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Pulling Up Their Breaches: an Analysis of Centrelink Breach Numbers and Formal Appeal Rates?¹

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Abstract

This paper shines a spotlight on Centrelink breaches and appeals in two general steps. First the number of Centrelink breaches are juxtaposed to appeal numbers from 1996 to 2001. This reveals that Centrelink breach rates have rapidly increased since 1997-1998 while formal appeal rates have not. Secondly, possible explanations for such contrasting breach and appeal numbers are explored. Four general analytical approaches are considered – the ‘hardliners’, the advocacy view, the political economy approach and the ‘new-contractualism’ approach. It shows that none of these approaches are entirely sufficient to explain current breach and appeal rates. In conclusion, it is suggested that more research and thought is needed.

Introduction

This paper examines the increase in Centrelink breach rates in Australia and the corresponding stagnation of statutory appeal rates since 1996. Further, it explores possible explanations for the differences between these rates. This will be achieved in two general steps. First, breach rates and Social Security Appeals Tribunal (SSAT) and Administrative Appeals Tribunal (AAT) appeal rates from 1996 to 2001 will be juxtaposed and their changes over time discussed. Second, these findings will be explored through four general approaches drawn from Australian social policy literature – the ‘hardliners’, the advocacy approach, the political economy approach and the new-contractualism approach.

¹ The paper is based on research contributing to a Research MA (Sociology/Anthropology) at Edith Cowan University, Perth, Western Australia. I would like to thank to supervisors Prof. Alan Black and Dr. John Duff, and also Kieran Tranter, who commented on drafts and provided much appreciated encouragement. Any errors, omissions or other flaws are my own fault entirely.
contractualism approach. This exploration will reveal that each of these approaches is limited and further research and theoretical reflection into the complexity of contemporary social policy is needed. However, this paper must begin by defining what is meant by Centrelink breaches and appeals, and introducing the appeals structure currently available to welfare recipients in Australia.

Defining Breaches and Appeals

What is a Centrelink Breach?

Centrelink is the federal government agency responsible for the day-to-day administration and payment of most Federal government income support payments. A ‘breach’ is a financial penalty in which part or all payment is withheld if a Centrelink client is deemed to have not satisfactorily complied with their ‘activity test’ or administrative duties (WRAS 2000). The definition and administration of social security breaches have changed over time. After 1997, the regime changed from a complete postponement of payment, to a reduction of income for a time, depending on the type and frequency of breach (Moses 2000).

The current financial penalties for breaches are shown in table 1. There are two general types of breaches: activity test and administrative breaches. Activity test breaches are applicable to payments that have an activity test requirement. These include Youth Allowance (YA), New Start Allowance (NSA). Activity breaches include failure to attend an interview with a Job Network employment agency and failure to attend a Centrelink office interview, without sufficient reason (Moses 2000). For a first activity breach, a person’s payment is reduced by 18 percent for 26 weeks (a penalty of $807.07 in total). For the second activity breach, 24 percent of a person’s payment is withheld for 26 weeks (a total penalty of $1,076.08) and for a third activity breach, payment is reduced 100 percent for 8 weeks (total of $1,379.60) (Moses 2000, p. 4).

Administrative breaches apply to all Centrelink payments, including parenting payment and disability support pension. Administrative breaches occur when a client does not attend an information seminar or fails to reply to a letter without adequate reason (ACOSS 2000, p. 7; Moses 2000). For a first administrative breach a person’s income is reduced by 16 percent for 13 weeks (a penalty of $358.69 in total) or 100 percent for two weeks (a total penalty of
$344.90) (Moses 2000, p. 4). Penalties do not increase for subsequent administrative breaches in the same manner as activity test breaches.

