information to be found in various surveys, inquiries and reports published in Australia in the last decade. They stand as testament to an increased awareness of the continuing lack of rights of disabled people in our society. In the long experience of Mr Justice Meares, 'if you drip water on stone long enough quite often the stone will wear away'. Disabled people have been remarkably patient. We have accepted the social obligations set out in the United Nations Declarations. What is needed now is action.

WHAT IS DISABILITY?

1.7 In 1981, the Australian Bureau of Statistics completed a survey which found that 194,200 Australians or 13.2 per cent of the population is disabled .1.

1.8 There is great confusion over legislative definitions and terminology used to describe disabled people. The South Australian Committee on the Rights of Persons with Handicaps (the Bright Committee) found that South Australian legislation contained 24 different phrases used in connection with physical disability and 40 different phrases connected with mental disability.² After considering the inconsistencies and potential for discrimination in their descriptions the Committee stressed the need to minimise ambiguity of Language in legislative and policy areas.

1.9 The World Health Organisation has provided definitions of Impairment, disability and handicap as follows:

Impairment

A generic term which embraces any disturbance in normal structure and functioning of the body including systems of mental function.

Disability

Disability is the loss or reduction of functional ability and activity that is consequent upon impairment. It is the mediating term of impairment and handicap. It covers incapacity in walking and other body movements and in manual activity, and behaviour disorders.

Handicap

Handicap is the disadvantage that is consequent upon impairment and disability. Handicap represents the social and environmental consequences to the individual stemming from the presence of impairment and disability.

The activities or tasks a person has difficulty in fulfilling are categorised as:

- (a) self care
- (b) mobility
- (c) communication
- (d) schooling
- (e) employment

- 1.10 The report Of the Bright Committee (the Bright Report) summarised these definitions as follows:

An impairment is an anatomic or functional abnormality or loss which may or may not result in a disability. A disability is a loss or reduction of functional ability which results from an impairment. Handicap is the disadvantage caused by disability. Thus, impairment is a medical condition, disability is functional consequence and handicap the social consequence.

On this definitional basis the Bright 'Report found the terms "'Persons with intellectual handicaps"; "Persons with 'physical handicaps' and 'handicapped persons' to the most appropriate because they encompass the social barriers which compound the effects of impairment.⁴ It was further argued that many inequities in the social security system can be attributed to the law awarding benefits on the basis of impairment. For example, two people with a similar mobility impairment may well suffer a different degree of disablement if only one can afford to own an imported electric wheelchair, make home and vehicular modifications, etc. Conversely, two people with quite different impairments may have similar disabilities. People with speech impediments and people who are deaf may have similar communication problems.

- 1.11 The need for a concise and consistent use of terminology is evident but in Australia as elsewhere remains unmet. Australian Federal legislation includes the Handicapped Persons Assistance Act 1974 (Cwlth) and the Aged or Disabled Persons Home Act 1954 (Cwlth) while the Social Security Act 1947 (Cwlth) has Provisions relating to "invalid persons", 'disabled persons' and 'handicapped persons'. Indeed, Australia is a signatory to a United Nations Declaration which speaks of the rights of disabled persons and another which speaks of the rights Of children who are 'physically, Mentally Or socially handicapped'.
- 1.12 The debate about the suitability of various definitions and terms continues and there is no clear unanimity among disabled people as to preferred usage. However,

indications are that the growing self-help movement in Australia prefers the use of 'disability' and 'disabled persons' and those terms are used in this Report.

WHAT IS DISCRIMINATION?

1.13 People may be discriminated against on many grounds including sex, race, ethnic origin, age, marital status, Political or religious conviction, and physical and mental disability. Some major areas in which discrimination may occur are employment, education, accommodation and the supply of goods and services.

There are two types of discrimination - direct and indirect.

Direct discrimination occurs when a person acts, either deliberately or unintentionally, to discriminate against another on the grounds of stereotyped attitudes or beliefs.

Indirect (covert, systematic) discrimination occurs when policies, practices or rules, although 'neutral' on the face of it, result in perpetuating discriminations against a Particular group of Persons.

1.14 Consider the following two examples of discrimination:

Universities are funded by the Public Purse and are free to all eligible students. On the other hand, Activity Therapy Centres, which are considered the equivalent of a tertiary education system for intellectually disabled People are so inadequately funded that clients, parents, and friends must raise supplementary funds and commonly pay fees.

Access to transport is a necessary prerequisite for the vast majority of Australian workers. For those who are unable to use public transport a car may be the only answer. Provisions in the Sales Tax

(Exemptions and Classifications) Act 1935 (Cwlth) and the newly introduced Mobility Allowance give recognition to this fact, albeit meagrely. However disabled people who work at home or attend an Activity Therapy Centre are denied this small relief. Furthermore, those people, usually women, who work at home taking care of a severely disabled family member, are ineligible for any transport assistance.

- 1.15 Indirect discrimination, which is built into the system, is more difficult to uncover and clearly much more difficult to rectify than individual direct discriminatory acts. Any worthwhile challenge to indirect discrimination will require action at various levels and will confront many established structures and social processes. The law represents one avenue for removing existing inequalities and providing the principles for future action.⁵

DEMOGRAPHIC PROFILE OF DISABLED PERSONS

- 1.16 The Australian Bureau of Statistics (1981) Survey using the World Health Organisation guidelines, defined a disabled person as one who has one or more disabilities or impairments.⁶ A handicapped person is one who is limited (by her or his disability) in the performance of certain activities involving self-care, mobility, communication, schooling and employment.

- 1.17 A high proportion of income units with a handicapped person received Government benefits as a source of income.⁷

Table: 1, Income Units With Handicapped Person:: :Source of Income

Source of Income,	Number of income units (13.00)	Per cent of :Income' units
None	-	2
Wages and salaries	3 4 5 . 4 :	
Self employment	-\$8.5	9.4
Unemployment benefits	21.0	2.0
Superannuation	73.7	7.1
Workers' compensation	20.0	1.9
Interest, rent, dividends	, 241.5	21,.1:
Invalid pension	166.7	16-0
Handicapped child allowance	17..7	7,..V
Family allowance	..154.3	14-.8
Age/widow/repatriation. pension	J451.6	A3.2 ,-
Other income		6 0 . 7 .
Not obtained:-	13.3	
Total (a)	1044.7	100.0

(a) Sum of components exceeds total because income units often have more than one: source :of income.

61,8 per cent Of income units with handicapped person receive income from a Government, pension (invalid, age, widow, repatriation pension, unemployment benefits), By comparison, a Government pension is the principal source of income for only 18.4 per cent of all income units.

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2. South Australia, Committee on Rights of Persons with Handicaps (First Report, Charles H. Bright, Chairman), The law and persons with handicaps, Adelaide, 1978, vol. 1, pp. 7-77.
- 3- ibid., p. 11.
4. See also Tasmania, Board of Inquiry into the Needs of the Handicapped (Ian W. Webster, Chairman), Report, Govt. Pr., Hobart, 1980, ch. 12; and New South Wales Anti-Discrimination Board, Discrimination and physical handicap, 2 vols, Sydney, 1979, ch. 1.
5. See L. Stein, 'Address' in Disability, discrimination, rights and entitlements, proceedings of a seminar organised by Disabled Advocates and Self-Help, Perth, W.A., 11 September 1982, pp. 13-15; E. Hastings, The self-help movement of disabled people in Australia, discussion paper prepared for the International Year of Disabled Persons Committee of Non-government Organisations, Canberra, 1981.
6. Handicapped persons in Australia, op.cit., p. 13.
7. ibid., p. 167.

CHAPTER 2

METHODOLOGY

SUBMISSIONS

2.1 Information was gathered from disabled people and their organisations on:

(a) how current taxation and social security provisions discriminated against them and what effects this had on their daily lives;

(b) their recommendations on appropriate measures to overcome these difficulties.

An 'issues paper' was prepared which outlined various provisions in relevant Acts followed by criticisms most often raised in relation to the practical effects of their implementation (see Appendix 1). Submissions were invited on these and any other matters that respondents felt should be raised.

2.2 On 9 March 1983, 500 copies of the 'issues paper' were mailed out. The mailing list was compiled from entries listed in various social service directories of disabled people's organisations. Special efforts were made to include all diagnostic categories of disability and an emphasis was placed on reaching voluntary organisations and members and representatives of self-help groups. A covering letter explaining the purpose of the research was included and information leaflets were attached with a request that they be displayed and distributed to members. It was further requested that details of the research be included in any available publications.

- 2.3 The closing date for submissions was set for 29 April 1983 and a reminder notice was sent out to those organisations who had not responded by that date. Following the initial receipt of both written and oral submissions it became clear that more 'issues papers' would need to be distributed and the submission deadline extended. Another 300 copies of the 'issues paper' were printed and the closing date for submissions was extended to 29 July 1983.
- 2.4 A breakdown of issues raised in the submissions shows 66.6 Per cent related to matters concerning social security legislation, 22.4 per cent concerned taxation legislation and 10.9 per cent concerned issues which did not directly fall within the ambit of social security or tax law (see Appendix 2). Over one-third of all submissions were directly concerned with income support, which accords with the matters which arose out of the International Year of Disabled Persons, when the issue of income support was one of high priority. A total of 37 organisations responded and 55 individual people responded, with the latter making 38 written submissions and 17 verbal submissions (see Appendix 3).

2.5

2.5 Further information and advice was sought from 'key informants' who had specialised knowledge in areas pertinent to the law and disability. Twenty informal interviews were conducted with members of self-help and advocacy groups, administrators of voluntary organisations and lawyers.

LEGAL EXAMINATION

- 2.6 A comprehensive list of current legislation was compiled and various acts were excluded from further consideration on a number of grounds. Practical constraints meant that certain acts were excluded on the ground that they were

largely peripheral to the main thrust of the research. Others, such as the A.C.T. Workmen's Compensation Ordinance 1951 and workers' compensation provisions in the Commonwealth Public Service Act were deleted on the grounds of their complexity and the fact that investigations are Currently being carried out in this area by other organisations.

- 2.7 On the basis of submissions received it was decided to focus the legal analysis of social security to those issues concerning the Invalid Pension, Sickness Benefits, the Handicapped Child's Allowance, the Program of Aids for Disabled People (PADP) Scheme and the Mobility Allowance. The legal analysis of taxation issues focuses on issues concerning work related deductions, concessional rebates, sales tax and custom duty.

LITERATURE REVIEW

- 2.8 Literature searches were carried out in several libraries. There is a vast amount of domestic and overseas literature which deals with the lack of equal opportunity faced by people with disabilities. Given the particular and often overlapping principles underlying social security and taxation law and the emphasis on income security raised in the submission, it was decided to focus on recent written material closely allied in subject matter.

CHAPTER 3

THE AUSTRALIAN TAXATION AND SOCIAL SECURITY SYSTEMS:
AN OUTLINE

The taxation and social security systems are commonly perceived, as discrete areas of government responsibility with separate, if not opposing, functions. The tax system collects monies for the public purse and the social security system gives financial assistance to those in need. Both systems are the subject of controversy and dissatisfaction is regularly expressed by disparate groups for a variety of reasons. Two major complaints in recent years concern: the expansion of social security outlays and heavy and/or equitable tax liability imposed on Australian taxpayers.

- 3.2 In the last twenty years or so there has been increasing discussion about the Inter-relatedness Of the social security and taxation systems. Their inter-relationship is important because both systems provide and contribute to the ultimate economic security and well-being of Australians. Before examining pieces of legislation which particularly concern people with disabilities in the next chapter, a brief outline Of the tax and social security systems and the principles which underlie them may be helpful.

PRINCIPLES OF THE TAXATION SYSTEM: EQUITY, EFFICIENCY AND SIMPLICITY

Equity

- 3.3 The taxation system is generally said to be based on three major principles: equity, efficiency and simplicity. Equity, which is a major concern, is based on the idea that the tax system should be equitable in its treatment of all members of the community.² Obviously, concepts of what constitutes 'equitable treatment' are value-laden and differ from person to person. Nevertheless, two general principles of 'equity' in taxation are commonly distinguished: horizontal equity and vertical equity.
- 3.4 Horizontal equity proposes that those in similar economic circumstances (e.g. those whose ability to pay is the same) should pay the same taxation. 'Economic circumstances' does not simply mean income received by a taxpayer but also takes into account the number of people who are dependent on the income received. A taxpayer who has a number of dependents will be given certain concessions which in effect reduce tax liability. Thus two people with the same income, one with three dependent children and the other with one, are not regarded, given horizontal equity considerations, as having 'equal economic circumstances'.
- 3.5 As regards people with disabilities, the principle of horizontal equity is illustrated in the personal income tax system by the invalid relative rebate which gives recognition (albeit scant) to the additional costs of maintaining a dependant who is disabled. Another category of taxation concessions which may be viewed as an attempt to achieve horizontal equity is the expenses-based 'concessional expenditure' rebate, currently 30 cents for each dollar which exceeds \$2,000. Expenditure includes

costs in respect of hospital, medical and education expenses, superannuation, life insurance rates, land taxes and adoption of a child. Tax concessions on hospital and medical costs can be very important to those people whose disabilities require recurrent non-optional expenditure on pharmaceuticals and health care.³

- 3.6 Vertical Equity proposes that people whose income is greater than others (after taking into account horizontal equity considerations) should carry a proportionately greater tax burden, i.e. the tax scales should be progressive, with the proportion of income paid in tax increasing as total income increases. The Australian personal income tax system has a progressive rate structure. In contrast, a regressive tax is one where the average rate declines as income rises (e.g. indirect taxes such as duty on petrol), and a proportional tax is one where the average tax rate remains constant over all income ranges.
- 3.7 While the complexity of the interaction of various forms of taxation cannot be over-stressed, it is important to keep in mind the effects of taxation categories.⁴ For example, people who have impaired mobility may be eligible for a sales tax exemption when buying a new car or they may be eligible for the new \$10 a week Mobility Allowance introduced in April 1983. Should both these types of transport assistance be available or is one more equitable and/or efficient than the other? The point is of course that while a choice of taxation methods exists, the one chosen must be consistently evaluated to ensure that the real effects match underlying principles.

Efficiency

- 3.8 The principle of efficiency in regard to taxation is characteristic of the individual income tax system as a whole. It rests on the view that the imposition of a tax

should be 'neutral' in effect and should not unintentionally distort a consumer's choice of goods or activities. For example, a tax should not have the effect of reducing the net return from work to the extent that -incentive is lost and unpaid work or leisure is made preferable.

3.9 With regard to work, there has been a considerable amount of research into the effects of income, taxation and women's participation in the labour market and the same economic methods could be used to examine for instance, income, taxation and participation of disabled people in sheltered workshops. It would be interesting to discover, for example, precisely what effect the pension free area of \$30 and the income test withdrawal rate of 50 cents in the dollar on income earned over that amount has on the incentive of people seeking employment in sheltered workshops.

3.10 On the other hand, some taxes are designed to be 'inefficient' and distort individual choice. A high tax on cigarettes and alcohol may be intended to discourage consumption and in turn lessen the demand on state supported health services. Similarly, import duties may be placed on foreign goods to protect and encourage domestic production and employment. Again, taxation principles and effect must be assessed. The current 20 per cent import tax on electric wheelchairs is illustrative because it distorts the choice of consumers and contributes to a lowering of their living standards by denying a possibly preferred choice if the tax were absent. In the event that an equivalent wheelchair is produced domestically the 'efficiency principle' can be argued. If not, it would seem hard to sustain. Furthermore, it may be more 'efficient' to subsidise local manufacturers or indeed consumers through a bounty rather than impose import duty..

16.

Simplicity

3.11 The principle of simplicity requires that the tax system be readily understood by the taxpayer, easy to comply with and administratively straightforward so as to keep costs to a minimum. However, considerations of horizontal and vertical equity are further complicated by attempts to tailor tax to individual requirements. This has inevitable consequences for the complexity of the system. Clearly, the Australian tax system is far from ideal in respect of 'simplicity' and much of the recent literature on tax reform has concentrated on this area.⁵

THE SOCIAL SECURITY SYSTEM

3.12 The International Labour Office (ILO) in its Introduction to social security gives the following definition:

Social security is the result achieved by a comprehensive and successful series of public measures for protecting the public (or a large sector of it) from the economic distress that, in the absence of such measures would be caused by the stoppage of earnings in sickness, unemployment, invalidity or old age and after death; for making available to that same public medical care as needed; and for subsidising families bringing up young children.

In other words, social security consists of both short-term assistance in periods of crisis and long-term assistance for the maintenance of disadvantaged people.

Under the authority of s.51 (xxiii) of the Australian Constitution, the Commonwealth provides a range of income security programs.

3.13 Direct financial assistance accounts for a major part of the social security budget while other items of expenditure include direct provision of services, assistance to organisations and administrative expenses. Income support has three main categories: pensions for

those who need long-term assistance (e.g. invalid, aged, widows); benefits for those whose need is temporary (e.g. sickness, special, unemployment) and allowances which may be broad-based (e.g. Family Allowance) or selective (e.g. Handicapped Child's Allowance or Sheltered Employment Allowance).

3.14 In 1984-85, total budget outlays on social security and welfare are estimated to be \$18,047 million which represented 9.4 per cent of estimated gross domestic product (\$192,875 million). Of this, it is estimated that \$16,650 million will be paid out as cash benefits in the form of pension payments (\$11,692 million), benefit payments (\$3,446 million), and family allowances (\$1,512 million). Payments for disability pensions and allowances and invalid pensions and allowances are estimated to be \$2,282 million.

3.15 Australian outlays on welfare expenditure compared to 22 other OECD countries show that our country lies seventeenth on the list.⁶

PRINCIPLES OF THE SOCIAL SECURITY SYSTEM: CATEGORISATION AND SELECTIVITY

3.16 In Australia, as in all other industrialised nations, there are always people outside the economic system with inadequate or no financial means. Nobody is self-supporting throughout his or her life - children are necessarily dependent and widows, orphans, single parents and the elderly often need support. People who are disabled also often need some financial assistance.⁷

3.17 Those people who, for a variety of reasons, are excluded from the financial rewards of the economic system must be supported by those who earn income. This is done mainly through the tax system. It is commonly accepted that disadvantaged people must be cared for and that the market

place cannot, and should not, be the sole arbiter of the distribution of wealth. Thus, the political debate on income redistribution is 'about the level and form assistance should take, not whether it is necessary. In Australia, the elected government accepts responsibility for determining what is a fair and equitable reallocation of resources. Reallocation through the social security system is determined on two major principles: categorisation and selectivity.

Categorisation

3.18 The principle of categorisation is used to determine who should qualify for assistance. Recipients must fall into one of a number of specifically defined categories. Categories may be broadly defined as with the Family Allowance which is payable without an income test to any parent, guardian or institution caring for a child or children under 16 and in respect of certain students aged 16 to 24. years. Alternatively, Categories may be relatively narrowly defined. For example, people qualify for a Sheltered Employment Allowance if they are between 16-64 (male), or 16-59 (female), employed in sheltered workshop, would generally otherwise meet eligibility criteria for a pension or benefit and meet residence requirements. Similarly, people qualify for the recently introduced Mobility Allowance if they are severely disabled and Cannot use public transport because of their disability, are in gainful employment or undertaking training, meet residency requirements and have not received a sales tax exemption on a new motor vehicle in the previous two years.

19.

Selectivity

3.19 The principle of selectivity is aimed at ensuring that people whose need is greatest in each category are the ones who receive the most assistance.⁸ This aim is achieved (in most cases) by income testing payments or inversely relating payment to any 'other income' the recipient receives.

The Invalid Pension is illustrative. Successful applicants for the Invalid Pension must pass an income test, be permanently incapacitated for work to the extent of not less than 85 per cent, or be 'permanently blind'. The basic rate (as at November 1984) is \$91.90 per week for a single person and while up to \$30 income is allowable in addition to the basic pension rate, each dollar over this amount reduces the rate of pension payable by 50 cents in the dollar.

