

STOP PRESS

REFORMS TO AUSTRALIA'S SYSTEM OF UNEMPLOYMENT BENEFITS

By
Christopher D. Gilbert
Henderson Trout Professor of Commercial Law,
Law School, Queensland University of Technology.

In his Budget speech of August 1990, the Federal Treasurer (Mr Paul Keating) announced forthcoming changes to Australia's system of income support for the unemployed. It is planned to implement these changes from July 1991. The following is a summary, not necessarily complete or fully detailed, of what the Commonwealth Government is proposing.

The major theme underlying the proposed reforms is to link more firmly income support schemes for the unemployed with incentives and mechanisms for getting the unemployed back into the work force. To that end, the reformed system of financial assistance to the jobless will emphasise active, effective job search by recipients, allied with increased Federal programs of job training. While there is a substantial, and to some extent compulsory, element of job searching and training integrated into the present system, it is the Federal Government's intention to increase these elements, especially by way of "beefing up" aspects of compulsion.

Under the new proposals, the "unemployment benefit" will be abolished — at least in name if not in substance. There will be a new, two tier payment system: the Job Search Allowance (JSA) and the Newstart Allowance (NSA). The JSA will be payable for twelve months only — at least in the case of those aged 18 years or more. For those unemployed aged 16 or 17, the JSA will remain the applicable benefit until they reach 18, when they may become eligible for the NSA. Under the JSA, remedial assistance may be made available to especially disadvantaged jobless persons after four weeks. After three months of receiving the JSA, an "activity test" will apply to recipients, requiring them not only to seek work, but to accept and participate in job training programs. It appears that JSA recipients will not become eligible for "mainstream" labour market programs until six months have elapsed, and the Commonwealth Employment Service (CES) has identified them as eligible for such programs. At various stages during their receipt of the JSA (usually after 3 and 6 months), recipients will be obliged to participate in in-depth reviews of their progress in job searching and/or retraining, conducted by the CES and/or the Commonwealth's Department of Social Security (DSS). Failure to participate in these reviews will usually result in loss of the JSA. For those aged 18 years or more who have been without work for at least 12 months, the NSA becomes the applicable benefit. However, it is the Commonwealth Government's intention that there will be no automatic right of transition from the JSA to the NSA. Applicants seeking to move from the former to the latter will have to make fresh application. NSA recipients will be subject to intensive reviews and interviews by both the CES and DSS. Sometimes the two agencies will conduct these reviews and interviews jointly. This review process will usually occur at least every twelve months.

An interesting aspect of the proposed relationship between NSA recipients and the relevant Commonwealth agencies, is that it is proposed that the NSA recipients will enter into individualised "contracts" with the Federal agencies. These "contracts" will embody a recipient's personalised program of job seeking and/or job retraining, as agreed between the recipient and the Federal agencies. It is apparently envisaged that these "contracts" will be

principally between the NSA recipient and the CES. It is also envisaged, apparently, that no one will be granted the NSA unless they have entered into such a "contract". From a legal point of view, these "contracts" raise several questions. Is it intended that they will carry the usual incidents of full legal enforceability, as with ordinary contracts? For example, if a NSA recipient did not adhere to his/her personalised program of work search and/or re-training as laid down in the "contract", presumably the Commonwealth could exercise its right to end or at least suspend further NSA payments. Could the Commonwealth go further and sue the defaulting recipient for damages for breach of contract? If so, what would be the measure of damages? Damages might possibly consist of those NSA payments received by the defaulter during the period of his/her breach of the "contract". On the other hand, if the Commonwealth cut off NSA payments, wrongly alleging that the recipient was breaching his/her obligations under the "contract", could the recipient sue the Commonwealth for damages for breach of contract? From a (perhaps) more practical point of view, would these "contracts" (or decisions made pursuant to them) be reviewable for Federal tribunals such as the Social Security Appeals Tribunal (SSAT), the Administrative Appeals Tribunal (AAT), or even, just possibly, by the Federal Court of Australia under the *Administrative Decisions (Judicial Review) Act 1977* (Cth)?

One thing about these proposed "contracts" is quite clear. They are intended to underscore and emphasise very strongly the fact that NSA recipients are not just passive receivers of social security benefits: they (the NSA recipients) will be expected — and compelled — to actively seek reintegration into the work force at the earliest possible opportunity. If a person receives the NSA for 2 years, an extensive and intensive review of that person's status will occur. It is apparently planned that, after 2 years on the NSA, a recipient's case will be jointly reviewed by the CES and the DSS. The object of this procedure will be to determine the recipient's situation, where he/she should remain on the NSA, or, if unable to work, whether he/she should transfer to some other program of income support. Persons who are receiving the NSA on a long term basis, and who are aged between 18-54, will receive expanded access to Commonwealth funded work training programs such as "Jobstart", "Jobtrain", "Skillshare" and "Job Clubs" — provided that recipients have been assessed by the DSS and the CES as being suitable for these programs.

Many of the "nuts and bolts" aspects of the proposed JSA/NSA system will remain relatively unchanged from the existing system of unemployment benefits. Thus, there is no proposal to change the current rates of payment. The differences between the "married" and "single" rates will remain. The special rates for those with dependent children will continue. Waiting periods for benefits will remain in place. It will continue to be necessary to register for work with the CES. Recipients will also still need to present a tax file number, in order to receive payments. Employer separation certificates will be retained, as will the current procedure of fortnightly lodgment of claims with the DSS. Also, as explained above, the requirements for active work search will not only be retained under the new arrangements, but will be significantly expanded. The Commonwealth intends that all those covered by the existing scheme of unemployment benefits at the time of implementing the new arrangements, will be transferred to the new system. Transferees will then come under the obligations of the JSA/NSA scheme, as well as taking part in its "assistance" aspects. It seems quite clear that current benefit receivers will have no choice about whether or not they transfer to the new structure. It will be compulsory.

The following remarks can be made, by way of final comments. First, one cannot say that unemployment benefits, as such, have been abolished. They remain in being, but under new names. Second, the requirements for benefit receivers to actively engage in job searching and, where appropriate, work training, have been noticeably toughened up. Third, the

introduction of "contracts" between recipients and the federal government, outlining the former's responsibilities under the new system, is a novel and interesting way of reinforcing obligations of those receiving benefits. Fourth, the overall design of the new scheme shows that the Federal government intends that recipients will no longer be merely passive receivers of social security (if that was ever a correct description of their situation). They must now take an enhanced role in planning their return to the work force as soon as possible.

(This update has been based on material provided by the Federal Department of Social Security. It is current as at August/September 1990. The writer would like to thank the Department of Social Security for their prompt and willing assistance in providing relevant material.)