### Table 1  The financial penalties of different breaches

<table>
<thead>
<tr>
<th>Type of breach</th>
<th>Period in fortnights</th>
<th>Reduction</th>
<th>Amount payable per fortnight after breach is applied</th>
<th>Loss per fortnight</th>
<th>Total amount of allowance lost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Breach</td>
<td>6.5</td>
<td>16%</td>
<td>$289.72</td>
<td>$55.18</td>
<td>$358.69</td>
</tr>
<tr>
<td>1st Activity Test Breach</td>
<td>13</td>
<td>18%</td>
<td>$282.82</td>
<td>$62.08</td>
<td>$807.07</td>
</tr>
<tr>
<td>2nd Activity Test Breach</td>
<td>13</td>
<td>24%</td>
<td>$262.12</td>
<td>$82.78</td>
<td>$1,076.08</td>
</tr>
<tr>
<td>3rd Activity Test Breach</td>
<td>4</td>
<td>100%</td>
<td>$0</td>
<td>$344.90</td>
<td>$1,379.60</td>
</tr>
</tbody>
</table>

Source: (Moses 2000, p. 4)

However, it is important to remember that a Centrelink breach means non-compliance not fraud. Welfare fraud is a criminal offence in which dishonesty is intentional. Breaches rarely involve criminal intent. Indeed, according to the Australian Council of Social Services (ACOSS), in 1998-99, out of the 6 million Australians receiving social security, less than 0.1 percent were found to have fraudulently obtained benefits (ACOSS 2000, p. 4). Welfare fraud rates have not increased at the same rate as breach rates (ACOSS 2000, p. 4). Some implications of this will be discussed in the second major section of this paper.

### What is a Centrelink Appeal?

An appeal means a formal questioning of a Centrelink decision by a client. The appeal structure is an hierarchical three tiered system of administrative review of increasing generality. The first level of appeal is an internal review of the decision by a Centrelink Officer called an Authorised Review Officer (ARO). If the client is still unhappy with this decision they can lodge an external appeal with the Social Security Appeals Tribunal (SSAT). Finally, if the client is unsatisfied with this decision - and has the stamina - an appeal
may be lodged with the Administrative Appeals Tribunal (AAT), which deals with all Commonwealth administrative appeals. An appellant cannot skip a level of appeal, they must complete an ARO review before appealing to the SSAT. Similarly, they must have an SSAT decision before appealing to the AAT. (SSAT 1997)

**Breach and Appeal Rates**

While breach rates have increased markedly from 113,100 in 1996-1997 to 349,100 in 2000-2001, appeal rates have not increased. This will be shown using a comparison between breach numbers, and relevant SSAT and AAT applications. Although it may be argued that a statistical analysis of significance (perhaps chi-square) would help validate these claims, this was not done for three main reasons. First, it is not the purpose of this paper to find a statistical causal relationship between breach numbers and appeal rates by eliminating all other possible variables. As will become clearer later, the fluidity of sociological and political issues render this impossible. Second, changes in Australian social welfare policy, allowance categories and even departmental responsibilities since 1997 mean that an involved quantitative analysis may obscure important differences and become over complicated. Using simple histograms does allow for these differences while showing general trends in the data. Finally, the huge increase of breach numbers from 1997-1998 to 1999-2000 is unprecedented in Australia and is historically, socially, economically and politically significant - statistical significance, though very important in many studies, is not essential here.
Figure 1  Centrelink breach (a) and appeal rates from 1996-1997 to 2000-2001