3.20 As regards income support, the Government seeks to strike a balance between three stated, though inherently conflicting, aims:

providing an adequate level of support;

ensuring reasonable incentives for self-help; and

ensuring that the cost is maintained within realistic limits.⁸

The relative weight given to these various objectives is of course a matter for political judgment. For instance, the Handicapped Child's Allowance was instituted to compensate parents for additional time spent caring for their child and to encourage them not to institutionalise their child. While the \$85 per month (maximum) payable to parents of a severely handicapped child may be a

politically 'realistic' amount, it is questionable whether this small sum would be a major factor in any decision of whether or not to institutionalise a child.

WHOSE BENEFIT? - THE TAX-TRANSFER SYSTEM

- 3.21 It is common for economists to refer to the interaction of the social security system and taxation system as the tax-transfer system. The tax-transfer system often regards pensions, benefits and allowance payments as negative tax payments. That is, these types of income support flow from the government to individuals and families rather than in the reverse direction, as in the case of tax payments.
- 3.22 As previously noted, the income support system is a major part of the social security budget. However, it is unwise to emphasise the role of pensions, benefits and allowances and ignore other ways and means that the Federal Government has at its disposal to promote the social welfare and well-being of its citizens.
- 3.23 Recently there has been renewed interest in the view of Professor R. M. Titmuss, an observer of the British system of social security.¹⁰ According to Professor Titmuss, state welfare intervention consists of three major categories.

Social welfare: Cash transfers and social services organised through the social security system, - e.g., pensions and benefits'.

Fiscal welfare: Allowances and benefits transferred through the taxation systems, e.g., hospital and medical rebates, home loan rebates.

Occupational welfare: Benefits associated with the remuneration for paid employment, e.g. fringe benefits.¹¹

Implicit in Titmuss's categories is the notion of the „inter-relatedness of the social security and taxation systems. Both are important instruments of social policy and both are used to distribute benefits to chosen groups of people. One major „difference between the two, however is the high visibility and general awareness of social security cash benefits and pensions compared with much less visible welfare 'payments'-such as tax concessions and rebates. This has led to a common belief that state-provided social welfare consists solely of pensions and benefits payments and social services organised through the social security system. Although for instance, tax, rebates on housing loans are also a cost to the government in the form of revenue foregone, such allowances are rarely, if ever, considered to be 'welfare payments',

3.24 A similar situation occurs with superannuation, payments which attract tax concessions. The Department of Social Security has recently estimated that the cost of private superannuation to the public revenue is around 19 to 2.4 billion dollars.]⁻² Moreover, what is in effect public expenditure disproportionately benefits higher income earners.

3.25 The following table compares the value of \$2,500 in claimable concessions for persons earning \$5,000, \$17,000 and \$40,000 per annum respectively.

Table 2: Value Of Tax Concessions. To Persons On Different Incomes

<u>INCOME</u>	X.	<u>CLAIMABLE CONCESSIONS</u>	<u>„REDUCTION IN TAX</u>
\$	\$	\$	\$
5,000	aop	2,500	108
17,000	3,458	2,500	150
40,000	14,395	2,500	150

The low income earner (\$5,000 per annum) is eligible for a reduction of \$108, the average income earner and high income earner reduces tax liability by \$150.

3.26 A major problem for many disabled people arises because of their reduced ability to compete in the labour market for scarce jobs which in turn denies to them many of those benefits which derive from fiscal and occupational 'welfare'. Moreover, rather than the security and status which attach to benefits such as superannuation and housing loans, many people with disabilities face the differentiation and stigma which often accompanies assistance through the social services. As Keens and Cass argue:

... since it is partial and misleading to consider only cash transfers and social services as 'welfare expenditures' it is essential that the other side of the public expenditure, tax expenditures and more broadly, fiscal welfare, be given equal political and administrative prominence. This requires that tax expenditures, including exemptions, deductions and rebates be identified, costed and brought within the same framework of budgetary control and reporting as cash benefits. It is essential also that the redistributive impact of fiscal welfare be identified -.¹³

3.27 Inequality and discrimination are far more complicated phenomena than a simple lack of money, Nevertheless, despite absolute advances in the Australian living standard, vulnerable groups such as people with disabilities still find themselves unable to share in many publicly funded social benefits which more privileged members of the community enjoy and perceive as a right. When people do not share an equal opportunity to community benefits supplied by the 'public purse' they are discriminated against.

3.28 In the last decade or so, increasing public awareness and recognition of civil and political rights has been witnessed. This change has also been reflected in

legislative initiatives at both federal and state levels of government. There is along way to go. The tax system and the social security system can recognise and enforce in specific and particular ways those generalised rights .t-9 economic security and a decent, standard of living encompassed in the United Nations Declarations and indeed, in their own underlying principles.

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CHAPTER 4

TOWARDS INDEPENDENCE

CHANGING CONCEPTIONS OF DISABILITY

4,1 There has been a great deal Of research to support the common observation that discrimination against disabled people lies in community attitudes.¹ Discrimination and stigmatisation occur when disabled People are stereotyped in terms of their disability.

4.2 Evidence gathered by social historians suggests that the way a society treats it disabled members reflects what that society attributes to the cause of disability. For example in the sixth century B.C. the Greeks associated physical abnormality with evil or sin and **this led** to the killing or abandoning of **children** and the scapegoating of individuals when a community suffered from plague, famine or other misfortune.

Alternatively, in some 'primitive' societies where physical disability is regarded as something which may happen to anyone, there is evidence of community acceptance and an emphasis on the obligations of the society to its disabled members.²

4,3 In the Western World in the last century there was a notable change in social conceptions and social policies regarding disability. In the United Kingdom disabled children and adults were swept along in the wave of middle class charitable philanthropy which was a feature of the Victorian Age. Victorian social reformers believed they had a moral duty to give protection and succour to the poor and afflicted. Asylums and institutions were set up for orphans, delinquents and the poor and in the latter

half of the nineteenth century institutions for physically and intellectually disabled people were also established. The doctrine of charity and the related growth in institutions was soon reflected in Australia.

- 4.4 While the aim of this charitable activity was obviously meant to assist those in need, and in terms of relative deprivation often did, it also had the practical effect of pushing disabled people further out of the mainstream of society and leaving 'them marooned on an island of' dependency. The repercussions are still felt today'. As the Bright Report notes 'many of our society's negative attitudes towards disabled persons e.g. that they are objects of pity, a burden of charity and dependent and eternal children, are attributable to the charity model developed in England during this period'.³

- 4.5 Wolfensberger has analysed current community attitudes towards disability in a book which has become a standard reference:⁴ The various types of attitudes he distinguishes are often interrelated and three major examples can be extrapolated.⁵

The 'Charitable' attitude

This attitude is characterized by the patronising treatment of disabled people who are perceived as objects of pity. In return for charitable largesse, the recipient is expected to be demonstrably grateful **and** to work as hard as possible for his keep.

In this respect, people who are disabled share the experience of other marginal groups to which they often also belong: the poor, the homeless, ethnic and racial minorities, and the-aged.

Indeed, employees who are disabled often find it is not sufficient to be as competent as co-workers but must demonstrate even greater efficiency, diligence and cheerfulness on the job,

The 'Protective' attitude

This attitude stems from the belief that the interests of disabled people are best served by insulating them against the harsh realities of the world,.. This view has been used to justify their segregation in institutions and encouraged their treatment as dependent 'children'.

An organisational corollary of the protective attitude occurs when charitable and professional organisations speak for the disabled instead of allowing them to speak on their own behalf,

A political corollary occurs when financial, resources are directed towards 'brick and mortar' projects and one-off 'visible' activities to the detriment of support systems and services supplied on the basis of consumer demand.

The 'Sickness' attitude

This attitude stems from the refusal to recognise the difference between ill-health and disability despite abundant evidence that ,people with a disability may be perfectly healthy or never have been sick at all.⁷ This has led to healthy individuals being placed in hospitals and medically-orientated institutions and promotes the stereotyped idea of disabled persons as eternal 'patients'.

CURRENT DEVELOPMENT TOWARDS A POSITIVE APPROACH

- 4.6 Undoubtedly attitudes towards disabled people are in a process of change and the efforts of self-help groups and the independent-living movement in particular are major forces behind increasing awareness. Yet complacency is clearly unwarranted. While it is true that overt discrimination has lessened we still live in a jungle of stereotyped expectations and prejudices which effectively exclude disabled people from the mainstream of Australian political and economic life.
- 4.7 Social exclusion and the denial of rights forces people to collude with society in order to gain some share of life's opportunities. They may be forced to beg or plead, develop evasive manoeuvres or they may suffer indignities in silence.⁸ The independent-living movement which had its origins in the United States in the late 1960s, and is rapidly growing world-wide, is changing how disabled people view themselves and how they wish to be viewed in society.⁸ As Elizabeth Hastings writes:

... disabled people have begun to analyse their position in society to apply economic, sociological and political formulae rather than the psychological formulae of adjustment and acceptance. They have begun to define themselves as an oppressed group rather than as an aggregate of unfortunate individuals, and they have begun to realise the strength and power in mobilisation and self-help. They see themselves as consumers of services, rather than as grateful recipients, and as consumers, they have much more confidence in their civilian rights, in their capacity for Self-determination, and in their demands for client-centred and appropriate agency interventions.¹⁰

THE INDEPENDENT-LIVING AND SELF-HELP MOVEMENT

- 4.8 The independent-living movement is based on a radically different view of disability. The problem is not one of individual impairment as the medical model would suggest

but rather of unnecessary dependence on professionals and relatives, of environmental barriers and unprotected rights, all of which limit the choices available to people with disabilities. It thus follows that the solution is not more professional intervention but rather initiatives which are geared toward self-help. As such, the principles underlying the independent-living movement are in total accord with the socially esteemed value of self-reliance and also have an affinity with the traditional non-interventionist values of the civil right.

4.9 The independent-living movement, self-help groups and citizen advocacy lobby groups are gradually forcing society in general and service providers in particular to change traditional concepts of protection and paternalism to those of 'integration' and Inormalisation..¹¹ Both concepts are closely, linked although a ,preference has been shown for the term 'integration' as it does not have the status quo connotations of 'normalisation' .¹²

4,10 'Integration' means in essence that people with disabilities will be able to share as far as possible in the ordinary life of the community. 'Programs and services involving disabled people will be continually evaluated to ensure they provide 'the least restrictive environment' to the !maximum degree of feasibility'. These qualifications are necessary because there will always be a need for certain special provisions to support individuals as they move into and live in an integrated setting. For children, for example, this may Mean that schools

incorporate or expand special classes and coaching lessons into existing curriculae or that structural alterations are made to improve accessibility to established school buildings. For adults it may mean extending domiciliary services such as Meals, on Wheels and Home Help.

4.11 While there is a general agreement on the philosophy independent living there has been some spirited disagreement as to the degree of integration which can be accomplished¹³ There has also been a well founded concern that principles will be pursued ahead of the practical support needed for success. It is feared that a reduction in institutional care will not be coupled with an equal rise in financial assistance and community support services and that people with disabilities will be forced to exchange one type of impoverished life for another.

While these concerns are valid they must be met with imagination, initiative and vigilance,

REALLOCATION OF FUNDS

4.12 The re-ordering of services from the traditional 'DriolCS and mortar' approach to community-based human services will entail a re-allocation of government funding. The National Advisory Council for the Handicapped has listed the following range of provisions which will be needed to foster and support independent living:

arrangements for assessment of individual need

assistance to disabled people, either individually or in groups, to purchase, modify, extend or construct suitable housing

adequate rehabilitation services with an independent-living orientation

domiciliary support services

assistance with the additional daily living costs resulting from the disability by payment of a special allowance

adequate information and referral service¹⁴

4.13 The Council further notes that by supporting the self-help movement which features a strong consumer and individualistic orientation of services, it hopes to 'increase the range of choice open to disabled people and their families' and that 'the argument in favour of this transcends relative cost considerations'. But as McIntyre rightly argues 'human distributors' (especially governments) will always need to be convinced that the benefits of a reallocation of resources will substantially outweigh the costs, especially for those programs which involve an increased distribution in initial stages.¹⁵ This fact has long been recognised by, for example, the primary producers' lobby and the mining lobby, which have successfully persuaded governments to allocate them substantial resources (subsidies) on the ground that an investment in their 'well-being' will flow on to society as a whole.

4.14 The results of overseas studies, such as that conducted by the Economist Intelligence Unit in the United Kingdom, provide the sort of information which may be utilised to influence planners and policy makers.¹⁶ The results in most cases showed that maintaining a person in the community costs between 39 per cent to 64 per cent of that needed to maintain the same person in an institution. Even when a disabled person required constant care, the cost of living in the community was only 88 per cent of the cost of institutional care. In Australia, similar findings were given by the Department of Health, which stated:

Results generally show that community based care is less expensive and often more effective than institutional care.¹⁷

A caveat to this general rule was made, namely, that the initial diversion of resources may mean that there is no evidence of savings in the short-term. Indeed, it has

been pointed out by the South Australian Department of Economic Development that community-based care will not necessarily be cheaper than institutional care if there is a high regard for quality of service.¹⁸

- 4.15 Translating the social philosophy of equal rights into action poses complex problems for policy makers. The efficient and productive use of scarce economic resources involves decisions about how to achieve maximum benefits at the least cost and choosing between different ends. According to one observer of the Australian welfare system, Professor C.P. Harris, social security programs may be classified into two broad groups: income security programs and opportunity security programs.¹⁸

Income security programs rest on the notion of individual need and are designed to protect or supplement the income of persons faded with adversity.

Opportunity security programs rest on the notion of social rights and are designed to protect the rights of individuals and guarantee equality of opportunity with respect to access to education, work, accommodation, and various kinds of community and social service.

Professor Harris argues that because the current Australian system is a combination of the two-, and will continue to be so in the foreseeable future, it is crucial that the basic philosophy underlying policies is explicitly acknowledged so as to enhance the co-ordination and effectiveness of existing and future programs.

This position is implicit throughout recent Australian studies where a consistent underlying premise is the need to evaluate existing provisions against the United Nations Declaration on the Rights of Disabled Persons which states that the 'first and foremost right' is the right to enjoy 'a decent life as normal and full as possible'.

4.16 If one major theme is to be found in recent inquiries into the position of disabled citizens in Australia, it is that they are not being given the opportunity to determine their own destinies and that they are no longer willing to let this situation continue. In the experience of the Victorian State Committee for the International Year of Disabled Persons the most significant fact to arise out of that year's activities was 'that disabled people are not a hysterical group of people making emotional demands on the Community', but are rather "realistic in their assessments of situations, reasonable in their demands, and above all, competent to manage their own affairs!'.²⁰

4.17 As regards the law, it has been repeatedly pointed out that it is not simply individual legislators who overlook the fundamental problems faced by disabled persons - it is endemic to the community. The resultant loss of rights is most probably due to a lack of awareness and commitment rather than active discrimination.²¹

While it is true that the effectiveness of laws depends on community support and acceptance it is also true that the law can fortify and encourage changes already begun.

The general principle that the law may be used to reinforce **and** sustain supportive community attitudes is the major thrust behind recent Commonwealth and State equal opportunity initiatives. Disabled people have special problems and incur costs in living which people without disabilities do not have. If legislation does not cope with these special contingencies, disabled people become victims of the law.

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AN ANALYSIS OF CURRENT AUSTRALIAN SOCIAL SECURITY
AND TAXATION LEGISLATION

SOCIAL
SECURITY LEGISLATION

- 5.1 The Schedules to the Human Rights Commission Act 1921 (Cwlth) declaring the rights of disabled persons clearly reflect changing societal attitudes to people who are disabled either physically and/or mentally, viz:

The move away from the medical dependency model in which disabled people are perceived as 'sick' and thus requiring hospitalisation or institutionalisation. Such a model has encouraged and perpetuated paternalism and patronisation of disabled people, with the 'patients' having all choices removed from them, and being encouraged to be dependent on their carers, who have presumed to know 'what is best for them'.

- The move towards a system for disabled people to become as self-reliant as 'possible by providing proper support and incentives for them to remain in their Own homes and lead More independent lives.

The belief that disabled people should be integrated as much as possible into the community and the work force.

The recognition that policies of 'even-handedness' discriminate against minority groupings and the disadvantaged who are less capable of availing themselves of the benefits offered than other members of the community who have not suffered the same social disadvantages.

Also, the recognition that legislation and policy cannot and should not be applied uniformly in all instances in respect of people suffering the same impairment and disability.

5.2 Despite the attitudinal changes much of our, welfare legislation in fact fails to reflect these concepts and in some cases blatantly operates in direct contradiction to them. Also, despite the fact that numerous attempts have been recently made to redress some of the previous ills of the legislation, (e.g. the introduction of the Mobility Allowance) such attempts are not only deficient in the amount of assistance provided and thus cannot hope to achieve this goal, more significantly they are merely token gestures in that the assistance is arbitrary and meets the needs of only a small percentage of those requiring such assistance.

5.3 The arbitrary nature of welfare legislation appears, at times to be the result of an inadequate theoretical, appreciation of the issues, or the result of political expediency (e.g. the introduction of Family Allowance), or else so totally inexplicable that one can only surmise it to be the deliberate policy of the of the Government to minimise the welfare budget without due regard to the persons affected. For example, it appears to be no coincidence that it is much more difficult, to obtain Invalid Pension than Sickness Benefits when it is in the interests of the Department of Social Security to pay Sickness Benefits rather than the Invalid pension to someone severely injured in a motor vehicle accident or at work. In these instances, the benefits must be repaid to the Department-out of compensation paid to the beneficiary.

5.4 In the following discussion the areas chosen which arouse the most concern are:

- (i) the permanently disabled (Invalid Pension)
- (ii) the temporarily disabled (Sickness Benefits)
- disabled dependant e (Handicapped Child's Allowance) "
- (iv) an allowance paid to people to overcome their disability (the Program of Aids fot biaableC (BAD?) Scheme)-
- Iv) an allowance paid to e&sist people to phta 4 employment (Mobility Allowance)

Apart from Sickness Benefits, these categories coincide with the areas most raised in the submissions, It Was felt important to include a discussion of Sickness, Benefits as many people who are the victims of the arbitrariness of the eligibility criteria for an Invalid Pension fall into the area of sickness beneficiaries. Further, it is not surprising that there was little response concerning Sicknesa Benefits because they are perceived as a temporary benefit and granted to a very diverse population, and as such do not present a focd6 for **unified action**. However, prior to examining these areas in more detail the following general observations may be made.

Disincentives for welfare 'recipients to receive other income

- 5.5 Perhaps the most blatant disregard of the emerging philosophy to assist disabled people to move towards self-reliance and independence is the disincentive for pensioners and beneficiaries to earn other income because of the effect that earnings or any other income has on social security payments and tax liability.

- 5.6 An examination of the tables below show the effects of part time employment on income. In the case of persons receiving Sickness Benefits, in particular, it is clear that the net income of welfare recipients who work part time is in some cases actually lower than if they solely receive a pension or benefit. The net result is unquestionably the development of a system which disregards and discriminates against many people whose well-being would be best served by a gradual return to the work force, particularly as a severely disabled person may require considerable time to build up work tolerance.
- 5.7 It should also be noted that people on Sickness Benefits are significantly worse off working part time than those on an Invalid Pension. Why this situation has developed is difficult to ascertain, unless, of course, it is an additional attempt to reduce the welfare budget. That is, the obtaining of part time employment may establish a capacity to work which would deny an Invalid Pension to the part time worker who would thus become a sickness beneficiary, leaving few if any part-time Invalid Pension workers (see Littman's case, below).
- 5.8 Another consequence for invalid pensioners working part time is that they lose part of their supplementary assistance or rent allowance if they earn any income. If the amount earned (by a single person) is more than \$30 per week, 50 cents is deducted from the pension for each \$1 income.
- Further, although the Invalid Pension is not taxable, a single person earning more than \$88.36 per week reaches an income bracket where his/her earnings are taxed.
- 5.9 Table 3 shows the effect that earnings have on the net or retained income of a single invalid pensioner who tries to get back into the work force.

Table 3 - Income Retention - Invalid Pension
(November 1984 Rates & 1984-85 Tax Scales)

<u>Earnings</u>	<u>Invalid Pension</u>	<u>Supplementary Assistance</u>	<u>Gross Income</u>	<u>Net Tax</u>	<u>Income Tax</u>	<u>Effective Marginal Tax Rate*</u>
0	91.90	15.00	106.90		106.90	50
5.00	91.90	12.50	109.40		109.40	50
10.00	91.90	10.00	111.90		111.90	50
15.00	91.90	7.50	114.40		114.40	50
20.00	91.90	5.00	116.90		116.90	50
30.00	91.90	-	121.90		121.90	50
50.00	81.90		131.90		131.90	50
60.00	76.90		136.90		136.90	50
80.00	66.90		146.90		146.90	50
90.00	61.90		151.90	.44	151.46	76.67
100.00	56.90		156.90	3.10	153.80	76.67
120.00	46.90		166.90	8.44	158.46	76.67
150.00	31.90		181.90	17.94	163.96	77.67
200.00	6.90		206.90	31.77	175.13	77.67
213.80			213.80	35.59	178.21	27.67

The 'effective marginal tax rate' refers to the percentage of an extra \$1 of private income that a pensioner would lose because of the combined effects, where applicable, of the pension and supplementary assistance income tests, personal income tax and the Medicare levy.

Source: Australia Department of Social Security

5.10 A number of comments can be made about this table :

- (i) There is an extremely high 'effective marginal tax' rate. This results from the combined effects of both the social security income tests and the personal income tax system on an additional dollar of private income. At a rate of 50 per cent, invalid pensioners pay a much higher 'tax' rate than the very rich yet do not have resources to minimise taxation obligations.
- (ii) Other factors can be taken into account which taint an even more depressing picture. For example, pensioners who work not only lose social security payments and pay tax on their earnings but they also have to pay more rent if they are renting from the Housing Commission or some other public authority. They lose educational allowances and, perhaps most significantly, fringe benefits which entitle them to advantages such as reduced telephone and travel expenses, and, of particular significance to invalid pensioners, medical and pharmaceutical expenses. When these 'losses' are also taken into account, the effective marginal tax rate can be more than 100 per cent.
- (iii) The table is open to the criticism that people who can earn the higher amounts in the table would no longer be incapacitated to the extent of 85 per cent and thus no longer qualify to receive an Invalid Pension. This may be true in some cases but it is possible for people to work a few hours a day and still be incapacitated. In Mann's case (Mann 8 SSR 75) it was stated:

It would, we think, be quite unrealistic and quite wrong to contemplate that because a man can do two, three or four hours work a day

'that, he is to be regarded as being able to be adequately capacitated 'for work' ... if only a part-time job can be obtained and held by the person in question, the appropriate degree of capacity is not reached in order to support a 'finding that he is not 'incapacitated for work.

The more likely consequence of obtaining part-time employment is to establish a capacity for work which would deny the part-time worker an Invalid Pension. In Littman 13 SSR 135, a 49-year-old woman suffering from a degenerative disease of the spine, a bladder problem and anxiety had an employer willing to employ her with ,these limitations for about 15 hours a week, but was denied an Invalid Pension.

If denied an Invalid Pension, people with a disability which prevents them from engaging in full-time work may still qualify for Sickness Benc.refits. The plight of a sickness beneficiary who works part time is even worse than that of an invalid pensioner.

5.11 Table 4 below demonstrates the effect that income earned by a single beneficiary can have on his/her net income.

Table Income Retention - Sickness Benefit"
(November 1984 Rates & 1984-85 Tax Scales)

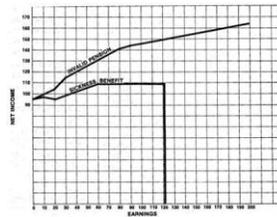
A							
Earnings	Sickness Benefit	Supplementary Assistance	Taxable Income (A+B) ' Tax	Net Income	Marginal (t+D-4) Tax	Effective Marginal Tax Rate*	
\$	\$	\$	\$	\$	\$	%	
Nil	91.90	15.00	91.90	106.90		89.17	
5.00	91.90	12.50	96.90	107.46	1.92	76.67	
10.00	91.90	10.00	101.90	108.29	3.61	76.67	
15.00	91.90	7.50	106.90	109.461	4.94	76.67	
² 0.00	91.90	5.00	111.90	110.62	6.28	113.34	
30.00	86.90		116.90	109.29	7.61	63.34	
50.00	76.90		126.90	116.62	10.28	63.34	
60.00	71.90		131.90	120.29	11.61	63.34	
80.00	56.90		136.90	123.96	12.94	100.00	
100.00	36.90		136.90	123.96	12.94	100.00	
120.00	16.90		136.90	123.96	12.94	100.00	
136.90			136.90	123.96	12.94	27.67	
150.00			150.00	132.06	17.94	27.67	
200.00			200.00	168.23	31.77	27.67	

The 'effective Marginal tax rate' refers to the percentage of an extra \$1 Of 'Private income that a beneficiary would lose because of the combined effects, where applicable, of the benefit and supplementary allowance, income tests, personal income tax, the special beneficiary rebate and the Medicare levy.

It will be noted that in some instances (where the income is between \$10 and \$20) the effective tax rate is 113 per cent. In other words for every \$1 a person earns above \$10, the Department of Social Security deducts \$1 from his/her benefit, and he/she pays to the Taxation Department 13 cents.

5.12 A person who is permanently incapacitated for work to an extent of at least 85 per cent may qualify to receive an Invalid Pension. An incapacity that is not permanent or is less than 85 per cent may only qualify a person for a Sickness Benefit. While the distinctions between these qualifications may be very slight, the following graph illustrates how a given classification can have very significant effects on a part-time worker.

FIGURE 1: INCOME RETENTION - INVALID PENSION AND SICKNESS BENEFIT (SINGLE PENSION)



For example, a person who sells newspapers for a few hours a day and is paid \$60 a week will, if classified as an invalid pensioner who is 85 per cent incapacitated, have \$20 more in his/her pocket than if he/she is classified as 'only' 80 per cent incapacitated and thus a sickness beneficiary.

5.13 It can, therefore, be argued that there is an inducement for a person who is incapacitated to:

- (a) exaggerate his/her disability in the hope that he/she will obtain an Invalid Pension, or
- (b) not try to rehabilitate him/herself by working,
- (c) work and cheat by not disclosing his/her income to the Department of Social Security. If this last course is adopted he/she will be 'obliged' to lie to other sources of assistance such as the Education Department, Housing Commission and Taxation Department. All these courses of action are not only socially undesirable but are also counter-productive to the Government and the individual concerned, the latter in many cases suffering from increasing anxiety which may have further detrimental effects on that person's health.

Comparison between the poverty line and social security payments per week

5.14 Most people receiving social security payments are extremely poor. The benchmark used in Australia to measure poverty in economic terms is the 'poverty line' first propounded by Professor Ronald Henderson, the Chairman of the Commission of Enquiry into Poverty. The following table sets out the comparison between the poverty line and social security payments and it is of interest to note that those most

severely disadvantaged are couples *or* single mothers with two or more children. As Table 5 shows social security - recipients tend to fall below **the** poverty line and yet the non-optional living costs of disabled people are significantly higher than those of other people in the community.

Table 5: Pensioners and the Poverty Line

Type of pensioner income unit	(A) 'Head not working' poverty line at August 1973	(B) (a) Pension plus child endow. August 1973	<u>Poverty gap</u> in \$
Single, no children	27.00	21.50	5.50
Married couple, no children	38.30	37.50	0.80
Couple with one child	47.40	42.50	4.90
Couple with two children	56.40	48.00	8.40
Couple with three children	65.40	54.50	10.90
Couple with four children	74.40	61.25	13.15
Couple with five children	83.00	68.25	14.75
Female with one child	36.50	30.50	6.00
Female with two children	45.60	36.00	9.60
Female with three children	54.60	42.50	12.10
Female with four children	63.60	49.25	14.35
Female with five children	72.60	56.25	16.35

(a) Pension rates in column (B) assume the lesser rate of mothers' allowance of \$4 paid where there are neither children under six nor, any invalid children. Furthermore, it is assumed that no supplementary assistance (paid to certain pensioners who pay rent and have very little other income) is being received but that they are owners or purchasers of their homes.

Source: Commission of Inquiry into Poverty, Poverty in Australia, April 1975.

Limitation period

5.15 The Social Security Act 1947 (Cwlth) provides limitation periods within which a, prospective pensioner or beneficiary must lodge his/her claim in order to obtain the full benefit allowable. Unfortunately, the limitation periods are not consistent and different provisions are laid down in respect of one's eligibility to obtain a benefit, pension or allowance. There are existing difficulties in that it is almost impossible to obtain retrospective payments if one has not lodged a claim within the prescribed period (see later discussion on the Handicapped Child's Allowance). However, the arbitrariness of the period itself (which varies depending on which allowance, benefit or pension one is applying for) has no obvious or consistent basis and only adds to the confusion already experienced by social security recipients and welfare workers who are trying to come to grips with the legislation. For example, in order to receive a Handicapped Child's Allowance from the date of eligibility, the claim must be lodged within six months (ss. 105R and 102[1]). If it is lodged outside that six months period, it is then only payable from the commencement of the next Family Allowance period. However, s. 119(2) provides that Sickness Benefits are payable on the seventh day after the day on which the person became incapacitated provided the claim was lodged within 13 weeks.

If it is not lodged within that time the benefit is usually paid from the date of lodgment except where it can be established that reason for the delay was due to incapacity or some other 'sufficient cause'. This can be compared to Invalid Pensions which are usually paid from the date that the application for a pension is lodged. This will be further discussed below.

- 5.18 The above points highlight some of the inconsistencies between the stated goals and the realities of the legislature and how they perpetuate the difficulties faced by disabled people.. Some Of the mere specific areas of the legislation which cause concern namely, Invalid Pensions, Sickness Benefits, the Handicapped Child's Allowance, the Mobility Allowance and the PADP Scheme, will now be examined.

INVALID PENSIONS

- 5.17 Adults who are unable to work by reason of their medical incapacity may qualify to receive an Invalid Pension under Division 3 of Part III of the Act.

Eligibility for invalid pension

- 5.18 Section 24(1) of the Act states: 'Subject to this Act, a person above the age of 16 years who is not receiving an age pension and -

(a) is permanently incapacitated for work; or is permanently blind; and

(b) is residing in, and is physically present in, Australia on the date on which he lodges his claim for a pension,

shall be qualified to receive an Invalid Pension.'

Provision is also Made for Invalid Pensions to be paid to people who do not permanently reside in Australia (see s. 24A).

A person is 'permanently incapacitated for work' if the degree of his permanent incapacity for work is not less than 85 per cent (s. 23).

Rate of pension as at 1 November 1984

5.19 Invalid Pension Categories	Amount per Week
Single Person	91.90
Married Person	76.65 (each)
Children (each)	14.00
Guardian's Allowance	
Child 6 years or over	10.00
Child under 6 or invalid	10.00
Supplementary assistance (rent allowance)	15.00

Invalid Pensions are not taxable.

Income test

5.20 A single person can have other income of up to \$30 per week or a married couple a combined income of up to \$50 per week plus \$6 per week for each child without affecting the pension. Income over these amounts reduces the rate of pension payable by 50 Cents in the dollar for a single person, or 25 cents in the dollar for each of a married couple.

This results in a single person receiving a part pension while his/her other income is less than \$213,80 per week or a married couple's combined income is less than \$356.60 per week. If there are children \$34 per week is added for each child.

Supplementary assistance is payable to pensioners renting accommodation. It is not paid where the rent payable is less than \$10 per week. There is a sliding scale up to a weekly rental of \$30 when the maximum of \$10 is paid. A tenant of a public housing authority will not usually receive this allowance.

An income test is applied for the supplementary assistance payable for rent or lodging. Any other income reduces the assistance payable by 50 cents from the first dollar of other income. Thus no supplementary assistance is paid if the 'other' income exceeds \$20 per week.

Pensioners are entitled to fringe benefits (which include medical, public hospital treatment and accommodation, optometrical, hearing, pharmaceutical and nursing home benefits). Other fringe benefits include concessions for travel, council and water rates and telephone rental. To remain eligible for these benefits a single person must have other income of no more than 00 per week and a married couple of no more than \$98 per week. \$20 per week is added for each dependent child.

There is, however, no income test on basic pension or fringe benefits for a blind pensioner (although there is for other additional allowances). Such a discrepancy appears to be arbitrary and discriminatory between different disability groups.

Problems

5.21 1. The 85 per cent rule

Professor Martin Partington examined the first 204 cases reported in the Social Security Reporter up to April 1983.¹ In his article he writes:

There can be no doubt the single most contentious issue that has been the subject of appeals before the Administrative Appeals Tribunal is the operation of the rule that claimant must be permanently incapacitated for work, such incapacity also being deemed to exist where the incapacity is not less than 85 per cent'².

5.22 Some of the criticisms of this rule are;

- (a) 85 per cent is an arbitrary figure. It is extremely difficult for some people to quantify their incapacity when it may fluctuate from day to day. This is particularly so in the case of some people suffering psychiatric illnesses.
- (b) It has been established in the Administrative Appeals Tribunal (AAT) that:

incapacity for work is to be assessed not simply by reference to the physical or mental State of the Claimant, but also to the Wider social and economic conditions which will affect the ability of the particular claimant in question, with the Condition from which he or she suffers, realistically to obtain' employment. Assessment of incapacity should consist of two stages; first evaluating, in purely medical terms, the extent of the claimant's impairment; and, secondly, ascertaining, in light Of the Previous assessment, the extent to which such impairment affects the ability of the particular claimant in question to engage in paid work.³

Unfortunately however the assessment at departmental level still remains in the hands of medical practitioners who may have little real knowledge of the 'wider social and economic conditions.

It is thus felt that while the pension is related to employability, the decision is a medical one reinforcing the medical dependency model and the 'sick' image of people who are disabled. Certainly the Administrative Appeals Tribunal 4s 1,edrEinc, the Situation in 0Abli, Of the cases that come before it but, from ntmempuaieport8., it would: seem that there are many people who simply give up before reaching the AAT.

- (c) There has also been difficulty in the past in assessing the percentage incapacity at 85 per cent where other factors apart from physical or mental disability or social and economic conditions operate. Professor Partington states: 'The 85% rule is to be approached as a qualitative rather than a quantitative test. The purpose of the rule is to ensure that those who have effectively lost their ability to undertake paid employment because they are substantially incapacitated for work should be entitled to benefits'.-4

In a recent case of Ilich 13 SSR 133 the Tribunal has conveniently listed a number of issues which previous cases (and in particular Panke 2 SSR 9 and McGeary 11 SSR 112) have found to be relevant in deciding whether there is 85 per cent incapacity. These are:

- the person's physical or mental incapacity
- ii) the extent to which the person's ability to obtain paid work is affected by the incapacity
- iii) the work suitable for the person, considering the whole Person and the cumulative impact of
 - his disabilities;
 - his capacity to work a normal day or week;
 - his age;
 - his work experience; and
 - the types of paid work available in the community which that person could perform

iv) the person's ability to attract an employer

v)

the distinction between difficulties in attracting an employer which

reflect an incapacity for work result from depressed job opportunities, and result from lack of interest in working

(d) criticisms are made that the Department is selective about the medical specialists that it chooses to conduct examinations, that their examinations of applicants are cursory but that the Department nevertheless accepts their opinion in preference to the applicant's own doctor. Professor Partington claims that the AAT has established 'that in a normal case where there was a disagreement in the assessment of the medical condition of the claimant, the evidence of the claimant's own "treating" doctors and specialists is to be preferred to that of the Department of Social Security's specialists, who may only have seen the claimant for very brief periods; this is particularly so when the claimant has been under the same doctor(s) for a number of years'.⁵

In Veljak 14 SSR 145 the Tribunal stated that the general practitioner was thought to be 'in the best situation to assess (the applicant) as a whole man'. Again it is said that some of the Department of Social Security specialists show a lack of appreciation or ignorance of the non-medical aspects of the incapacity and a bias against applicants, particularly those suffering back or psychiatric complaints.⁶

5.23 2. Permanent incapacity

There is difficulty in assessing the 'permanency' or otherwise of many disabilities. Professor Partington claims that the Tribunal has adopted the principle that 'permanent' incapacity was incapacity that would last for an indefinite period into the future; it was not necessary to prove that the claimant's condition is incurable.⁷ However it should not be considered that an incapacity is permanent where there was 'evidence that by proper and reasonable treatment the incapacity could be cured or the impairment lessened' (James 14 SSR 145).

- 5.24 The importance given by the AAT to the evidence of doctors who have treated the claimant creates a problem for those who cannot afford to pay the cost of obtaining medical reports and who may not be able to obtain legal aid.
- 5.25 The problem of legal aid is exacerbated by the fact that many people who wish to appeal to the AAT against the denial of a pension are no longer eligible for assistance from the Australian Legal Aid Office. Previously, those who qualified for a pension or benefit also satisfied the means test for legal aid. Regrettably, in 1983, the Australian Legal Aid Office guidelines were not adjusted when Social Security benefits were increased. The position is now that many pensioners, particularly those who have a number of children or who have paid off their - house (and thus do not have expensive mortgage repayments) and do not have hire purchase commitments, will not qualify for legal aid (thus discriminating against the more frugal poor).
- 5.26 There appears to be a reluctance by the Department of Social Security to award Invalid Pensions due to the pervading and misguided belief that the granting of a pension will reinforce the claimant's 'illness' and thus provide a disincentive to work. Such a belief is

contrary to sociological studies which document people's basic need to work and the therapeutic effect of working. And indeed, the Tribunal has consistently encouraged rehabilitation. In Tiknaz 5 SSR 435 and Aleksit 7 SSP 65 it directed that Invalid Pensions be granted and at the same time recommended that the claimants attempt a program of rehabilitation.

5.27 On the other hand, in Vogdanos 13 SSR 134, where two specialists consulted by the Department assessed the claimant, who was suffering from a spinal disability and had psychiatric problems, as fit for work and expressed the opinion that the grant of an Invalid Pension would 'confirm his misconceptions' or 'reinforce his problem of incapacity' the Tribunal said: 'The role of the Social Security system, however, is not therapeutic; it is to provide financial assistance according to prescribed criteria. It may be considered in a particular case that the provision of that assistance is not in the best interests of the applicant; but such considerations are irrelevant in the assessment of whether the applicant satisfies the criteria for the benefit for which he has applied.'

Further, the obtaining of part-time employment may in fact establish a 'capacity to work' which would deny the part-time worker an Invalid Pension. (See discussion on Littman and Mann cases above).

SICKNESS BENEFITS

5.28 Sections 108 and 109 of the Social Security Act make provision for the payment of a benefit to persons who are temporarily incapacitated for work because of illness.

Eligibility for sickness benefits

5.29 Sickness Benefits are payable to those who are aged between 16 and 65, if male, 60 if female, and who are temporarily unemployed because of illness or injury. The applicant must have resided in Australia for at least 12 months or be able to convince the Department of Social Security that he or she is likely to remain in Australia.

Rate of benefit

5.30 The same benefit is paid to sickness beneficiaries as is paid to unemployed beneficiaries except that sickness beneficiaries may also qualify to receive a supplementary allowance if they pay rent and single unemployment beneficiaries over 18 years receive a lower basic rate of benefit.