Table 2  Centrelink breach (a) and appeal rates from 1996-1997 to 2000-2001

<table>
<thead>
<tr>
<th>Year of breach or appeal</th>
<th>SSAT applications received (d) (e)</th>
<th>AAT applications received (i) (j)</th>
<th>Activity Breaches</th>
<th>Administrative Breaches</th>
<th>TOTAL breaches</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996-1997 (f)</td>
<td>4211</td>
<td>1765</td>
<td>47,400</td>
<td>65,700</td>
<td>113,100</td>
</tr>
<tr>
<td>1997-1998 (b) (f)</td>
<td>1896</td>
<td>1934</td>
<td>60,981</td>
<td>59,737</td>
<td>120,718</td>
</tr>
<tr>
<td>1998-1999 (c) (d)</td>
<td>1930</td>
<td>1764</td>
<td>88,751</td>
<td>88,751</td>
<td>164,900</td>
</tr>
<tr>
<td>1999-2000 (h)</td>
<td>2252</td>
<td>1649</td>
<td>177,759</td>
<td>177,759</td>
<td>302,494</td>
</tr>
<tr>
<td>2000-2001 (h)</td>
<td>3236</td>
<td>1398</td>
<td>est 250,100 (k)</td>
<td>est 99,000 (k)</td>
<td>est 349,100 (k)</td>
</tr>
</tbody>
</table>

Notes for Figure 1 and Table 2:

a) data represents the number of breaches, *not* the number of people breached (Moses 2000, p. 5)
b) the current incremental breach regime was introduced in 1997-1998 (Moses 2000, p. 3)
c) ‘an error in the Centrelink computer system resulted in the under-representation of breach numbers for 1998-99 by an estimated 48,000 breaches, or 4,000 breaches each month. This error has been
rectified for all breach data recorded from July 1999 onwards, substantially increasing the apparent number of reported breaches’ (Moses 2000, p. 5)

d) includes Youth Allowance, New Start Allowance, Unemployment Benefit, and Job Search Allowance


f) SSAT data includes Job Search Allowance, New Start Allowance, Unemployment Benefit and Youth training Allowance

g) SSAT data includes Youth Allowance, New Start Allowance and Job Search Allowance

h) SSAT data includes New Start Allowance and Youth Allowance

i) includes all social security matters


k) this data is ACOSS’s estimate of data obtained under freedom of information legislation. The actual data obtained was for an eight month period from July 2000 to February 2001. Actual activity breaches for this period were 166,485, administrative breaches were 65,915 and actual total breaches were 232,400. Source: (ACOSS 2001, p. 5).

Figure 1 represents breach and appeal rates from 1996-1997 to 2000-2001 pictorially, while the actual figures are shown in Table 2. Both Figure 1 and Table 2 show breach rates as activity breaches, administrative breaches and total number of breaches. It is important to note that the number of breaches is represented rather than the number of people actually breached. Also, the current incremental breach regime was not introduced until 1997-1998, and due to departmental error, the 1998-99 figure was underestimated by around 48,000. Nevertheless, the pattern is striking—the total number of breaches almost tripled over this period.

However, the number of appeals shows a different pattern. The formal appeal rate appears minuscule and flat when juxtaposed to the increased breach numbers since 1997-1998. However, the SSAT and AAT data in Table 2
reveals a subtle pattern. SSAT appeal numbers for 1996-97 were approximately double those recorded for 1997-1998. The SSAT Annual Report observed that this was an unprecedented high (1996-1997, p.18), but neglected to explain it. The SSAT Annual report described the 1997-1998 figures as dropping back to normal despite ‘expecting a further increase in appeal lodgements in 1997-1998’ (1996-1997, p. 18). SSAT appeal numbers then rose slightly from 1997-1998 until 2001. However the rise appears almost inconsequential when compared to the explosion of breach numbers over the same period.3

The pattern of AAT application numbers is even more subtle. A gradual rise of appeals is shown from 1996-1997 to 1997-1998, after which AAT appeal rates fell sightly by approximately 500. However the more subtle pattern and slight peak in 1997-1998 rather than the SSAT’s peak in 1996-1997, are not surprising when two important points are considered. First, the changes were less obvious because all social security payments are represented, not just those subject to Activity breaches like the SSAT data. Consequently, the pattern is effectively diluted. Secondly, AAT appeal rates peaked a year later than SSAT appeal numbers due to the time required for matters to reach the higher level AAT, usually 3-6 months (AAT 2000-01; AAT 1994-95; AAT 1995-96; AAT 1996-97; AAT 1997-98; AAT 1998-99; AAT 1999-2000). It is highly likely that many people who appealed to the SSAT in 1996-1997 did not reach the AAT level until 1997-1998 (AAT 1996-1997; AAT 1997-1998). Due to this time lag effect the peak in AAT appeal numbers in 1997-1998 corresponds with the peak in SSAT appeal numbers in 1996-1997. However, in contrast to the SSAT appeal numbers increasing slightly since 1997-1998, in contrast to the AAT rates which decreased slightly from 1998-1999.

includes all social security matters, not just breachable payments. Therefore, the AAT data also includes such payments as family support payment, single parent and old age pensions. It is also important to note that the payments have changed name over this period.

It is also important to note that payment categories have changed over time (see Figure 1 and Table 2). For example Youth Allowance was not available until 1998-1999. However, the data from 1996-97 to 2000-2001 has some comparative utility because the general effect has been a reshuffle of existing payments under new names rather than the creation or destruction of actual payment categories.

3 It is important for later discussion to note here that 1997 marks the launch of Centrelink (replacing the Department of Social Security (DSS)), the Job Network Agencies (replacing the Commonwealth Employment Service (CES)), and the new incremental breach regime (Moses, 2000).
Spotlight on Theoretical Interpretations of Breach and Appeal Rates

So, what does all this actually mean? Certainly, the year 1997-1998 appears important, but why has it manifest in an explosion of breach numbers but not Centrelink appeals? The remainder of this paper will explore some possible responses to this question. Four major theoretical frameworks underpin the Australian social policy literature; the 'hardliners', the advocates, the political economy approach and the 'new-contractualism' approach. This paper will explore these four approach's responses to the rapid rise in breach numbers but not formal appeal rates. I will outline each approach, discuss its interpretation of the current breach and appeal rate and evaluate each approach according to some of its strengths and weaknesses. This process will reveal some limitations of the current scholarship on breach and appeal rates, and the need for further research and scholarship.

The ‘Hardliners’ (Moses 2000, p. 16)

The ‘hardliners’ approach dominates current Australian welfare policy. It draws from Hayek-like (Hayek 1959; Mendes 1998) neo-liberal ideas of trust in market forces and the morality of self-reliance (Bessant 2000; Carney & Hanks 1986; Carney & Ramia 1999; Considine 1999; Dean 1998; Dean & Hindess 1998; Kerr & Savelsberg 1999; Owens 2001; Sieman 2000; Yeatman 1990; Yeatman 1997; Yeatman 1999). It argues, generally, that the public, embodied by the taxpayer, must be protected from people who abuse the welfare system by claiming benefits that they are not entitled to and/or who do not contribute to society themselves (Newman 1999).

This is reflected in Prime Minister John Howard’s 1999 Federation Address titled ‘The Australian Way’. He maintained that

‘the dole system we inherited sent the worst possible message to young Australians. It told them that dropping out of school, out of their communities, escaping personal responsibility, was acceptable and that the taxpayer would foot the bill’ (Howard 1999).

Later in the address he stresses the importance of ‘improving compliance’ (Howard 1999). This improving compliance was the express justification given by Philip Ruddock in the second reading speech for the Social Security Legislation Amendment (Activity Test Penalty Periods) Bill 1997. Indeed,
Ruddock cited the OECD Job Study’s conclusion that ‘a priori reasoning and historical evidence both suggest that if benefit administration can be kept tight, the potential disincentive [for self reliance] effects of benefit entitlement will be largely contained’ (Hansard 1997, pp. 3191-3192). It follows from this perspective that some regime, like the breach regime is needed to ensure compliance. Indeed, the breach regime ensures taxpayers generosity is not abused by ‘welfare cheats’ through financially punishing those who breach (McClure 2000, p. 40).

Thus, according to the ‘hardliners’ view, the increase in breaches since 1997-1998 is good and necessary. It is a process for weeding out the ‘deadwood’ and minimising abuses to ensure the most deserving are effectively and efficiently assisted.