(s. 119(2a)).

There Single, over 18 years is a waiting period of or with dependents seven days. That is, the benefit is not paid for the first seven days of the incapacity unless it is a recurring incapacity

The current rates are:

Single, under 18 years
 Single, over 18 or with dependents
 Married couple (total)
 For each child; add

An applicant who is paying rent may qualify for supplementary allowance after six weeks of unemployment due to -sickness. The maximum weekly rate is \$15.00._

5.31 Means test.

If the beneficiary receives 'other income', which includes personal earnings and profits earned in excess of-\$20 a week, the maximum rate of Sickness Benefits will be reduced: if the 'other income' is between \$20 and \$70 per week, by half of that income; if the income exceeds \$70 per week, by all of the excess.

5.32 'There is discrimination against those not in the work force who through illness are unable to work. Section 108 of the Act provides that Sickness Benefits are paid to those who are incapacitated for work temporarily and as a result of that incapacity have 'suffered a loss of salary, wages or other income'. Sub-section 1(c) (ii) applies to the situation where a person has never been in the work force and thus has not lost income. It provides that those who, but for their incapacity, would be qualified to receive an unemployment benefit qualify to receive a Sickness Benefit. Section 113 provides that 'the rate of sickness (including any supplementary allowance) payable to a person shall not exceed the rate of salary, wages or other income which that person has lost by reason of his incapacity'-. This means that those who were not receiving any income or only receiving unemployment benefits prior to qualifying for the Sickness Benefit will not receive any more than the amount for unemployment benefits .
(Keating [1981] 4 AIN no. 33 and Rucevic 10 SSR 100).

This means that people in this position cannot receive the supplementary allowance which is normally paid to sickness beneficiaries.

5.33 In Rucevic, the Tribunal commented that this situation appears unjust. It is particularly unjust to those whose illness is a result of their unemployment such as those

who develop a psychiatric illness after a long period of unemployment. It also seems unjust to those who, although ill, try to remain in the work force and, while not working, obtain unemployment benefits but who are eventually obliged to obtain Sickness Benefits.

- 5.34 A claim for Sickness Benefits is payable on the seventh day after the day on which the person became incapacitated provided the claim was lodged within 13 weeks. If it is not lodged within that time the benefit is usually paid from the date of lodgment except where it can be established that the reason for the delay was due to incapacity or some other 'sufficient cause'. Ignorance of the existence of the benefit is not sufficient cause (Wheeler [1981] 3 ALN no. 22). This can be compared to Pensions which are usually paid from the date that the application for a pension is lodged.

- 5.35 Regular medical certificates must be obtained to support the application for a Sickness Benefit. This means inconvenience and expense to applicants, particularly those who live in the country where long distances may have to be travelled to see a doctor.

Repayments of benefits

- 5.36 Section 115B(3) can cause problems for people who have been receiving Sickness Benefits following an injury at work or a motor car accident, and subsequently receive compensation for loss of income.

Section 115B(3) provides that when a beneficiary receives compensation for an incapacity, the Director-General may recover:

- (a) the amount of Sickness Benefits received by the person in respect of that incapacity; or

- (p) the amount of lump sum payment, or periodical payment or payments or such part- of that amount or those amounts as, in the opinion of the Director-General, relates to that incapacity, whichever is the lesser amount.

This should mean that, in those cases where damages are reduced by reason of the injured person's own contributory negligence, the refund to the Department of Social Security should be adjusted accordingly. The difficulty arises where settlement discussions take place at the door of the Court as is so often the case. It is impossible to obtain an instant decision from the Department as to precisely what part of the Sickness Benefits will be sought to be recovered if the action is settled.

Following Shaddock v Parramatta Council (1982) 36 ALR 385, it would be extreme³¹ to require an officer of the

Department to express an opinion. In that case, the Parramatta Council was held to be responsible for the negligent advice given to the plaintiff. It was decided that a person comes under a duty of care in relation to the provision of advice or information if he carries on a business or profession and in the course of it provides advice or information of a kind which calls for skill and competence or he otherwise professes to possess skill and competence and he provides advice or information when he knows or ought to know that the recipient intends to act or rely on it.

- 5.37 It should also be noted that this provision only applies to sickness beneficiaries and not to those who have been receiving unemployment benefits or the Trvalic Pension.

Sickness beneficiaries (unlike invalid pensioners) pay tax on their benefit. Tax is again payable on that portion of recovered compensation that relates to the loss of income. This means that the beneficiary pays double tax on Sickness Benefits that he receives but subsequently repays to the Department.

- 5.38 Sickness beneficiaries do not receive the same fringe benefits as do invalid pensioners; for example, rate rebates and free train travel are not available.
- 5.39 A Sickness Benefit Unlike an Invalid Pension is not - 'portable', that is the benefit will only be paid to an Australian resident. A person eligible for an Invalid Pension: can travel overseas and still receive it.

HANDICAPPED CHILD'S ALLOWANCE

- 5.40 Provision for the payment of an allowance to those caring for handicapped children can be found in Part VIB of the Act.

Eligibility for the Handicapped Child's Allowance

- 5.41 This allowance is paid to persons caring for a child who is disabled in their own home.

A 'child' is a person under the age of sixteen, or a fulltime student under the age of 25 who is not working or receiving an Invalid Pension (see ss. 105H[1] and 105H(31)).

The Act makes a distinction between a 'severely handicapped child' and a 'handicapped child'. Section 105H(1) defines a 'severely handicapped child' as a child who:

- (a) has a physical or mental disability;
- (b) by reason of that disability, needs constant care and attention; and
- (c) is likely to need such care and attention permanently or for an extended period.

On the other hand a 'handicapped child' is a child 'who is not a severely handicapped child' and who:

- (a) has a physical or mental disability;
- (b) by reason of that disability needs care and attention only marginally less than the care and attention that he would need if he were a severely handicapped child; and
- (c) is likely to need such care and attention permanently or for an extended period.

Usually a child who is handicapped, but not 'severely' so, is termed a 'substantially handicapped child'.

- 5.42 The difference between the two categories of handicapped children is that the care and attention required by a substantially handicapped child is 'marginally less' than that required by a severely handicapped child.

The difficulty in making this fine distinction is an example of a number of interpretative problems that exist in this part of the Act. They shall be referred to in more detail below.

Rate of allowance

- 5.43 The maximum allowance payable is \$85 a month. In the case of severely handicapped children this amount is paid without regard to the financial means of the parents. On the other hand, a means test is applied to the parents of a 'substantially' handicapped child who must satisfy the Department that they are, by reason of the 'care and attention that they give to the child, 'subjected to severe financial hardship' (s. 105JA). The amount payable is dependent upon their income and the additional costs they have in caring for their handicapped child. A minimum of \$20 a month is paid.

The allowance is payable with Family Allowances. It is not taxable.

Complaints about the Handicapped Child's Allowance

5.44 Numerous criticisms have been proffered about this allowance. Some of the most frequent are:

It is very difficult to distinguish between a severely handicapped and a substantially handicapped child or for that matter, to decide which handicapped children do not fit the criteria for this allowance.

Classification is made by a Commonwealth Medical Officer based on reports from doctors and parents.

Generally speaking, children who have such handicaps as cerebral palsy, Down's Syndrome, hydrocephalus, spina bifida, mental retardation and leukaemia, are classed as severely handicapped children. Conditions normally regarded as substantially handicapped are: Perthes disease, deafness, mild mental retardation which involves learning and behavioural problems, epilepsy, muscular dystrophy and diabetes. ⁸

Some handicaps are more obvious than others, and, it is believed, more likely to attract the allowance. For example, the parents of a child who has Down's Syndrome are more likely to get an allowance than the parents of a child with cystic fibrosis because children with cystic fibrosis often appear healthy and may not have obvious physical difficulties. Also, a child with Down's Syndrome has a medically recognised complaint, unlike other children who may suffer an unlabelled developmental disability.

It is also questionable whether the amount of care and attention necessary can be equated with the medical determination of the degree of severity of disablement.

- 5.45 Furthermore, it is very difficult to make such distinctions with very young children. There are children who have been labelled as 'substantially' handicapped at the age of three or four months and who, at a later age, for example 12 to 18 months, exhibit severe developmental disabilities. Yet it is difficult to persuade the Department to change its original categorisation of the child's handicap.
- 5.46 It has been suggested that the assessment of the degree of handicap is being made by the wrong people. According to Rees and Emerson, 'The question which has been overlooked is whether medical personnel conducting interviews in hospitals or in central city offices, are best equipped to assess the time and other demands on a family with a substantially handicapped child?'⁹ They argue, in line with some submissions, that people such as social workers should be involved in the assessment process..
- 5.47 In making their assessment Commonwealth Medical Officers take into account the information supplied by parents. Undoubtedly those parents who are confident, articulate and knowledgeable and who emphasise the child's disability are likely to obtain more than those who do not, for whatever reason, fully inform the Medical Officer. This may sometimes be because they are unable to face up to the severity of the handicap (as in Cassoudakis 14 SSR 138).
- 5.48 The availability of the Handicapped Child's Allowance does not appear to be widely known by doctors or medical social workers and many of the parents only learn of the existence of the allowance when children commence school.
- 5.49 To receive the allowance from the date of eligibility the claim must be lodged within six months (ss. 105J and 102[1]) which relate to qualifications for Handicapped Child's Allowance). If it is lodged outside that six-months period it is only payable from the commencement

of the next Family Allowance period. It can be granted retrospectively if there are 'special circumstances' (s. 102[1][a]). It would appear from the reported decisions of the Administrative Appeals Tribunal that 'special circumstances' must be special indeed.

- 5.50 A comparison should be made with the provisions of the Act relating to the payment of Sickness Benefits. Section 119(2) provides that this benefit is payable on the seventh day after the incapacity provided that a claim for the benefit is lodged within 13 weeks of that day, or, if it is not lodged within that time, s. 119(3) provides that it can still be back-dated if the Director-General 'is satisfied that the failure to lodge the claim within that time is due to the cause of the incapacity or to some other sufficient cause'.
- 5.51 'Special circumstances' were found to exist in de Graaf 1981 3 ALN no. 13, where application for a Family Allowance (then called Child Endowment) was not made within six months as required by the Act. The Tribunal found that the applicant honestly believed, and had some reason to do so (because there had been a general increase in the allowance), that she had applied for Child Endowment for her second child within the six months period. It was not until approximately four and a half years later that she discovered that the increase in the endowment was due to an increase in the rate payable for the first child. The Tribunal found that the 'circumstances were in our opinion special enough'. The applicant made a mistake'. The fact that the mother was under stress looking after a new-born baby as well as a three-year old made the mistake understandable.
- 5.52 De Graaf does not appear to have been followed in subsequent decisions of the AAT. In Messina 14 SSR 137, the applicant claimed that her husband had posted an application for a Family Allowance shortly after the birth

of her child. As in de Graaf, the payments were made into a bank account which was not checked very often. Some nine months after the child's birth the father noticed that there was an increase in the allowance of \$4.90. He assumed that this was extra payment in respect of the child but in fact it was as a result of a re-adjustment from four-weekly to monthly payments by the Department. It was not until two and a half years after the birth of the child that the mistake was discovered. In this instance the Tribunal found that special circumstances had not been established. De Graaf was distinguished because the increased payment into the bank account was substantially more.

- 5.53 In any event it is strange that in cases where the - application is not made within six months of eligibility and there are no special circumstances, the payments are not back-dated. The position is that if the parents are at first ignorant of their entitlement but subsequently obtain that information and make application a day before the six months expire, they will get the allowance for the past six months. If they apply six months and one day later they will not receive any back payments.
- 5.54 The lack of knowledge of the existence of the Handicapped Child's Allowance has been blamed on the Department of Social Security's failure to sufficiently advertise its existence. The Tribunal held in Wilson 1981 3 ALN no. 76 that ignorance of the allowance did not constitute 'special circumstances'. Neither did the failure of doctors and social workers to inform the applicant nor that the child's handicap was one that would not be commonly accepted as a handicap constitute a 'special circumstance'.

Similar findings were made in Cassoudakis 14 SSR 138.

5.55 In Wheeler 1981 3 ALN no. 22 the applicant was not aware that he could apply for Sickness Benefits and thus did not make any application during the thirteen week period. He claimed that this ignorance was 'sufficient cause' for the Tribunal to back-date the Sickness Benefit. The Tribunal found that in the circumstances of that case 'sufficient cause' had not been established. However, it did say:

without attempting to be in any way exhaustive the sort of matters which suggest themselves to us as being relevant in assessing the 'sufficiency' of alleged ignorance as the cause for failing to lodge a Claim for Sickness Benefits within time are:

- (i) the length of time after the commencement of the period of sickness when the applicant became aware of his entitlement to claim;
 - (ii) the length of any further delay in the lodging of a claim after the applicant became aware of his possible entitlement;
- the applicant's level of literacy, his age and length of residence in Australia and whether he has made any prior claim under the Act;
- (iv) the facilities available to the applicant to obtain information or to seek advice regarding the benefits payable under the Act; and
 - (v) the attempts made by the person to obtain information or advice as to the availability of benefits under the Act.

5.56 Another criticism is the requirement that the child be in 'constant' need of care and attention. In Yousef [1981] 4 ALD 317, one of the specialists involved in the case said that although the child (who suffered asthma) needed alert and skilful treatment from her mother, this was not 'constant' treatment because it was not attention for 24 hours a day. The Tribunal said that for care and attention to be 'constant' it need not be required every second of the day. If it was 'continually recurring', the statutory requirement was satisfied. This definition was

adopted in Schramm 10 SSR 98 where the evidence was that the treatment required by a child suffering from cystic fibrosis included physiotherapy sessions three to five times a day, supervision of drug-taking and diet, special swimming sessions and other physical exercise recommended by doctors.

- 5.57 In McKerrow 13 SSR 125 the Tribunal found that a mother who had to keep her intellectually handicapped child constantly "under her eye" satisfied the Yousef test. In Meloury 13 SSR126 it was held that the child's parents constantly supervised her. That supervision was not necessary for the bare survival of the child but it was needed for 'the minimisation of the child's disability so as to enable the child to develop as much of its potential as it can and to lead as normal a life as is possible'. However, the care and attention must be provided 'in a private home that is the residence of that person and of that Child' (s, 105J). In Schramm and Meloury and the more recent cases of Gilby 15 SSR 151 and Gardner 15 SSR 152 it was held that as the children spent part of each day at school (in the case of Schramm it was pre-school) the care was not being provided in a private home and thus allowance was not payable. This is a 'Catch 22' situation. The Handicapped Child's Allowance will be paid to the parents of a handicapped child if they keep the child isolated at home.

On the other hand, if they try and encourage the child to lead a normal life and integrate the child into its own community by, for example, sending the child to school, then they will probably lose the allowance. The Social Security Reporter comments on the Meloury case as follows:

The MT observed that Meloury and her husband were suffering severe financial hardship because of the care and attention which they provided to Rebecca and another handicapped child. They have six children and their only income was an Invalid Pension and a wife's pension. Were it not for the care and attention needed by these children,

Meloury could undertake part-time work but as the Social Security Act stood, their financial hardship could not be alleviated by a granted Handicapped Child's Allowance for Rebecca. This 'unfortunate limitation' indicated a need for law reform.

It is also ironic that the care and attention provided by Meloury was (presumably) considerably more than that provided in McKerrow. In Meloury the child was absent for part only of five days of the week. In MoKerrow the child was away from home, and in an institution, for four days and nights and part of another day. In McKerrow the Tribunal ordered that the allowance be paid during the time that the child was at home.

5.58 The Act provides that a child can be classed as a handicapped child if he or she needs constant care and attention 'by reason of that disability'. In one case in which the Welfare Rights Centre in Sydney was involved, the Department at first claimed that a child, who was suffering from cancer and receiving chemotherapy, although severely handicapped was not so 'by reason of the - disability' but rather by reason of the -treatment. The child has since died.

There has been considerable criticism of the income test which applies to substantially handicapped children. In Yousef the Tribunal said:

The result of all this is that a wealthy person has a severely handicapped child faces no kind of means test, but a person who has a child needing only marginally less care- and attention than that heeded by a severely handicapped child has to be subjected to fierce financial hardship to be eligible at all, and is then still required by the legislation to face the test of the Director .General's discretion as to whether the full \$73 per month should be paid. We would not ordinarily-make such a comment, but in this case we feel entitled to question whether the intention of the legislation is really reflected in these provisions (p.319).

- 5.59 The allowance is not transportable unlike an Invalid Pension.
- 5.60 The amount of the allowance is clearly inadequate. Currently (November 1983) it is \$85 a month to the parents of severely handicapped children. Substantially handicapped children's parents receive between \$20 and \$85 a month. This should be compared with the Handicapped Children's Benefit of \$5 a day which is paid to eligible organisations which accommodate handicapped children. The Department of Youth and Community Services of New South Wales pays \$20 a night to people who care for disabled children in their home.
- 5.61 It is also interesting to Compare the allowance with the Domiciliary Care Allowance (DCA) payable, under the National Health Services Act 1948 (Cwlth), to adults. There is little difference in the allowance paid - a, DCA is currently \$42 a fortnight. The allowance is paid:
- If A Medical practitioner certifies that a patient has a 'continuing need for nursing caret and if a registered nurse certifies 'that the patient is receiving adequate nursing care'. This DCA is to all intents and purposes an HCA for adults. However the procedures for assessing entitlement of the DCA are simple, the test that a person is kept out of an institution (s. 58E) and less: controversial in that there is only one benefit with no means test .⁹

MOBILITY ALLOWANCE

- 5.62 Part VIIB of the Social Security Act makes provision for an allowance of \$10 per week to be paid to those working People and those who undertake vocational training who are so severely disabled that they cannot use public transport. This allowance was introduced in April 1983 (see Social Security Legislation Amendment act 1982 [10wlth]).

Eligibility for the Mobility Allowance

5.63 Severely handicapped people who are employed (which includes employment in a sheltered workshop) or receive vocational training for at least 20 hours a week and who are unable to use public transport to get to work without substantial assistance can qualify to receive this allowance. It is not available to people who have purchased a car free of sales tax within the previous two years, or who have a car under the scheme administered by the Commonwealth which is known as the Gift Car Scheme.

Rate of allowance

5.64 \$10 a week is paid. It is tax free. There is no means test.

Problems

5.65 The allowance is payable to those who are employed, or are attempting, through training or experience, to obtain paid employment. The successful applicant must spend at least 20 hours a week doing this. The allowance is thus not available to:

- (a) Housewives who may work for many hours in excess of 20 who need to be mobile to go shopping, transport children, etc.
- (b) Those who are so severely disabled that they cannot work for 20 hours a week although they may wish to do so. It is to be noted that people who qualify for a sheltered employment allowance are not required to work 20 hours a week.
- (c) Secondary school Children above the age of 16 because of the criteria of vocational training.

- (d) Unemployed disabled people who need assistance to attend medical appointments, to hunt for jobs or for social purposes.
- (e) Severely disabled people who need considerable time to build up their work tolerance and who cannot initially work for 20 hours a week.

5.66 The allowance is apparently only available to those who could, but for their disability, use public transport. It is not available in country areas where public transport is not readily available.

5.67 The failure, to provide the allowance to all the above categories of people fails to reflect legislatively the desire to assist disabled people generally to become more self-reliant and to assist their integration into the community. Despite the fact that the allowance was introduced recently, the legislation does not recognise the special needs of disabled women who stay at home and perform household work, or the special needs of people who need to make a gradual transition into the workforce. It generally meets the needs of only a very small section of the disabled community.

PROGRAM OF AIDS FOR DISABLED PEOPLE (PADP)

5.68 This scheme enables disabled people to obtain a wide range of aids which are not otherwise obtainable from any Commonwealth or State Authority. It is administered by the Department of Health. The aids available are various. They include wheelchairs, oxygen, toilet articles and home modifications.

To be eligible for aids under PADP applicants must establish that they require the aid for a disability of permanent or indefinite duration, and that they are not eligible to receive the aid from any other Government source. There is no formal means test.

5.69 PADP is another system of providing service and one which attempts to fill the gaps left by other sources. Since its inception in 1981 it has been criticised on a number of grounds. The main ones are:

- (a) It is not well advertised. This and the fact that it only 'fills the gap' means that the informed and skilled may be able to take advantage of PADP but the uninformed and less endowed, perhaps the most severely handicapped, do not enjoy equal access to the scheme.
- (b) Only persons who are living outside hospitals, nursing homes and hostels are eligible unless the aid is being acquired so that they can move home. Presumably this is on the assumption that these places can provide their own aids. But many of them cannot.
- (c) Many complain that some groups are refused aids which may help them overcome their disability. For example those with impaired hearing or impaired vision do not receive communication aids.
- (d) People suffering from an ailment may receive some aids to relieve their problem but be refused others. For example, those who are incontinent may receive drainage bags and bottles but they are denied incontinence pads and pants.
- (e) The guidelines, which are rather broad, are administered by the Commonwealth and State Departments of Health. This results in different interpretations being adopted in the various States and even within one State between separate hospitals.

Income tax

5.70 As has been foreshadowed, there are difficulties in compensating persons for disabilities through the income tax 'system'. A tax concession's value depends on tax otherwise payable and hence on assessable income, not on the needs of the individual. Further, the tax system itself ideally operates in a neutral fashion, i.e. it should operate so as to reduce to a minimum distortion of individual choice. All tax concessions affecting individual decisions on earning or spending are non neutral. -

Further, income tax relief for disabled people must be seen in the total context of Government assistance and services. On the other hand, cash benefits, medical and para-medical services and other rehabilitation services need to be considered for their adequacy. It is the value of benefit delivered to disabled people rather than the total cost of benefits which is of utmost relevance.

Assessability of incomes

5.71 The -income of a disabled person is generally treated in exactly the same way as that of any other taxpayer, whether, it is earned income or whether the source is property. Disabled children are in some respects more favourably treated than other children in respect of income from property: Income Tax Assessment Act 1936 (Cwlth)'s, s102AC(2) and s102AE -2(b). However, these provisions are designed: to exempt such children from anti-avoidance provisions which would otherwise impose a higher than normal tax rate on them

Work related deductions

5.72 The general deduction provision of the Act, s51.(1) and other sections dealing with work related or income producing expenditure, make no special provision for disabled people. Numerous submissions made to this Inquiry pointed out that most disabled persons who wish to work incur additional transport costs in order to get to and from their employment. Travel to and from work is not deductible because it is regarded as expenditure of an essentially private or domestic character (Lunney v. F.C. of T., [195-8] 100 CLR 478), Although if taxpayers can establish that their home is a work base they will be able to claim costs for travelling to and from it (Ballesty v. F.C. of T., 77 ATC 4181).

The additional costs of disabled people getting to and from work were recognised in part in 1982 by the introduction of the Mobility Allowance. Applicable from April 1983,. \$10 a week is paid to 'severely handicapped' persons in employment or undertaking vocational training who are unable to use public transport and who have not purchased a vehicle free of sales tax within the previous , two years. The payment is not means tested and bears no relationship to the actual additional cost of transport for those who qualify for it.

To allow a deduction for some part of transport costs would not of course; meet the full extra cost disabled people incur as a result of their disability in getting to and from work.. But if used in conjunction with the Nobility Allowance ^{it} would lead to an improvement in their present position. The main objection to it would be uncertainty as to cost, but some idea of the number of persons affected may be gained from the number seeking the Mobility Allowance.

5.73 Transport costs are not the only additional costs people who are disabled must meet if they are to work. In Case P.31, 82 ATC 141 Gilbert v. F.C. of T. a university lecturer was, as part of his duties, required to travel from Brisbane to Darwin to conduct classes. Because he is a quadriplegic he had to be accompanied by an attendant and his father was able to act in that capacity. The taxpayer's claim was for his attendant's travel and accommodation expenses.

The No. 1 Board refused the deduction on the basis that the expense of the attendant was a private or domestic outgoing even though it would have been impossible for the taxpayer to travel otherwise. The state of the law is such that if the employer had paid the expenses this amount would have been deductible by the employer (if not an exempt institution) and probably not taxable in the hands of the employee (though this is by no means certain). If the employer had paid the taxpayer a sum to cover his attendant's travelling expenses the amount would have been assessable to the taxpayer (see para 10, 82 ATC 145).

5.74 Clearly, some further consideration needs to be given to the situation of disabled persons in the area of work related deductions. Gilbert v. F.C. of T. is quite consistent with the long-established policy of the Income Tax Assessment Act in relation to deductions which have some personal character for the taxpayer (i.e. some personal benefit from the expenditure). If it can be said that the expenditure has an 'essentially private' character it is non-deductible. In some cases it may be apportioned between business and private use (e.g. the fixed costs of running a privately owned car partly for business purposes). In Gilbert, while the Board conceded the taxpayer could simply not perform his duties in Darwin without attendant care, it was beyond question that such care was of a private nature.

5.75 It would be possible to draft an amendment to s. 51 which, broadly, would allow disabled persons a deduction for a proportion of the extra costs they incur as a result of their disability and which they must incur if they are to work. Some fairly specific defining of 'disabled person' would be required, which however would need to be broader than that provided in the Sales Tax Legislation (see below). For example, while it is unlikely that the Government would wish to make all aids to vision deductible for those with less than perfect vision, substantially disabled persons should be given all reasonable encouragement to work if they so choose. Providing a work related deduction is a direct form of assistance which does not require much administration and has its own internal limits (it can never exceed 60 per cent of total earnings and it is in the interest of taxpayers to reduce it).

The major drawback of tax deductions is that such assistance is greatest for those on higher incomes. It may be considered that a tax rebate is more appropriate. Here, as with deductions, there must be a tax liability before this is of any value but the rate of benefit remains the same for all taxpayers over the threshold (i.e. who pay more in tax than their total rebates are worth).

Concessional rebates (Income Tax Assessment Act 1936
ss. 1511-159Y)

5.76 Some special provisions already exist for disabled persons and their taxpaying supporters. The care of a disabled child can give rise to a 'housekeeper' rebate and invalid pensioners may claim the pensioner rebates which effectively raises the tax-free income limit for pensioners. The current size of these rebates makes them only a token contribution to the extra living cost created by the disability but there is other Government assistance

in the form of re-establishment allowances, the Handicapped Child's Allowance, and the domiciliary nursing care benefits.

5.77 The submissions and other research reveal two main problems with concessional rebates.

- (a) The rather narrow approach taken by the Tax Office in deciding whether special circumstances exist for the-granting of the housekeeper rebate (s. 159L(41), and the requirement for the rebates that the housekeeper be wholly engaged in that function.

While the taxpayers have in some cases been successful in obtaining the rebate on a reference to a Board of Review or an appeal to a court there is little consolation to those who are not able to fight. The evidence presented in the submissions suggests a strong case for a more liberal attitude on the part of the Australian Tax Office in relation to disabled persons. The requirement that the housekeeper be wholly engaged in keeping house for the taxpayer also seems unduly restrictive and could be abolished provided, it were made clear that the amount of the rebate was not to exceed the amount paid to the housekeeper for his or her services.

- (b) The availability of the medical expenses- repaid depends of course on whether the expense is 'medical'. A rebate has been allowed for a chair-lift (18 CTBR. Case 7) but not for a ramp (17 CTBR Case 13).. Neither is a therapeutic pool rebatable (18 CTBR Case 32, 26 CTBR Case 104). This problem may well be rectified by the preparation of a more liberal Taxation Ruling by the Australian Tax Office.

5.78 The Australian Tax Office does accept that payment of wages to the attendant of a severely disabled person by a third party does not give rise to an income tax liability of the disabled person. If a direct payment is made to the disabled person, the amounts paid are regarded as medical expenses within s.159P of the Income Tax Assessment Act. Payment, in the Tax Office's view, merely reduces the rebate claimable under s.159P by the disabled person and does not constitute income in his hands. (See Income Tax Ruling I.T. 2052, 25 July, 1983).

SALES TAX AND CUSTOMS DUTY

5.79 In recent years there have been a number of attempts by the Federal Government to broaden the tax base by extending the range of goods subject to the existing wholesale sales tax. A study was done by the Australian Tax Office on the feasibility of a more general sales tax in 1980. Political pressures have made it difficult for any federal government to make major changes to the present incidence of indirect taxes. Even a proposal to extend the wholesale sales tax to building materials, which are presently exempt, failed to pass the Senate in 1980-81. In such a political climate it is unlikely that arguments in favour of further exemptions will be heeded unless the cost to revenue is small and the need demonstrably great.

Sales tax in general

5.80 Since August 1982 the general rate on all new goods has been 20 per cent but there are some important exceptions. The relevant legislation is the Sales 'Tax (Exemptions and Classifications) Act 1935 (Cwlth).

- (a) 'Luxury' goods appearing in the Second Schedule are taxed at 32.5 per cent. The concept of luxury here is firmly rooted in the 1930s when the

legislation was first passed. Thus appear jewellery, 'fancy' goods such as pearl-handled brushes, fountain and ball point pens, toiletries, photographic equipment, radio equipment, slot machines, and a few latter-day luxuries such as television, audio and video tape recorders. Contraceptives were once included but were deleted in 1973.

- (b) Household goods are taxed at the 'concessional' rate of 7.5 per cent under the Third Schedule. This category includes furniture, home appliances, furnishings, drapery and blankets. The same rate applies to maps, hand tools, films and film-making equipment and some industrial machinery. There are a number of Tax Office rulings disqualifying goods suitable for household use under this category because the view has been taken that they have a commercial nature, e.g. some types of dishwashers.
- (c) Commercial and passenger motor vehicles are taxed at 20 per cent.
- (d) Of prime importance in sales tax matters is the list of exemptions. There are two aspects of exemption relevant here: goods which are exempt regardless of their purchaser, and goods which are exempt because of the purchaser and/or the use to which the goods are put. Some important categories of exemptions are:

Equipment and materials for primary production, mining and fishing

Primary products

Food beverages and tobacco (alcohol and tobacco are subject to the separate excess taxes)

Fuel, power and light
 Books, printed matter and paper
 Scientific, educational and religious goods,
 works of art and antiques
 Small business manufacturers (to a value of
 \$12,000 per year)
 Containers

A number of exemptions relate specifically to disabled persons. The most important are:

Item 42B	medical and surgical appliances
Item 42(10) :	wheelchairs
Item 42C	modification of motor vehicles
Item 123	goods specifically for the use of the disabled
Item 123A	Teletext decoders attached to TV sets for use by people with impaired hearing
Item 135	cars purchased for the use of disabled persons
Item 135A :	a concession confined to war veterans and working disabled persons

5.81 The submissions revealed a number of difficulties concerning the exemptions. The classification system has not caught up with new technology which may assist the disabled, e.g. portaprinters for the deaf. Such items are not presently exempt from sales tax because they are not specifically adapted for the use of the disabled. The Australian Tax Office has ruled (S.T. 2011) that Item 42B excludes home spas which have therapeutic value for some disabled persons.

5.82 A major concern in this area is Item 135A, which limits sales tax exemption on motor vehicles and parts to disabled persons who are in employment. While this may encourage disabled persons who are affluent enough to purchase new cars to accept employment, the concession's size depends on their degree of affluence rather than on their productive capacity. It will be remembered that the Mobility Allowance is available if this concession has not been utilised within the previous two years. There is much to be said for increasing the Mobility Allowance and abolishing this particular concession. Disabled buyers of second-hand cars get no concession under Item 135A though part of the total cost may be reduced by Item 42C if the vehicle requires modification. The policy of tying such benefits to employment is also questionable. The opportunity to become independently mobile should be equal for all and there should be no discrimination against those people, often women, whose work is unpaid. Why not extend the Mobility Allowance to all disabled people or provide a subsidy for the purchase of suitable vehicles rather than use the sales tax provisions to benefit a narrow section of the disabled?

5.83 It should be noted that Item 135A (as well as the similar concession for veterans, Item 135) does extend to spare parts, tyres, batteries etc., and thus the benefit is not necessarily confined to disabled buyers of new cars. The maximum benefit is 20 per cent of the wholesale price, which of course may be only 15 per cent or less of the retail price paid by the buyer, depending on the retail margin.

The Customs Tariff

5.84 By its very nature, the Customs Tariff is an exercise in discrimination as it is designed to make imported goods more expensive and thus protect local industry. The

tariff is not primarily a revenue-raising measure as high rates of tariff may lead to very few goods being imported if locally produced substitutes are available. Ideally, the Customs Tariff should not present greater problems for disabled people than it does for other Australian - consumers. In Particular 'by law entry' should make it possible to import goods of special use to disabled persons which have no Australian manufactured equivalents.

- 5.85 Complaints relating to the Customs Tariff were in relation to wheelchairs (Schedule 3 ref. no. 87.11). Imported wheelchairs, after a 1980 Industries Assistance Commission review, are now subject to a 20 per cent tariff. It was submitted that this tariff is being applied to chairs which have no suitable Australian-manufactured equivalent. This type of problem is of course very common in the tariff area and reflects the solicitude that the Department administering the tariff tends to show towards Australian manufacturers who are the Department's natural constituency. Possibly the matter could be referred to the IAC after the present tariff has had some time to operate (the rate was fixed at 20 per cent, down from 25 per cent, as recently as 26 May 1983). It should be noted that the rate for imports from developing countries is 5 per cent.
- 5.86 There is at least one other item in the Customs Tariff expressly made duty free for the disabled: Schedule 4, Item 18 - goods as prescribed by By-law which are specially designed for the use of blind, deaf or dumb persons. Consideration should be given to whether the same policy should apply to wheelchairs. The IAC, in discussing the employment effects of reducing tariff, noted that only 55 persons were employed in making wheelchairs in Australia. In 1979-80 some 6,000 wheelchairs were sold in Australia, some 55 per cent by volume (70 per cent by value) being imports. Locally

manufactured wheelchairs were mostly of the heavier non-folding type and custom made, and therefore not easily substituted by imports.

It should not be forgotten, however, that direct Government aid is provided to wheelchair users for help at home and at work for widening of doorways, access ramps and grip rails, as well as wheelchairs on loan. The estimated cost, according to the IAC, was \$700,000 in - 1980-81.

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4. *ibid.*, 10.
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7. M. Partington, *op. cit.*, 7.
8. Australia, Department of Social Security, Introduction of the Handicapped Child's Allowance: guidelines, Canberra, 1974/5.
9. S. Rees & A. Emerson, 'Handicapped children - how doctors decide' (1983) 8, 2 Legal Service Bulletin, 715.

CHAPTER 6EVIDENCE FROM THE SUBMISSIONS

- 6.1 The distribution of the 'issues paper' and call for submissions was not designed to provide statistically valid data regarding the discrimination faced by people with disabilities. Nevertheless, the submissions revealed major areas of continuing concern. They revealed objective evidence of the practical difficulties faced in the day-to-day living of people with disabilities. Many expressed feelings of exasperation and resentment about the lack of action taken by authorities despite formal acknowledgement of continuing deficiencies in the level of income support, eligibility Criteria for assistance and service provision.
- 6.2 As noted above, approximately 150 specific areas of concern were raised in the submissions. Of these just over 100 dealt with areas of social security legislation and the remainder with taxation legislation. Nearly one-third of those concerned with social security legislation raised matters relating to the Invalid Pension.

The next three most frequently raised areas were:

the Handicapped Child's Allowance
the Program of Aids for Disabled People (PADP) Scheme
the Mobility Allowance.

The issues raised about taxation legislation were evenly spread although particular concern was expressed about the lack of income tax reductions on aids and appliances, customs duty on wheelchairs and sales tax exemption on motor vehicles.

INVALID PENSION

- 6.3 The level, eligibility criteria and administration of the Invalid Pension have long been a source of criticism. Since early 1980, the Australian Council of Social Service and other concerned advocacy groups have gathered information on the problems and injustices faced by pensioners in attaining their rightful entitlements.' Space does not allow a comprehensive coverage of all the matters raised by respondents but the following points are the most pertinent regarding discriminatory aspects.

Eligibility

- 6.4 To be eligible for an Invalid Pension a person must be permanently incapacitated for work to the extent of not less than 85 per cent or must be permanently blind. Several respondents pointed out that the automatic entitlement of the pension accorded to blind people is anomalous and discriminatory. It means for example that blind employees, including those who work in sheltered workshops, are able to receive a higher income than their physically or intellectually disabled workmates whose pension is income tested. As one person who is a quadriplegic comments:

Although (blind people) need no items for incontinence or the prevention of bedsores, no wheelchair and have less trouble using public transport, although they can live in houses with steps... and live as long as other 'upright' people, the federal government awards them a pension free of a means test. Why the discrimination between the two disability groups?

- 6.5 Other respondents criticised the fact that while the pension is related to employability, the decision is made by a medical practitioner. As a representative of the Endeavour Foundation observes:

The criteria for granting the Invalid Pension (85 per cent incapacitated) arbitrary, subjective and very vague in meaning. In practice the criteria vary depending upon the doctor concerned and the level of unemployment in a particular region. In a 'hungry' labour market some borderline people will be employed. In a region of high unemployment the same people will be deemed eligible for the Invalid Pension. This creates confusion and is perceived as being unjust.

Another respondent pointed out that the medical assessment for employability is based on

the assumption...that disability causes people to be unemployed. It is a well known fact that many people with severe disabilities are employed at all levels and types of jobs (even though) discrimination clearly exists against disabled people in employment. Medical involvement in the 85 per cent criteria reinforces the 'sick' image.

Pension agents

- 6.6 A number of respondents questioned the procedure whereby an agent or institution may be appointed to receive the pensioner's benefit on his or her behalf. It was argued that in some cases the pension was not used for the benefit of the pensioner alone. Furthermore, as one respondent pointed out:

Once an agent is appointed there seems to be no procedure for review. The ease with which a parent or other family member can coerce a 16-year-old intellectually handicapped person to sign over his pension opens this system to abuse. The appointment procedure should be supervised and the continuation of such an arrangement subject to regular review.

This view was also expressed with regard to landlords who rent private accommodation to pensioners.

- 6.7 Another respondent gave the following details of how his pension is consumed by the costs of institutional accommodation:

I get \$164.70 Pension plus \$20.00 rent allowance, total of \$184.70 per fortnight. My accommodation costs are \$172.50 per fortnight, which leaves me the grand total of \$12.50 per fortnight to spend on toiletries, clothing, phone bills etc. etc. By the way, the \$172.50 is based on a 15 day fortnight which throws my finances out when there is thirty one days in the month and leaves me in debt. I find that the method of paying pensions and allowances is far from satisfactory as I need to have some money for my own use.

The same point was made regarding the conversion of the Invalid Pension to the Sheltered Employment Allowance. Some workshops divide the allowance into a cash component and a cheque or bank deposit component in a way which effectively places the management between the beneficiary and government transfer payment. While there may be some justification on administrative grounds it remains that this practice is demeaning for the pensioner concerned. The loss of control over rightful income would not be countenanced by the vast majority of Australian citizens and discriminates against pensioners in their ability to achieve self-determination.

Married versus single rates

- 6.8 Several respondents argued that the higher rate paid to single invalid pensioners is discriminatory and 'anti-marriage'.

BANDICAPPED CHILD'S ALLOWANCE

- 6.9 A recent ACROD publication provides a comprehensive coverage of the flaws in the eligibility requirements and administration of the Handicapped Child's Allowance.² In line with the findings of the ACROD research, the eligibility criteria and administration of the Handicapped Child's Allowance (H.C.A.) were the two major areas of criticism raised in submissions.