Furthermore, the increase in breaches but not appeals can be used as evidence that formal appeals of welfare matters at the SSAT and AAT must be streamlined to save resources. Indeed, in 2000-2001 the government unsuccessfully proposed the Administrative Review Tribunal Bill 2000 and Administrative Review Tribunal (Consequential and Transitional Provisions) Bill 2000. Due to the inefficiencies of the SSAT and AAT, it argues, they should be merged with the other external review bodies to form a ‘one stop shop’ called the Administrative Review Tribunal (ART). It was argued that this was required for ‘fair, just, economical, informal and quick’ external review (Explanatory Memorandum Administrative Review Tribunal Bill 2000, 2000, p. 168). The ART was to be more economical and quick than the SSAT and AAT because it would provide a single tiered review, where appellants need special permission to be represented by either a lawyer or social worker, and the matter would be heard by a single person rather than the current SSAT panel (Explanatory Memorandum Administrative Review Tribunal Bill 2000, 2000).

Furthermore, the relatively low Centrelink appeal rate is seen as a positive indicator that the breach regime is working (Moses 2000, p. 15). DFaCS has reasoned that ‘on a very conservative estimate, 27 percent of people who are breached do not reclaim within 6 weeks’ (Moses 2000, p. 16). The conclusion is reached that ‘a significant proportion must have an alternative source of income’ (Moses 2000, p. 16) and were not legitimate recipients of payment.

The hardliners perception of the relationship between breach and appeal rates has some appeal. Indeed, it does provide a strong link between current breach and appeal rates and a policy framework for future developments.
Pulling Up Their Breaches: an Analysis of Centrelink Breach Numbers and Formal Appeal Rates? (McClure 2000). However, this strength is overshadowed by two serious limitations.

First, the ‘hardliners’ assume all breaches are accurately applied. However, as the Welfare Rights Advocacy Service (WRAS 2000, p. 5) and ACOSS (2000b) have observed, in 1998-99, 43.8 percent of activity test breach cases that were appealed at the SSAT were over-ruled. Indeed, Centrelink is not administratively infallible. Second, this approach underestimates and chooses to ignore the hardship breaches cause. Indeed, it assumes many people who are 100 percent breached and do not reapply have some other source of income. This is contradicted by WRAS (Wadsworth 1997; WRAS 2000; WRAS 1999) and The Salvation Army of Australia’s research. Indeed, a census of Salvation Army clients found that every second person requesting emergency relief who had been breached by Centrelink said that this breach had caused their need to ask for assistance (The Salvation Army Australia, August, 2001, p. 10).

In summary, while the hardline view does provide a strong link between current breach and appeal rates and a policy framework for future developments, it has serious limits. It ignores the possibility of administrative error and down-plays the personal and social cost of depriving a client and their family of an income.

The Advocacy View

The advocacy approach to social welfare policy and the breach/appeal regime draws from the optimism of the classic post war welfare approach of Marshall (1949/2000) and Titmuss (1968/1979), who consider access to welfare a basic right of citizenship. It is reflected in the Australian Council of Social Services (ACOSS) (1997a; 1997b; 2000a; 2000b), the Welfare Rights Advocacy Service (WRAS) (2000; 1999), and The Salvation Army of Australia (The Salvation Army Australia, August, 2001) responses to the breach regime. The advocates argue that welfare recipients are some of the most vulnerable people in our society. Their task is to protect people’s basic right to welfare by advocating in their defence.

The advocates argue that the current increase in breach numbers reflects an over harsh breaching regime. They point out that since New Start Allowance and Youth Allowance payments are already under the Henderson poverty line, breaching financially penalises those who are already living in poverty (ACOSS 2000b; WRAS 2000; WRAS 1999). Furthermore, they suggest the
current breach regime targets the most vulnerable of those living in poverty, such as youth (Lackner 2001). For example, Susan Lackner (2001, p. 3) observed that ‘young people aged under 18 to 24 are the group most affected by Centrelink breaches, with 53 percent of all breaches occurring in this age range’.

Parallel to concerns about breaches, the advocacy approach regards the current low appeal rate as a serious problem. This is because under-utilisation of the SSAT and AAT reflects that fewer people may be protected from government error or abuse of power (WRAS 2000).

Further, the advocates argue that the current increasing breach rate and consistently low appeal rate reflects two factors. First, they argue it reflects the vulnerability of the people being breached. Rather than appealing or relying on other income after being breached, these writers observe that the most vulnerable recipients are more likely to become homeless or turn to emergency relief when state funds become unavailable (ACOSS 2001; The Salvation Army Australia, August, 2001; WRAS, 2000). Second, according to this approach, the relationship between steady appeal rates and the increased number of breaches indicates an unnecessarily harsh regime. The increase in breaches since 1997-1998 reflects new, confusing requirements, that recipients must meet to receive payment. Since 1997 there have been a steady increase in activities for the unemployed especially the job search diary, work for the dole, increased fortnightly employer contacts (from 2 to 8), negotiating between job network providers and Centrelink and mutual obligation (ACOSS 2000c). All these require complex negotiation between agencies, mobility and a good standard of oral and written communication skills (AAT 1994-95; ACOSS 1997a; ACOSS 2001).

The advocacy approach highlights some important relationships between breach and appeal rates. It points out that the breach rate increased after new, confusing activity requirements were introduced. Also, the advocates point out that the low appeal rates reflect the government’s targeting of the most vulnerable people, because they are the least likely to have the skills and resources necessary to navigate the appeals process (WRAS 2000).

Despite these important observations however, this approach does have important limitations. It does not reflect on why these current harsh breaching penalties were implemented in the first place. Indeed, their pragmatic approach to social policy leads them to ignore deeper political dimensions. Their policy recommendations tend to react to current government policy and advocate for
incremental changes rather than more substantial social change. For example, rather than questioning the existence of a breach regime, they accept the new incremental regime and only criticise the hefty financial penalties (ACOSS 2000b). Further, their emphasis on the vulnerability of Centrelink clients suggests paternalism, that clients are too unskilled to advocate for themselves.

In summary, the advocacy view provides many valuable insights into how the current breach and appeal rates reflect the vulnerability of Centrelink clients to administrative error or misuse of power in an unnecessarily harsh breaching regime. However, it has one serious limitation. It ignores deeper political questions such as why such a harsh breaching regime exists, and denies Centrelink clients intelligence and competence. While the hard line and advocacy approaches represent contemporary pragmatic responses to welfare in Australia and have significant strengths (but serious weaknesses) in explaining breach and appeal rates, there are other approaches that may explain the relationship. Two are significant – the political economy approach and the new contractualism approach.

The Political Economy Approach

The political economy approach has a long history in social policy. Writers such as Offe (1984; 1996) in Europe, Fox Piven (1971) in the US and White (1990) and De Maria (1992) in Australia draw from a Marxist intellectual heritage to offer a critique of the post Second World War western welfare state. They generally argue that the western welfare state is not benevolent. Rather, as White (White 1990, pp. 2-3) observed, income support is given in return for certain deprivations of liberty like activity test requirements. Or, as Fox Piven argues, the ‘chief function’ of social welfare is ‘to regulate labour’ for capitalists by keeping the peace during economic turmoil and keeping wages low during other periods (Fox Piven & Cloward 1971, p. 3).

Therefore, according to the political economy approach, the current increase in breach numbers is linked to the capitalist function of breaches. Breaches keep wages low through ensuring income support is provided in return for certain deprivations of liberty.