- 6.10 Regarding eligibility, one respondent summed up a situation which concerned many:

It is essential to recognise the purpose for which the H.C.A. has been established and to find the fairest way of assessing who is eligible. Let us accept that assistance is given to parents who are willing and able to cope with a handicapped child in the family home as distinct from institutions. This would then make the qualification for eligibility a social rather than a medical one...based on the physical or mental level of the child's handicap.

- 6.11 Other respondents provided case studies to illustrate the deficiencies of medical assessment to determine whether a child was 'substantially' or 'severely' handicapped. For example the Cystic Fibrosis Association of N.S.W. argued that:

Because CF children often look healthy on the surface and do not have obvious physical difficulties, Commonwealth Medical Officers have classified them as 'substantially' handicapped instead of 'severely'. It is hard to get across the fact that the healthy looking child may at any time become ill and require hospital admission.

- 6.12 The N.S.W. Bexley Therapy Centre reported that 'Another blatant example of discrimination is the ready payment of the H.C.A. to a recognised syndrome e.g. Down's Syndrome versus non-payment to an unlabelled developmental disability.' However, as one respondent who gave evidence of 'clearly false' diagnoses adds: 'To be fair to the medical profession, they are put in a situation where they are asked to give opinions that in some cases, e.g. intellectual functioning, they are unqualified to give'.

PROGRAM OF AIDS FOR DISABLED PEOPLE (PADP)

- 6.13 As with the Handicapped Child's Allowance, the Australian Council for the Rehabilitation of the Disabled (ACROD) has produced a paper on the PADP Scheme which contains a comprehensive coverage of relevant issues.³ The

submissions received support. ACROD's findings, - particularly the need for additional funds and the need to include additional qualified persons, e.g. occupational and speech therapists, physiotherapists, as approved - subscribers.

- 6.14 There was also practical evidence that the scheme is poorly publicised. A number of phone and written enquiries were received in response to the 'issue paper' requesting information about eligibility for aids and appliances under the .PADP scheme, It was clear from these enquiries that the scheme is not widely known, especially amongst those groups of people, e.g. the newly disabled and migrants, who may not have access to 'mainstream' information sources. The effect „of inadequate, selective publicity is invariably discriminatory.
- 6.15 Evidence was also gathered to support criticisms of regional discrepancies in the interpretation of dispensing guidelines. ACROSS made enquiries at two major Sydney hospitals on behalf of a respondent who was in desperate need of a new pair of built-up shoes. The respondent wished to have her shoes made by a Sydney shoemaker whose work, in the past, had met her 'requirements.. The advice received from one hospital was that built-up shoes could only be made and supplied by the resident hospital shoemaker and that a client's eligibility would be determined by an income test. The advice received from the second (neighbouring) hospital was that if the client had a shoemaker with whom she was happy the hospital would not object. In their experience, this situation lessened Departmental work and increased client Satisfaction. In the past, income-testing had applied but at present it was not 'necessary!'. Unfortunately, the respondent lives closest to the first hospital and was required to seek assistance there. Such discrepancies are inequitable and divisive. Access to a federally funded program should not depend on where one lives.

- 6.16 It was also submitted that while the stated aim of PADP was to increase independence the reality was something else. For instance, a woman who is a quadriplegic writes that PADP is supplying her with '...electric wheelchair batteries and repairs - but ONLY if I absolutely grovel... The batteries are my legs.. .my aim is to be as active on wheels as a normal person on legs - time, energy and money allowed!'
- 6.17 The ACROD paper on PADP includes a list of aids not covered and a number of submissions drew attention to a variety of these items. It was suggested that the list of available PADPaids would have been more appropriate if greater consultation with disabled people had been undertaken in the planning stages of the scheme.

Special mention was made of the lack of provision 'for any sort of alternative communications devices, except the electro-larynx, despite the fact that provision of such devices would greatly assist some people in functioning more independently in the community'. The ACROD recommendation that high priority should be given to the inclusion of aids which either enable people to be discharged from or prevent admission to an institution should be given immediate attention.

MOBILITY ALLOWANCE

- 6.18 The Mobility Allowance of \$10.00 per week was introduced in April 1983. To be eligible people must be able to use public transport, be in gainful employment or undertaking vocational training and not have purchased a vehicle free of sales tax under Item 135A within the previous two years. But what of the unemployed? As the Disabled Motorists (Victoria) argue:

The present mobility allowance discriminates against the unemployed disabled citizen. For nearly a quarter of a century the unemployed disabled have been denied the Sales Tax Exemption on new cars and now this long overdue social benefit has become a wedge forcing disabled citizens into different classes. Any form of class distinction is deplorable. While this was not the intention of the legislation, its effect is regrettable.

6.19 Similarly, the Paraplegic and Quadriplegic Association of N.S.W. argue that:

The Mobility Allowance should be made payable to unemployed as well as employed disabled persons who are unable to use public transport. It is wrong to discriminate against the unemployed who, in many cases, wish to work but are not given the opportunity to do so. Payment of the Allowance to unemployed would allow them to better utilise their time to develop their interests and potential to the fullest degree.

An example of this was provided by a country respondent who has twin daughters, both of whom were born with spina bifida and live in wheel-chairs. The young women are presently undertaking a vocational course at a Technical College two full days a week. However as their study time does not quite meet the stipulated 20 hours, they are not eligible for the allowance. As their mother writes: 'The problem is we live out of town and therefore (my daughters) need to rely on me for transport. It costs quite a bit. The twins are very anxious to be independent and free from their Invalid Pension but it will clearly be a struggle to do so.'

6.20 The Disabled Advocates and Self-Help (DASH) W.A. make three additional points regarding transport concessions:

- (i) The requirement that people must work or undertake vocational training for no less than 20 hours per week to be eligible for the Mobility Allowance does not acknowledge that a severely disabled person may require considerable time to build up work tolerance.

- (ii) There is an obvious inconsistency in the eligibility criteria between the Mobility Allowance and the Sheltered Employment Allowance. The Mobility Allowance requires the person to work for not less than 20 hours per week whereas the Sheltered Employment Allowance requires the person to attend work for a minimum of 18 hours per week.
- (iii) The criterion stipulating vocational training has excluded persons over the age of 16 years who are still attending secondary studies.

6.21 Another respondent who is 80 per cent disabled due to rheumatoid arthritis points out that the eligibility - criterion discriminates against disabled women who manage a household:

As I have two children still at home I consider my home as 'work'. When the Mobility Allowance was announced in the paper I showed the Social Security Department to see if I was eligible; I was met with a very disinterested response. I consider the home my 'work' and I work for more than the required 20 hours a week. If I received the Mobility Allowance I would be able to do my own shopping (I now rely on my husband or friends) as it would pay for a taxi. This would give me the 'mobility' the allowance seemed aimed at. It was pointed out to me that if I studied or retrained I could then receive the allowance. I explained that owing to the unpredictability of my arthritis, I was unable to study or retrain but this was received very unsympathetically.

COSTS OF INDEPENDENCE

6.22 Many respondents described the financial difficulties they encountered trying to survive in times of high inflation. They described the continual struggle to meet the inescapable costs of disability and how their poverty adversely affects their family life and chances of fulfilling social life. However, those disabled people

who do work and as a result become ineligible for a pension or benefit often find their costs increase with independence. A self-employed quadriplegic assesses his situation as follows:

At no time have I received either a pension, benefit or allowance to help me in my determination to be a useful member of society. I received no compensation when injured, I am confined to a wheelchair and rely primarily on my parents (and some unpaid friends) to do the hundreds of small chores necessary to keep the doors of my business open. My complaint is that, whilst I am expected to pay the full complement of tax for spending on such things as beaches, parks and reserves (to which I have no access), public transport (ditto), schools and services for the young (I am unable to father a child) etc. etc. I am, however, unable to claim as redeemable (either from my hospital or medical benefits contribution or as a tax deduction) the 'crippling' payments I must make for goods and services which are not used ordinarily by 'normal' people, e.g. suppositories, gloves, lubrication, urinary equipment...sheep skins, pillows, wheelchairs, commode/shower chairs, house modifications, clothing modifications, car modifications, etc. In brief, I must dig deep into my own pocket for items necessary for me to stay alive whilst my friends may use this so-called 'money after tax' for their own enjoyment or family betterment. It is nothing short of barbaric that such ongoing expenses must be financed, as they are, by me and others like me. This is how the quadriplegic is discriminated against as compared to the rest of society.

While the current level of income support does not meet the non-optional expenses incurred by severely disabled unemployed people, neither does the taxation or social security system give meaningful assistance to those who are working.

DISCRIMINATION IN GOVERNMENT FUNDING

6.23 The issue of government funding of institutions and service organisations was raised in a substantial number of submissions. The common theme was that current legislation should be redrafted to reflect more accurately the Independent-Living Model and/or normalisation

principles. The following excerpts are chosen to illustrate some specific points raised regarding this complex issue.

- 6.24 The Collective of Self-Help Groups (Vic.) draws attention to taxation law and how it affects their member organisations. They point out:

Many charities have the advantage of indirect financial assistance by being exempt from paying sales tax, payroll tax and stamp duties. They also have access to non-government sources of funding, such as philanthropic trusts and private donations. The Sales Tax Act and Income Tax Assessment Act 1936 (Cwlth) make available these financial advantages to charitable institutions and public benefit institutions. This means those organisations which provide the more traditional welfare services, such as institutional care, benefit. Disability groups that are concerned with community education, integration or social action do not have the same access to these financial resources. Clearly these laws are not based on notions of furthering social justice and equity. They discriminate against groups asserting their equality and rights and attempts to prevent social problems.

- 6.25 It was also submitted that eligibility for funds under the Handicapped Persons Assistance Act 1974 (Cwlth) should be extended to include self-help groups even if they are not providing sheltered workshops or residential facilities. It was argued that present funding of organisations is self-perpetuating in the sense that the more disabled people who are accommodated in an institution, the higher the level of incapacity subsidy granted. This was seen to discriminate against the individual seeking self-determination and independence.

- 6.26 Dissatisfaction with the distribution of funds was also expressed by representatives of organisations currently funded under the Handicapped Persons Assistance Act. It was pointed out that the subsidy base for Sheltered Workshops and Activity Therapy Centres is virtually the same although it is widely acknowledged that their style

of operation and ability to generate income from productivity is markedly different. Funding requirements force agencies into a reliance on the charity dollar which causes particular financial stress for Activity Therapy Centres, the trainees and their families.

6.27 A burdensome reliance on charity donations was also raised in respect of nursing homes and hostels. Several respondents noted the acute shortage of accommodation designed to cater for the special needs of disabled people, especially the young. As one person wrote: 'I am greatly concerned for the young disabled who are forced to live out their lives amongst geriatric patients - many (young residents) age before their time, lose hope, lose heart. Some, with a little financial assistance (say for the purchase of a computer) could become productive, independent citizens.'

6.28 Others noted the inflexibility of Departmental regulations. The Paraplegic and Quadriplegic Association of N.S.W. pointed out that community hostels are governed by traditional nursing home regulations which are medically oriented and often impose requirements which are inappropriate for young healthy disabled people. The Retarded Citizens Welfare Association of Tasmania drew attention to the frustration experienced when plans for community homes are thwarted through lack of subsidy and lengthy delays in processing of claims.

6.29 Several respondents praised the assistance given by home care services. 'I have benefited greatly from Home Care. It has and still does keep me from being permanently institutionalised.'

Another person who is a quadriplegic wrote that Home Care was 'the only thoroughly supportive organisation I've dealt with - even when they say no they don't make one feel guilty for asking'.

6.30 But some people equally in need of domiciliary services and support are not so fortunate. As one Association official writes: 'State Grants (Home Care) Act 1969 (Cwlth) aid is apparently unavailable to parents to assist with severely intellectually handicapped children, particularly those who are hyperactive, non-ambulant or have secondary or multiple handicaps'. It was further noted that intellectually handicapped people have little or no access to paramedical services such as speech therapy and physiotherapy. Mention was also made about the restricted service provided under the Delivered Meals Subsidy Act 1970 (Cwlth). The present service caters overwhelmingly for the aged disabled and is only available at lunch time, five days a week.

6.31 A member of Disabled People's International (Australia) wrote about service provision in general and the need to move towards direct payment to individuals so that services can be purchased and be responsive to consumer demands rather than meet perceived needs as defined under a medical model or a charity ethic:

Services should not be provided which will impose a feeling of gratitude or guilt. Gratitude for a charity service or guilt from using welfare or social security rights and entitlements. I have been told too often to 'shut up and be grateful' by charity based agencies even when their services have been inappropriate or poorly delivered. 'Don't bite the hand that feeds you' is another hackneyed phrase thrown at disabled people. The medical model has been recognised for many years as dependency producing and expensive. Much of the legislation has a medical bias, emphasis or input. The implication seems to be that disabled people are sick and continually in need of medical attention therefore the sick role is continually being imposed. Legislation should be redrafted to reflect an independent living model and/or normalisation principles.

6.32 Tax concessions and rebates are usually very important to disabled people because of the non-optional extra costs of disability. The major theme in the submissions received on tax matters concerned the failure of present provisions to provide incentives for self-reliance and independence.

6.33 Several respondents noted how current taxation legislation discourages disabled people from seeking employment. The Paraplegic and Quadriplegic Association of N.S.W. writes:

After 12 months in permanent paid employment, a disabled person loses all fringe benefits and becomes responsible for his own medical aids and equipment as well as the cost of medical and hospital insurance. After taking these expenses into account, a disabled person on a low average income may find himself worse off than if he had stayed on the Pension and this acts as a disincentive to seeking full-time paid employment. Given the expenditure incurred in training the disabled in rehabilitation centres and elsewhere, it would seem appropriate that such an investment not be wasted.

6.34 Respondents also drew attention to the fact that the costs of using a wheelchair are non-claimable despite their being an essential pre-requisite to employment. The expenses of buying and repairing a wheelchair and depreciation represent non-optional cost differences between disabled and able-bodied workers. Furthermore, the costs involved in travelling to and from work are not allowed as a direct deduction even when the disabled taxpayer cannot use public transport. Respondents felt that the latter denial of tax benefits was particularly discriminatory considering the transport concessions granted for example to sales representatives and businessmen.

6.35 Parking fees in cases where, as a result of disability, it is necessary to park a car close to the place of employment was another inescapable cost which respondents argued should be deductible.

- 6.36 The matter of attendant care expenses incurred during training and employment was also raised. While attendant care costs may be claimed under the general fixed : concessional rebate, it was argued that a direct deduction would .increase the-incentive for disabled people to join the workforce and recognise the additional expenditure their disability imposes in earning their income. One respondent writes: 'As a P.A.Y.E. employee I have to ,travel. My attendant's expenses are disallowed on the grounds that these expenses are of a private and personal natuxe., Disabled people need`forms, of compensation to offset these unavoidable costs if they are to compete and integrate with their peers equally.'
- 6.37 It was also pointed out that the disabled taxpayer's scope for engaging various types of attendants, e.g. engaging a taxi-driver as an attendant for travel purposes, is circumscribed for those confined to a bed or wheelchair in the sense that payment is only rebatable when the service is prescribed by a doctor. This is not a requirement for people who are blind.
- 6.38 Another anomaly between-disability groups is the fact that the expenses of maintaining a guide dog are allowable deductions for blind people but deaf people do not receive a similar benefit for maintaining a hearing dog.
- 6.39 A number of submissions were concerned with the failure of present tax concessions to assist families with .a disabled ,member at home. The current allowable rebates for caring for an invalid relative or disabled spouse bear little relationship to the time, effort and costs involved in such carp-. Moreover, if a taxpayer becomes disabled and requires modification of his/her domestic residence in order to continue living independently, there is no encouragement of this way of taxation deduction/rebates in the current provisions. Also, where a taxpayer with a

disabled child needs to move house because of the disability, there is no tax relief for necessary moving costs such as stamp duty, solicitors' and agents' fees.

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CHAPTER 7INCOME SUPPORT AND DIRECTIONS FOR FUTURE ACTIONSOME RECENT PROPOSALS

7.1 The ACROD Report into the Relationship between Poverty and Disability which was submitted to the Commission of Enquiry into Poverty showed how the impoverishing effects of disability arose for adults through an inability to earn and, for families with a disabled child, primarily through the lack of financial provisions to relieve the economic burdens faced by parents.¹ The Poverty Commission proposed a universal strategy of a guaranteed minimum income (GMI) applicable to all income units so as to compensate for and prevent economic disadvantage.² The Commission's approach was to view poverty in terms of an income deficiency, to define a 'standard poverty line' and to ascertain the number of income units the disposable income of which fell below the appropriate poverty threshold.³ As regards pensions and benefits, the Commission recommended that they:

- (a) be raised to the poverty line;
- (b) be regularly updated and include a component based on a forward estimate of inflation; and
- (c) have identical conditions for members of various disability groups.

The Commission also recommended, in line with the ACROD Report, that extraordinary costs arising from chronic disability be investigated with a view to providing supplementary or special assistance.

- 7.2 The Poverty Commission's GMI Scheme clearly has many advantages, not the least of which is its simplicity. Further, by integrating the income taxation and social security systems, no stigma is imposed on those in need of income support by forcing them to deal with a separate social security system.⁴ It would have a horizontal redistributive impact (which would benefit the great majority of pensioners and beneficiaries) while at the same time promoting selectivity principles by 'clawing back' a proportion of GMI payments according to increase in private income.
- 7.3 The GMI scheme is aimed at eliminating chronic economic deprivation and overcoming what Professor Henderson describes as the 'lamentably inefficient, pauperising and degrading effects of the current piecemeal system of cash transfers'.⁵ However, many questions have been raised about its implementation and redistributive impact on different family types.⁶ For example, Podger, Raymond and Jackson argue that the introduction of a separate section on 'Taxation Expenditures' in the 1980 Budget papers was a welcome initiative. Although far from comprehensive, it nonetheless brought some of the major tax transfers into consideration with the cash transfers on the outlay side of the budget.⁷ Following Titmuss, they are particularly concerned that the redistributive effects of social welfare policy are not considered in isolation. The impact of fiscal welfare and occupational welfare must be taken into account if the realities of redistribution are to be correctly assessed. They conclude that while conflicts between equity, efficiency and simplicity are inherent in any tax-transfer system, adjustments and reform of existing tax and social provisions could achieve similar effects to those expected from a GMI scheme.⁸

- 7.4 Becky Llewellyn also points out that a GMI scheme D.ex se does not solve the problem of target groups who are disadvantaged relative to other low-income earners such as disabled people who have additional costs such as those associated with equipment and transport.⁹

The complex debate about the relative advantages of introducing a GMI scheme raises major issues outside the scope of this report. There is no fault, however, with the finding of the Poverty Report that large numbers of people reliant on pensions and benefits currently suffer grave economic hardship. Similarly there is no question about the fact that progress since the publication of the Poverty Report has been minimal.

- 7.5 The comprehensive South Australian enquiry The law and persons with handicaps (the Bright Report) held the view that present income security provisions for disabled people require major legislative reform rather than 'adjustments' .¹⁰ The Committee noted the ad hoc basis of existing income maintenance schemes and the resultant lack of co-ordination, anomalies and administrative complexity. They recommended a disability allowance as a means of rationalising and simplifying present provisions. The disability allowance would be free of a means test, indexed to cope with rises in the cost of living and be available to any person who has extra financial burdens because of disability regardless of cause. They envisaged the amount payable would be similar to the Invalid Pension and replace present pensions and benefits, the Sheltered Employment Allowance, sales tax exemptions, Mobility Allowance, fare concessions and many repatriation benefits.
- 7.6 The Bright Report's proposed disability pension has major advantages over existing arrangements. On the administrative and legal level it streamlines procedures

and removes anomalies. For individuals this would reduce the uncertainty, unfairness and stigma which arises from assistance based on the cause of disablement. On the other hand some people, such as those on repatriation benefits and recipients of high compensation awards, may lose out.