Further, merits review bodies like the AAT and SSAT, according to these writers, are merely another tool of oppression. Indeed, De Maria (1992, p.118), writing specifically about the AAT in Australia, put ‘it bluntly’ that, since:
‘Australia’s history is a history of oppression perpetuated through iron-structured partnerships between government and the judiciary’, then ‘the Australian community … could not rely on it (the AAT) to cut across, contradict, or question government policies which hurt the ordinary Australian’.

In other words, the AAT gives the illusion of safeguarding peoples right to welfare and political participation. However, in reality, it is just other mechanism for the powerful to oppress.

Therefore, the rapid rise in breach numbers and the stability of appeal rates is unsurprising according to the political economy approach. They would argue that the labouring classes are simply being oppressed through tightened behavioural controls such as more detailed activity and administration requirements, rather than formal appeals. It is only some administrative details of oppression that have changed. The location of economic and political power remains with those that control the means and mode of production, and the aim of class oppression is unchanged - to perpetuate capitalist interests and, ultimately, capitalism.

The strength of this approach is that it escapes the breach good/appeals bad approach of the hardliners and the breach bad/appeals good approach of the advocates, and emphasises that both are a manifestation of the same economic oppression. However, the political economy approach is seriously limited. Their explanation of the rapid increase in breaches but plateau of formal appeal rates lacks detail. Indeed, while they offer an explanation for activity testing of social security payment, they do not explain why this has intensified since 1997-1998.

In summary, the political economy approach does look beyond the pragmatics of contemporary policy to broader political issues like the potential for the formal appeals structure to be oppressive to Centrelink clients. However, it is limited because it lacks the detail required to explain current breach and appeal patterns.

**The ‘New-Contractualism’ Critique**

The new contractualism critique links administrative changes to the emergence of neo-liberal governance in English speaking countries (Bessant 2000; Carney 1998; Carney & Ramia 1999; Considine 1999; Kerr & Savelsberg 1999; Owens 2001; Yeatman 1997; Yeatman 1999). These writers argue that the dominant discourse of Australian welfare policy has shifted from a
citizen’s right to an economic safety net, to attaching payment to an individual behavioural contract. To these writers this signifies a ‘new-contractualism’ in social welfare. It is not a classical ‘contract’ because the parties are not equal nor particularly free. Indeed, clients are effectively coerced into maintaining certain behaviour, under threat of financial retribution, using the language and ceremony of a classical liberal legal contract.

According to this view, increased breaching by Centrelink since 1997-1998 correlates with an increased fervour for monitoring individual behaviour through a ‘contract’. Indeed, although monitored social security payments are not new in Australia, 1997-1998 marks both a new level of monitoring and the introduction of new welfare architecture to facilitate it (Carney 1998, pp. 26-35). In 1997-1998 three connected major reforms occurred - the public Commonwealth Employment Service was replaced with privately contracted Job Network Agencies, the Department of Social Security was ‘contracted’ into the new Centrelink, and the current incremental breach regime was implemented. The Job Network was particularly important in this final change from entitlement to contract. This is because clients must now negotiate an ‘Activity Agreement’ with a Job Network provider ‘case manager’ to qualify for income support. Previously, such contracts were not individually negotiated. Furthermore, if the client does not comply with this contract, the ‘case manager’ is required to recommend Centrelink breach them. Not only are Job Network ‘case managers’ recommending many breaches, but Centrelink appears to be administering a significant proportion of them. Indeed, while twenty one percent of breaches imposed in 1998-1999 and twenty four percent in 1999-2000 were attributable to the Job Network, in both years less than 50 percent of all breaches recommended by the Job Network were administered by Centrelink (Moses 2000, p. 8).