In general, the Bright Report's recommendation on income maintenance has been favourably received. However, the abolition of the means test and the uncertainty of what this would mean in relation to increases in the level of Government spending together with probably adverse effects on repatriation benefits has raised doubts about its political acceptability .11

- 7.7 A more recent proposal, also involving a disability allowance, was submitted by Becky Llewellyn as a contribution to the International Year of Disabled Persons.¹² It is an imaginative scheme based on sound principles and has received strong support from disabled people. In this proposal the disability allowance acts as a supplement to other income (wages, pensions and benefits allowances and private income), is payable only within the basic taxation range and is taxable. The disability allowance is payable to individuals of all ages or their legal guardian and eligibility is based on an assessment of the 'measurable long-term/permanent functional limitation on loss resulting from an impairment' and applies equally to mentally and physically disabled people. Reassessment is periodic (every two years), and would preferably be administered by the Commonwealth Rehabilitation Service.
- 7.8 The basic principle underlying the disability allowance is one of compensation:

It is public recognition of the non-optional nature of expenditure for goods and services required by disabled people and is an attempt to redress the handicapping effect of an inaccessible community. Direct payment to individuals shifts the traditional context of disabled people or their families being objects or clients of services to their being consumers in a market-place transaction. The costs to the government of avoidable extra dependence and mis-match in, over-servicing are reduced as the disability allowance increases the possibility of 'dependent' people becoming more independent, problem-solvers, resource-seekers and buyers of appropriate goods and services.¹³

The level of payment is on a sliding scale based on an indexed 'basket of goods', the components of which could include special accommodation costs, transport, communication, personal transfer, domestic roles, personal care and attendant care. People will qualify for a percentage of each component depending on the specific needs and requirements arising from their functional losses. Thus a person who is self-sufficient in all respects except for an inability to use public transport will only receive the transport component whereas a more severely disabled person would qualify at different levels for several or all components.

- 7.9 Becky Llewellyn contrasts the cost of supporting a severely disabled person through a disability allowance with current Commonwealth Contributions towards institutional care.¹⁴ At the time of writing (1981), the Commonwealth contributed \$172 weekly to nursing homes for basic Ordinary subsidy, plus \$42 weekly if 'the person was in intensive care', as well as taking \$60 weekly from the individual's pension. The suggested component costs of a disability allowance for a severely disabled person living

in the community were as follows:

COMPONENTS OF EXTRA COST	SUGGESTED MAXIMUM WEEKLY
1. Personal Care	\$20.00
2. Attendant Care	\$100.00 - 20 hrs at \$5 per hr
3. Transport	\$30.00
4. Accommodation	\$20.00
5. Domestic Roles	\$30 - 6 hrs at \$5 per hr
6. Personal Transfer	Flat payment
7. Communication	Flat payment
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Total Maximum	\$200.00
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The removal of attendant care requirements left a maximum supplementary payment of \$100 for 100 per cent assistance with personal care, transport, accommodation, domestic roles. As functional limitations decrease, the payment level would drop proportionately, with a maximum payment of as little as a few dollars.

7.10 Becky Llewellyn lists the major advantages of the proposed disability allowance as follows:

- (a) A fundamentally more just and logical system of targeting to real need through taxation provision, income cut-off and tying payment to specified, assessed areas.
- (b) Could cut government overspending on institutional care through providing the choice of less costly community living with appropriate financial backing of individuals and families.

- (c) Freedom of choice for severely disabled persons in matching their requirements most efficiently With public funds.
- (d) Does not penalise incentive and recognises the extra non-optional costs of living with a disability.
- (e) Availability of better and more accurate statistics.¹⁵

7.11 Two possible disadvantages of the scheme are the 'wastage' of funds in allowing people the right to risk and make occasional mistakes and administrative complexity when no standard rates apply. It has also been argued elsewhere that the introduction of a disability allowance could have a divisive effect on the community by giving one dependent group preferential treatment over others (e.g. the unemployed) and that a GMI scheme would be a sounder development in the long term.¹⁶

DIRECTIONS FOR FUTURE ACTION

7.12 Given the inescapable conclusion that both taxation and social security legislation are arbitrary and do not reflect changing attitudes towards disabled people, piece-meal reform will be of limited value. In our view there should be a major review of the whole social security system and the introduction of a disability allowance such as that proposed by Becky Llewellyn should be given serious consideration.

7.13 Some thought should also be given to whether the Department of Social Security should retain total control over all social security payments.

If the legislation is intended to reflect the belief that disabled people should be integrated into the community and the workforce and that payments should assist them in the process of rehabilitation, consideration should also be given to whether the Health Commission is a more appropriate body to administer those parts of the social security system. Current legislation and its application only attempts to ensure that people who cannot work have the minimum assistance to survive economically.

- 7.14 Further, consideration should be given to providing uniformity in the application of the legislation and to overcoming such inconsistencies as, on the one hand, the universal payment of the Family Allowance, and, on the other, the differentiation in means testing and rules which apply in respect of other benefits, pensions and allowances. For example, the 85 per cent incapacity rule can have the result that two substantially incapacitated people with almost identical symptoms and complaints are treated very differently merely on an arbitrary interpretation of their exact degree of incapacity made by two doctors.

Current legislation pays little heed to the philosophy of integration into the community and the need to assist disabled people in their attempts to become more self reliant. In a recent case, the AAT held that a child with only one leg was not eligible for a Handicapped Child's Allowance as his parents had ensured that he had become integrated into his own community of school children and participated in many sports. The fact that the child was attending an ordinary school was the result of enormous energies and input by his Parents. The withdrawal of the allowance from this family because the child had integrated successfully must provide a disincentive to other families attempting to overcome the effects of a disability. No recognition was made of the enormous costs, both financial and personal, that were required to achieve and sustain this result.

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CHAPTER 8

RECOMMENDATIONS

- 8.1 There are some reforms that should be instituted to improve the overall delivery of assistance.

GENERAL REFORM

1. The availability of pensions, benefits and allowances should be more widely advertised. This is particularly the case with the Program of Aids for Disabled People (PADP) and the Handicapped Child's Allowance.
2. Failure to apply for a pension, benefit or allowance should not be a bar to the recovery of the pension, benefit or allowance from the date which the disabled person could have obtained it, had he or she known of their rights, unless it can be shown that the Department of Social Security is prejudiced in ascertaining when this right would have accrued.
3. As it is presently structured, social security, other welfare payments and taxation are not synchronised and their combined effect can operate as a disincentive to people trying to get back into the workforce by doing part-time work. There should be no differentiation between pensions, benefits or allowances, as to the amount the pension or benefit is affected when recipients work part time.

4. Similarly, the requirements that sickness beneficiaries must repay the benefits received out of compensation monies should be annulled, particularly as there is no similar requirement for recipients of the Invalid Pension.

Under the current legislation, individuals' lump sum payments can be affected to a dramatically different extent depending on whether they are receiving the Invalid Pension or Sickness Benefits, even though the degree of their disability may be very similar.

- 8.2 Regarding specific social security payments, the following amendments could be instituted immediately.

Invalid Pension

The 85 per cent permanent incapacity requirement should be abolished. It is impossible to assess 'incapacity' with that degree of accuracy. The test should be whether a person is by reason of his or her medical condition, training, skill and the social and economic environment in which he or she lives, substantially incapacitated for work. This assessment should be made by a combined medical and welfare team.

Sickness Benefits

1. The amount deducted from Sickness Benefits because of income earned should be the same as that in the case of Invalid Pensions.
2. There should be a legislative provision to prevent double taxation.
3. All sickness beneficiaries should receive a supplementary allowance.

4. Consideration should be given to the requirement of obtaining medical certificates and the inconvenience that the beneficiary suffers in regularly obtaining these, particularly in isolated areas. Disabled people in isolated areas should be allowed a certificate which anticipates the duration of the incapacity.
5. Sickness beneficiaries should receive the same fringe benefits as invalid pensioners.

Handicapped Child's Allowance

1. The legislation is vague and difficult to interpret. It should be redrafted and words such as 'severely', 'marginally less' and 'constant' should be avoided.
2. The distinction between 'handicapped' children and 'severely handicapped' children should be abolished and an allowance paid to all parents who can establish that their child is disabled and that by reason of that disability they suffer economically either directly (e.g. by incurring unusual medical expenses) or indirectly (e.g. by not being able to earn additional income because of the time required to care for the child). This assessment should be made by a medical and welfare team.
3. The availability of the allowance should be more widely advertised. It is suggested that information in appropriate languages should be given to parents when they receive their first Family Allowance payment and that hospitals, doctors, baby health centres, pre-schools, creches, kindergartens and primary schools be regularly forwarded pamphlets in several languages.
4. The amount (currently \$85 a month) is inadequate. We do not make any recommendation as to the amount that should be paid because it will depend on the overall

review of the social security system that we consider should be undertaken. We do however note that those people who undertake to care for a disabled child in N.S.W can receive \$20 a night from the Department of Youth and Community Services.

Mobility Allowance

- The allowance should be paid to all severely handicapped persons who are unable to use available transport (public or private) and do not own a car.

Program of Aids for Disabled People

The provision of aids should be administered by the one authority, preferably the Department of Health.

The guidelines should be more specific so that they may be consistently interpreted.

- 3, . Aids should be available if they are needed and should not be denied merely because the disabled person is in hospital and the hospital cannot fulfil that need.
- The aids which are made available should be increased in number and variety.

TAXATION REFORM

Taxation legislation covering work related or income producing expenditure should be amended and broadened to assist disabled people with the extra costs incurred through employment, especially those relating to transport and attendant care.

2. There should be a more liberal interpretation of eligibility criteria concerning the granting of the housekeeper rebate to taxpayers supporting a disabled

child or adult.,

- Similarly, the interpretation by the Taxation Office of what constitutes a 'medical' expense should be liberalised to ameliorate current anomalies and exclusions in allowable rebates.
- 4. The list of items which attract sales tax exemptions should be examined in order to include new innovations and technological advances in equipment which has therapeutic value for disabled persons.
- 5. The current 20 per cent Customs Tariff on imported wheelchairs should be referred to the Industries Assistance Commission with the recommendation that their importation be made duty free.

WHAT IS TO BE DONE?

- 8.3 It is clear from the recommendations of the reports outlined in Chapter 7, the evidence contained in the submissions and the analysis of current legislative provisions, that disabled people, especially pensioners and beneficiaries, cannot adequately seek and attain their rights within the law as it stands. All three highlight the continuing poverty of disabled people, the gaps and anomalies in income maintenance provisions and delivery of services, and the fragmentation and confusion in Federal/State funding.
- 8.4 The situation today is the outcome of outmoded assumptions and .'solutions'. The outmoded assumption that people by virtue of their disabilities are not capable of managing their own lives has for too long been supported by public indifference, ignorance and prejudice. The 'solutions' have invariably been piecemeal, ad hoc and inadequate. It is abundantly clear that further minor legislative and administrative changes will at best only ameliorate some of the worst discriminatory aspects of current legislation.

- 8.5 It was noted at the outset of this report that few of the problems raised in the submissions were new. The practical difficulties faced by disabled people in their day-to-day living have been recorded by numerous inquiries, surveys and reports in the last decade. Recommendations, both detailed and general, have been made. Some reforms have been made, such as the introduction of the Mobility Allowance, the extension of fringe benefits to sickness beneficiaries and invalid pensioners re-entering the workforce, and the extension of appeal rights to the AAT. Nevertheless, these reforms, while welcome, do not confront the fundamental disregard of rights of disabled people and in some cases simply add to the bewildering, complex maze already confronting people, many of whom are poor and unaware of available resources and entitlements.
- 8.6 The plethora of recommendations in recent reports aimed at alleviating present discrepancies and shortfalls in current legislation provide ample guidance for immediate government action. An effective solution to present problems will however never be attained until the explicit recognition given to the social philosophy of equal rights embodied in the United Nations Declarations is acted upon.
- 8.7 With regard to income security programs, it is imperative to recognise that the current economic climate with high levels of unemployment is a fact of life and will continue to be so for the foreseeable future. Physically and mentally disabled people face an increasingly hard battle to join the workforce. One immediate step to be taken by the Government is to recognise that unemployment and Sickness Benefits are designed as short-term options.

8.8 Disabled people are developing an awareness of their lack of rights and the prevalence of discrimination, and are increasingly prepared to challenge these injustices. Government must face up to the fact that the poverty of disabled people and the inequitable complexity of current programs cannot be 'fixed' by tinkering at the edges. The choice facing us is whether to act boldly on the available evidence or whether to continue taking the easy way out by patching up a long-outdated, inefficient system.

Appendix 1

Disability and the Law

call for submissions on social security and taxation law

In 1981 the Commonwealth government established the Human Rights Commission to promote the rights of people as set out in five United Nations statements.

These statements include:

The Declaration on the Rights of Disabled Persons which says all disabled persons have a right to:

- *respect*
- *family and social life*
- *economic security*
- *education, training, employment and trade union membership*
- *protection from discriminatory treatment*

The Declaration on the Rights of Mentally Retarded Persons which says among other things that all intellectually disadvantaged people have a right to:

- *proper medical care and therapy*
- *economic security*
- *education, training and work and trade union membership*

The Declaration of the Rights of the Child which says among other things that all children have a right to:

- *a name and nationality*
- *adequate care, affection and security*
- *education*
- *special treatment, education and care if handicapped*

Successive Commonwealth governments have legislated for various types of assistance to ensure the rights and promote the social welfare of Australian citizens.

For people with disabilities, government assistance may for example be in the form of Commonwealth government services, subsidies to state governments and voluntary welfare agencies, direct cash payments or taxation concessions.

The areas of social security law and taxation law are complex. To simplify matters a little we have listed each in turn and briefly noted some of the most common complaints and issues brought to our attention.

IN THE FOLLOWING ISSUES PAPER WE HAVE LOOKED AT VARIOUS SOCIAL SECURITY AND TAXATION LAWS WHICH ARE MOST LIKELY TO AFFECT DISABLED PEOPLE.

IN PARTICULAR WE WANT TO KNOW HOW THESE LAWS MAY DISCRIMINATE AGAINST OR DISADVANTAGE PEOPLE WITH DISABILITIES.

We would like to hear the views and experiences of individual people with disabilities and organisations representing disabled people.

- *Do you agree with these complaints?*
- *Why or how do they discriminate against or affect your rights as a disabled person?*
- *What areas and issues have not been raised?*
- *What should be done?*

Please comment on any areas that you feel are appropriate to you. Use extra paper if we have not provided enough space. Please do not hesitate to ring us at ACOSS if you want to discuss the issues raised, need further information or if you can provide us with assistance.

Pamela Bedwell
ACOSS
P.O. BOX E158
ST JAMES 2000

SOCIAL SECURITY AND TAXATION

LEGISLATION

The Commonwealth government assists people with disabilities through both direct and indirect laws and regulations.

Direct Assistance includes:

- *income maintenance through pensions, benefits and allowances.*
- *government services such as the Commonwealth Rehabilitation Service and the provision of aids and appliances.*
- *tax relief in the form of direct deductions, rebates and allowances.*

Indirect Assistance includes:

- *subsidies and other financial assistance to organisations providing services and accommodation.*
- *tax relief through exemptions on sales tax and customs duty.*

Taxation and social security legislation should be based on notions of social justice and equity. Yet clearly, many disabled people and their families suffer economic hardship and social deprivation quite contrary to the aims and underlying spirit of these laws.

FLAWS IN THE SYSTEM

The current level of pensions, benefits and allowances rarely comes close to covering basic living costs let alone giving recognition to the non-optional extra costs that disability brings. As Elizabeth Hastings writes 'Disability... is an expensive condition (and) disabled people are measurably the poorest group among the poor'. Moreover, the eligibility, level and conditions of income assistance vary enormously and present a fragmented picture of confusion.

- *Invalid pensions and sheltered workshop allowances are means tested while blind pensions are not. On the other hand, while both invalid and blind pensions are non-taxable recipients will find that when they are transferred to the aged pension (age 60 for females and 65 for males) they will be liable for tax.*
- *Invalid pensioners who undertake a rehabilitation course may receive a training allowance which is non-taxable. If however, the same training allowance is granted to someone who previously received unemployment sickness or special benefits the training allowance is taxable.*
- *The earnings limit (which was once equivalent to the pension) is currently \$30 per week for a single person and \$50 per week for a married couple. Every dollar earned over that amount is taxed 50%. In effect this is a taxation rate 0/at least 50 per cent on a low income. Higher when combined with personal income tax.*

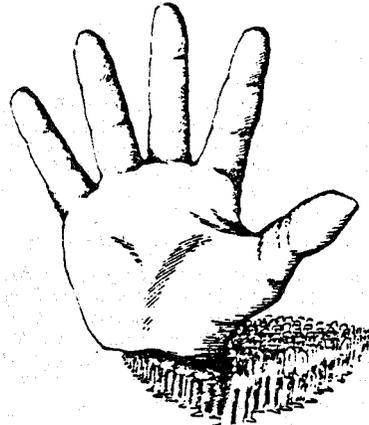
- *Transport assistance given through the Department of Veteran Affairs is more generous than concessions accorded to non-exservice personnel under the Social Security Act.*

The low level of direct financial assistance to disabled people is often contrasted to the relatively generous funding of organisations providing institutional care. Above all, this financial imbalance in funding priorities can be seen to thwart the right of disabled people to choose an independent lifestyle if they so wish.

In the last decade numerous government enquiries have supported the call of disabled people for an increased role for domiciliary services to prevent an early or unnecessary reliance on institutional care.

The relative costs of institutional care compared to independent living is an added factor in favour of a shift in funding priorities.

invalid pension
action



SOCIAL SECURITY ACT 1977

Invalid Pension

The invalid pension may be paid to a person who reaches 16 years of age, is permanently incapacitated for work to the extent of '85 per cent' or is permanently blind. Residential requirements are also imposed and except for blind persons, an income test.

The level of payment and administration of the invalid pension have been the source of continuing criticism. Some of the main areas of concern are:

- *the harshness and arbitrary nature of the '85 per cent' incapacity rule for eligibility.*

- the administrative process covering the application, medical assessment and granting of the pension and the appeal system. The major complaints about invalid pension administration are the lack of information and advice about rightful entitlements the secrecy surrounding departmental procedures, insensitive and unsympathetic medical examinations and long delays especially in the appeal process.
- the 1982/83 Commonwealth Budget provision that the 12 months work transition 'fringe benefits' for people rejoining the workforce will only apply to those people with 'manifest' disabilities. The provision for people with 'non-manifest' disabilities will be limited to 3 months. The social security definition of 'manifest' is likely to exclude those people with less visible disabilities such as psychiatric illness, intellectual handicap, bad backs etc.
- the provision that the pension may be paid to an authorised person or body on behalf of the invalid pensioner. There is evidence that this system is open to abuse. One recommendation is that before guardianship is granted it should be established whether and to what extent the need exists and then to ensure that the guardian is not in a position of conflict of interest.

The Special Benefit

The Special Benefit is payable to a person who may not be eligible for sickness or unemployment benefits and whose physical or mental disability, domestic circumstances or for any other reason which satisfies the Director-General, makes that person unable to earn a sufficient livelihood and provide for dependents (if any).

The major criticism of the Special Benefit is:

- the host of internal and largely secret regulations which govern the administration of the Benefit. The discretion and flexibility which was originally intended is practically negligible due to a strict application of eligibility criteria and the time consuming processes of evaluation and Departmental determination.

Sickness Benefit

Disabled people placed on sickness benefits face many of the same difficulties as unemployment beneficiaries. Benefits are not secure and require the costs and uncertainty of attaining medical certificates. They must also face the much more stringent Income test which is also applied to unemployment beneficiaries.

Sickness beneficiaries will also find that the amount they receive while on Sickness Benefit will be deducted from other compensation received e.g. workers compensation or common law compensation. This does not happen to people receiving invalid pensions or unemployment or special benefits.

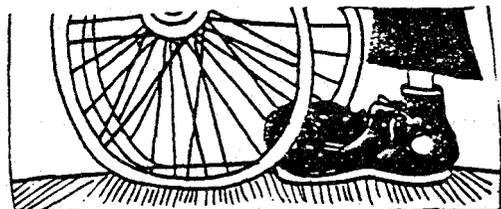
They could also find that they are double taxed on income they actually never receive.

Handicapped Childs Allowance

A Handicapped Childs Allowance may be paid to parents or guardians caring for a severely or substantially physically or mentally handicapped child at home. There are two categories of allowance. For a severe! handicapped child the full allowance (\$85 a month at the time of writing) is payable and there is no Income test. For a substantially handicapped child the allowance is subject to an income test and the amount payable (up to \$85 a month) is subject to the discretion of the Director-General. Several criticisms have arisen about the Handicapped Childs Allowance since its introduction a few years ago.

For example:

- the stringent income test applied to parents of a substantially handicapped child. The stringency of the income test has been shown to exclude from eligibility a high proportion of families with a substantially handicapped child.
- An income test based on the 'severity' of the disability of the child is arbitrary. A mildly intellectually handicapped child who is hyperactive may need more care than a profoundly handicapped child or a moderately handicapped child who can go to school.
- The availability of the Handicapped Childs Allowance is not widely known. Many families (and doctors) are not aware of their entitlements and this source of assistance cannot be back-dated or paid retrospectively to the date of diagnosis.



Handicapped Childrens Benefit

If a **substantially or severely handicapped child is resident at an approved hostel the organisation may be entitled to the payment of the Handicapped Childrens Benefit which is presently \$5 a day. In this case the child may also qualify for the isolated Child's Allowance which is paid by The Commonwealth Department of Education to the child's parents when geographical isolation prevents reasonable access to a government school.**

The Handicapped Children's Benefit Is an example of the discrepancies in funding priorities regarding institutional and domiciliary care. It is argued that:

- the funds directed toward institutional care (approximately \$35 per week) would be more appropriately and better spent on increasing the allowance for domiciliary care (currently \$18 per week) and in encouraging and supporting small-scale, self-help facilities in the community.

Sheltered Employment Allowance

The Sheltered Employment Allowance may be paid to a disabled person over the age of 16 who is employed in an approved sheltered workshop and is either an invalid pensioner or likely to become a pensioner if not provided with sheltered employment. There is an income test the same as the invalid pension.

The major areas of criticism regarding the S.E.A. are:

- the lack of incentive for people to enter sheltered employment when the average wage paid to employees is \$15.60
- the 50% 'quasi-income tax' levied on earnings beyond \$30 per week and the loss of health care and fringe benefits if 'other weekly income' exceeds \$68 per week. The most typical income of a workshop employee is less than \$140 per week (ACROD). This can be compared to average weekly earnings of \$352.10.

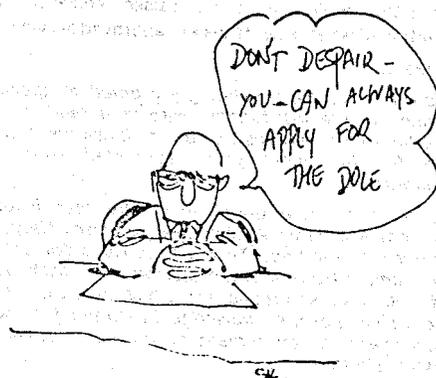
Commonwealth Rehabilitation Service (CRS)

Part VIII of the Social Security Act covers the provision and operation of the Commonwealth Rehabilitation Service. The service operates institutions in all States to provide remedial treatment and vocational assessment for people, broadly of working age, who have become disabled through an accident or illness. In 1977, the eligibility requirements for free rehabilitation were widened. Nevertheless, the annual number of people receiving CRS assistance in the last few years has remained very small compared to the number of *new* invalid pensioners and sickness beneficiaries in the same period.

The geographic distribution of CRS institutions has undoubtedly contributed to this situation and the 1982-183 Budget has allocated funds for mobile teams and regional rehabilitation units to alleviate problems associated with geographical isolation.

Various studies on rehabilitation in Australia have been conducted in recent years and most have forcibly advised the *need* for increased co-ordination of services and allocation of resources for the CRS. It has been claimed for example that:

- that the CRS is mainly concerned with vocational rehabilitation and has refused people who could be helped in developing living skills.
- accident prevention and health education be given higher priority and a larger share of rehabilitation resources allocation.
- health care professionals often see the CRS as an arm of the social security system rather than a part of the health care system and as a result do not recommend people who would benefit from rehabilitation services.
- rehabilitees should be allowed to participate when decisions which determine the direction of their treatment, training and vocational goals (if any) are made.



THE HANDICAPPED PERSONS ASSISTANCE ACT 1974

The Handicapped Persons Assistance Act is the Major source of funds for approved services and organisations for the handicapped. Eligible organisations must be non-profit and either religious, charitable, benevolent or ex-service or a local government body. To qualify for financial assistance organisations must provide a 'prescribed service' which includes training **and** activity therapy centres, sheltered workshops, residential accommodation, recreational facilities and rehabilitation facilities. Different levels of grants are contributed towards capital costs and running costs.

The Handicapped Persons Act has aroused considerable debate. The main thrust of the criticism is aimed at the institutional bias of this Act. A provision which is often mentioned in this respect is the \$500 'training fee' paid to a sheltered workshop if a disabled person who has finished at least 6 months training subsequently completes one year in open employment.

Two points are raised namely, that:

- the worker should receive the \$500 as an incentive payment rather than the organisation and
- the \$500 is scant compensation to an organisation for the loss of a productive worker.

The last point is often given as a reason why the \$500 training fee (which has not been increased since the Act was passed in 1974) is rarely claimed by organisations and why some organisations are reluctant to lose their best workers.

Another point which is often raised concerns the interpretation of what constitutes an 'approved service'.

It is argued that:

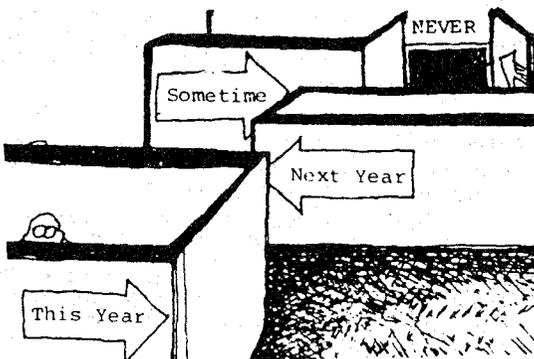
- *the funds are overwhelmingly granted to agencies which provide institutional care with related high capital investment costs and that these institutions are for the Most part segregated from the community.*
- *apart from institutional bias, the Handicapped Persons Assistance Act has been criticised about the pattern of funding. This can cause organisations planning difficulties e.g. projected salary costs, level of public subscriptions etc., which is undoubtedly exacerbated by the knowledge that funding is always contingent on government goodwill and consistent fiscal priorities.*
- *currently, the workshop ratio of trainers/trainees is approximately 1:15 rather than the recommended 1:5.*
- *Commonwealth subsidies for approved workshops and ATC's are the same. However ATC's do not generally have the productive capacity of workshops and cannot therefore as readily make up the deficit in funding. Parents in some areas typically pay \$20a week to keep their child at an ATC - hardly an example of free universal education!*

THE STATES GRANTS (HOME CARE) ACT 1969-1973

The States Grants (Home Care) Act is aimed at stimulating the development of community based services which help aged people to remain in their homes as long as possible. Subsidies are granted towards home care services e.g. housekeeping, capital and running costs, senior citizens centres and salaries of welfare officers employed by these centres.

It has been argued that:

- *an amendment should be made to this Act to provide equal assistance to disabled persons who prefer to live independently within their community. This would ameliorate current funding discrepancies between institutional type care and domiciliary care.*



THE DELIVERED MEALS SUBSIDY ACT 1970-1974

The Delivered Meals Subsidy Act subsidises approved organisations which conduct a regular service of delivering meals to aged or invalid people in their homes.

THE NATIONAL HEALTH ACT 1953

The National Health Act provides pharmaceutical benefits and aids and appliances necessary for the treatment and rehabilitation of sick or disabled people.

Over the years, complaints have been raised about a number of pharmaceuticals which have become restricted and the reasons given for their restriction. These include vitamin preparations and pharmaceuticals for the treatment of osteoarthritis, asthma and diabetes.

Program of Aids for Disabled People.

The PADP scheme commenced in 1981 under the responsibility of the Department of Health. The aim of PADP is to provide a wide range of aids to disabled people not covered under existing Commonwealth, State or joint Commonwealth/State programmes.

Since its inception PADP has been the subject of controversy, not the least because it adds to an already confusing system of funding and service.

Other major criticisms are that:

- *PADP is inadequately funded and poorly advertised.*
- *Some people, such as those with impaired hearing who require communications aids, e.g. hearing aids, telephone attachments, teletypewriters etc., receive no assistance.*
- *There is little conformity in the provision of aids from State to State and institution to institution e.g. the supply of domiciliary oxygen for people with respiratory complaints.*

AGED OR DISABLED PERSONS HOMES ACT 1974

The Federal Government subsidises two-thirds of the costs of eligible State, local government and voluntary organisations which provide self-contained hostel type or nursing home accommodation for aged and/or disabled people.

This Act was extended in 1974 to cover people with disabilities. A frequent criticism which has arisen since then concerns the inadequate facilities provided for disabled young people in institutions principally concerned with the care of the aged. It is argued that:

- *many young people who are disabled face the prospect of living out their lives amongst geriatric patients (many of whom may be immobile and/or senile) and they are thus isolated and alienated, lack environmental stimulation and have no opportunity to mix with a variety of age groups including their peers.*

THE STATES GRANT (PARAMEDICAL SERVICES) ACT

The States Grants (Paramedical Services) Act subsidises the State in relation to the provision of paramedical services for aged people. It has been argued that.

- *This Act be reviewed with the goal of enhancing independent living initiatives.*

THE ACOUSTIC LABORATORIES ACT 1948

The Acoustic Laboratories Act established and maintains the National Acoustic Laboratories (NAL).

Recommendations contained in a recent enquiry into government laboratories have caused concern. It is argued that:

- *the diagnostic and dispensing activities of NAL should continue to be provided by the Commonwealth so that the needs of children and pensioners who are hearing impaired continue to be met.*



TAXATION LEGISLATION

Governments commonly use the taxation system to promote the welfare and provide incentive to individuals and/or organisations in a way deemed to enhance the 'public interest'. Taxation is often divided into two broad categories - direct and indirect.

DIRECT

INCOME TAX ASSESSMENT ACT

People with disabilities are required to pay tax on income just the same as any other citizen. Similarly, they may be eligible for certain types of tax relief made available to taxpayers.

Tax concessions and rebates are usually very important to disabled people because they must face the non-optional extra medical costs of disability. A tax rebate, currently calculated at 30 cents in the dollar, is available to all resident taxpayers whose concessional expenditure exceeds \$1590. Items which qualify include medical expenses, superannuation payments, life assurance, education expenses, rates and land taxes and adoption expenses.

Medical expenses may be claimed for a spouse, a child under 21, a person for whom the taxpayer can claim a dependent rebate e.g. invalid relative or a student under

25 (not necessarily related to the taxpayer), or a non-student child under 16 (not being a child of the taxpayer).

Section 159P includes, within the definition of medical expenses payments.

- (a) 'to a legally qualified medical practitioner, nurse or chemist, or a public or private hospital, in respect of an illness or operation;
- (d) for therapeutic treatment administered by direction of a legally qualified medical practitioner;
- (e) in respect of an artificial limb (or part of a limb), artificial eye or hearing aid;
- (f) in respect of a medical surgical appliance (not otherwise specified in this definition) prescribed by a legally qualified medical practitioner.
- (h) as remuneration of a person for services rendered by him as an attendant of a person who is blind or permanently confined to a bed or an invalid chair; or
- (I) for the maintenance of a dog used for the guidance of a blind person, being a dog that the Commissioner is satisfied is properly trained in the guidance of the blind by a public institution.'

The costs of medical treatment for disabled people are often high in both relative and absolute terms. It has been argued that most concessional rebates in fact give little or no benefit to the taxpayers and are cost inefficient. It is suggested that:

- *the definition of 'medical expenses' be expanded to include domestic modifications and installations of aids which would enable people to remain at home.*
- *the definition of disability which allows a rebate on attendant care should be broadened to include those disabled people who, in the opinion of a legally qualified medical practitioner, require attendance but may not be permanently confined to a wheelchair.*
- *the current pilot study into attendant care will investigate alternative methods of providing such assistance. A cash allowance appears the most favoured method because it allows the greatest degree of self-determination for disabled people. Other methods could be tax concessions or a direct tax deduction.*

Direct deductions-Section 51(1)

Direct deductions may be claimed by eligible taxpayers regarding,

'All losses and outgoings to the extent to which they are incurred in gaining or producing the assessable income, or are necessarily incurred in carrying on a business for the purpose of gaining or producing such income, shall be allowable deductions except to the extent to which they are losses or outgoings of capital, or of a capital, private or domestic nature, or are incurred in relation to a gaining or production of exempt income'.

People with disabilities often find that employment substantially increase their daily expenses, particularly transport costs. If, as is often the case, the disabled taxpayer contributes to but cannot use public transport, other (usually expensive) means must be found. In April, 1983 the Government will introduce a non-taxable, non-means tested mobility allowance of \$10 per week payable to severely disabled people who are gainfully employed or undertaking vocational training.

The mobility allowance has been criticized on the ground that:

- *recovery of transport costs would be more appropriate in the form of a direct deduction. It has been pointed out that other groups of people (e.g. insurance and real estate agents) may claim vehicle expenses under Section 51(1) of the Income Tax Assessment Act and it is a regressive step to make a distinction for disabled people when grounds for the claim are essentially the same.*

Invalid Relative Allowance - Section 159

A person maintaining an invalid relative i.e. a person over 16 who is a child, brother or sister of the taxpayer, is entitled to a dependants rebate of up to \$376 per annum which is reduced by \$1 for every \$4 by which the invalid's separate net income (including the pension) exceeds \$282 for the year. A tax rebate of up to \$830 per annum may be allowable. It has been pointed out that:

- *this is an incredibly small amount when the time and effort needed for such care is considered. A special burden must be placed on the young family who do not wish to place a disabled parent in (more expensive) institutional care.*

INDIRECT

SALES TAX (EXEMPTIONS AND CLASSIFICATION) ACT 1935

The First Schedule to the Sales Tax (Exemptions and Classifications) Act exempts from sales tax a wide range of drugs, medicines, food, clothing, and building materials. These exemptions include all goods designed and manufactured expressly for use by persons suffering sickness, disease and disablement (Item 123), medical and surgical appliances (Item 42B) i.e. self help articles, modification of a motor vehicle (item 42c) and purchase of a motor vehicle and parts (Items 135 & 135A).

Item 135 covers ex-service personnel with accepted disabilities to sales tax exemption on motor vehicles and parts. The Department of Veterans Affairs handles applications and may also grant veterans a transport allowance when the severity of their disability or medical rehabilitation, treatment and assessment or recreation or training requires travel from home.

Item 135A covers people with accepted disabilities who are permanently unable to use public transport and in gainful employment to sales tax exemption on motor vehicles and parts necessary for transport to and from work. Applications and exemption forms are handled by the Taxation Office.

Item 42C covers all people with a physical impairment to a tax exemption on goods used to modify a car for their use.

Not surprisingly the above tax provisions have been strongly criticised.

Two basic criticisms are that:

- *the legislation favours those who are financially able to buy a car and those who are fortunate enough to have a job.*
- *the eligibility criteria are discriminatory between people who have different impairments but suffer a similar degree of disability.*



COMMONWEALTH CUSTOMS ACT

The imposition of customs duty and tariffs causes anomalies and adds substantially to the cost of equipment for many disabled people. For example:

- *those people who prefer or require an Imported electric wheelchair must pay up to an extra 34%. Similarly imported wheelchair tyres are ten times more expensive than bicycle tyres.*

It is clear that related issues (e.g. the protection of local industry, the responsibility for research and development and replacement and repairs of aids) make a simple solution impossible. Nevertheless long term plans to alleviate present discrepancies in the costs of various aids **must be sought**.

APPENDIX 2**ISSUES RAISED IN SUBMISSIONS: A TABULATION****Social Security Legislation**

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APPENDIX 3SUBMISSIONSWritten Submissions: Organisations

Adult Deaf Society of Victoria
 Albury - Wodonga Foundation for the Handicapped
 Australian Association for the Mentally Retarded A.C.T.
 Australian Deafness Council A.C.T.
 Australian Legal Workers Group N.S.W.
 Autistic Children's Association of N.S.W.
 Australian Quadriplegics Association N.S.W.

 Bexley Therapy Centre, Parents and Friends N.S.W.
 Blind Workers Union of Queensland

 Cerebration Services, Prince Henry Hospital N.S.W.
 Collective of Self-Help Groups Vic.
 Combined Pensioners Association N.S.W.
 Crossroads N.S.W.
 Crossroads W.A.
 Cystic Fibrosis Association of N.S.W.

 Disabled Advocate and Self-Help W.A.
 Disabled Motorists Vic.
 Disabled Motorists Vic.
 Disabled Persons International
 Downes Syndrome Association of N.S.W.

 Endeavour Foundation Qld

 Gay Disabled Club of Australia

 Hability Industries Pty. Ltd. N.S.W. '
 Help Handicapped Enter Life Project Qld

 Independent Living Centre N.S.W.

 Leichhardt Women's Community Health Centre N.S.W.

 Manic Depressive Self-Help Group N.S.W.
 Muscular Dystrophy Association of N.S.W.

 Narrabri Sheltered Workshop, Namoi Branch
 N.S.W. Association of Sheltered Workshops

 Paraplegic and Quadriplegic Association of N.S.W.

 Retarded Citizens Welfare Association of Tasmania
 Retinis Pigmentosa Society of N.S.W.
 Royal Blind Society N.S.W.

 Scleroderma Association of N.S.W.
 Southern Region Association of the Disabled
 Sunnyfield Association N.S.W.

Written Submissions: Individuals

Beames, Mrs H.
Bell, Mrs R.

Chamberlain, R.J.
Coates, C.
Collingwood, I.C.

Evans, Mrs U.

Ferguson, Mrs J.
Ferguson, Mr J.

Glasgow, W.F.G.
Gough, Mr R.

Hastings, Ms E.

Keens, Mrs J.
Kimble, Miss S.

Llewellyn, Mr R.
Lunnon, Mr G.

Marks, E.
Marschke, M.E.A.
Mill, Ms M.
Mitchell, Mrs J.
 Mullins, Z.
 Myers, J.J.

Phillips, Mrs P.
 Pitts, A.R.
 Plant, A.R.

Renalson, V.A.
Ross, I.A.
Rosswell, Mrs M.

Schoenauer, J.R.
Shepherd, P.E.
Smith, Mrs J.
Smith, Mrs P.
Sturt, C.
Summers, Mrs A.M.
Sutherland, Mrs E.

 Warburton, R.
 Weir, Mr C.P.
 Winter, Mr J.

Verbal Submissions

Anonymous, A
Anonymous, B
Anonymous, C

Brice, Mr D.

Cardy, Mr.
Case, Mrs I.
Christian, Mr J.
Crossley, Ms R.

Funnel, Ms S.

Gibson, Mr

Lee, Ms A.

Martock, Mrs D.
Morgan, Mr N.

Shires, Ms A.
Smith, Mr R.

Walker, Mrs E.
Watkins, Mrs N.

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