Following the ‘new contractualism’ approach, the introduction of the Job Network is also important for understanding the current consistently low appeal rates. While the Job Network personalises clients’ treatment, it denies them administrative safeguards. Indeed, while recipients could previously appeal Commonwealth Employment Services and Department of Social Security decisions to the SSAT, AAT or the Commonwealth Ombudsman (Owens 2001), they can now only appeal Centrelink decisions. This is because while Centrelink is a government body subject to statutory review to the SSAT and AAT, the Job Network consists of private organisations that are outside

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4 Indeed, Carney observes that the work test in 1933 was a behavioural requirement for payment (Carney & Ramia, 1999, p. 125-126)
the appeal structure. This means that while a Centrelink decision to breach a client is appealable, the Job Network Agencies negotiation and monitoring of the Activity Agreement and reporting about a client is not. The space in which recipients can appeal decisions has constricted substantially (Owens 2001). Thus, the corresponding stagnating formal appeal rate indicates the decline in administrative safeguards for Centrelink clients as private agencies administer individual agreements and monitor clients’ behaviour.

Consequently, according to the new contractualism approach, the relationship between increasing breach rates and low appeal rates is connected to new administrative arrangements. In particular, the increase in breaches after 1997-1998 corresponds with the introduction of the Job Network, while the decreasing scope for administrative appeal of welfare matters has prevented a corresponding increase in formal appeals.

New contractualism’s interpretation of current breach and appeal rates is compelling. Indeed, it clearly links the increase in breach rates and stagnating appeals with changing fundamentals of social policy. In particular both the increasing breach rate since 1997-1998 and the continuing low appeal rate despite the rise in breaches is linked to new welfare architecture in Australia, especially the introduction of the Job Network.

However, the new contractualism approach has one serious limitation. Australian writers mentioned within this critique of current social welfare administration uncritically accept that the AAT and SSAT safeguard welfare recipients’ right to income support. While Carney (Carney & Ramia 1999) does qualify that the Australian welfare system has always been ‘oppressive’, he ignores the behavioural control that formal appeal processes administer to welfare recipients. Indeed, the SSAT and AAT can only overturn a Centrelink decision on the individual merits of the matter. Neither the SSAT nor the AAT can overturn a Centrelink decision because the legislative framework on which the decision is based is unfair or unnecessarily harsh. Ultimately, the SSAT and AAT also monitor a client’s ‘Activity Agreement’ with their ‘case manager’. Consequently, like the other three analytical approaches to Centrelink breaches and appeals in the Australian literature, the new-contractualism approach is problematic.

In summary, the new contractualism critique offers a compelling and detailed analysis of the relationship between the increase in breaches and consistently low appeal numbers. However, like the other three approaches, it is limited. The ‘hardliners’ problematically assume that all breaches are legitimate, and
underestimate the hardship a breach can inflict on a person. Similarly, the advocacy view ignores deeper political issues while the political economy approach fails to explain why capitalist oppression is manifested in its current manner. Finally, the new-contractualism critique assumes that the appeals structure in Australia is entirely benevolent rather than a creature of the current move from entitlement to contract in Australian welfare.

Consequently, the relation between current breach and appeal rates requires further research and theoretical investigation. The existing Australian literature fails to provide a coherent framework through which to examine the relationship. In particular, more research is needed about the legitimacy of breaches that are not being appealed, the deeper political context of breaches and appeals, why breaches and appeals are administered in the current manner, and the deeper political nature of the AAT and SSAT.

Conclusion

In conclusion, further research and theoretical reflection is required to understand the increase in Centrelink breaches since 1997-1998 and corresponding stagnation of formal appeal rates. This has been shown in two general steps.

In the first step, it was shown, through a comparison of breach numbers and appeals to the SSAT and AAT since 1996, that despite Centrelink breaches increasing almost three fold since 1997-1998, appeals to the AAT and SSAT have stagnated. In the second step, these findings were explored through four general approaches drawn from Australian social policy literature - the ‘hardliners’, the advocacy approach, the political economy approach and the ‘new contractualism’ approach. Although each approach has strengths, they also have limitations. Consequently, the relation between current breach and appeal rates requires further research and theoretical investigation. The existing Australian literature fails to provide a coherent framework through which to examine the relationship.

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