

Chapter 2 - Concluded matters

This chapter lists matters previously raised by the committee and considered at its meeting on 1 December 2014. The committee has concluded its examination of these matters on the basis of responses received by the proponents of the bill or relevant instrument makers.

Social Services and Other Legislation Amendment (2014 Budget Measures No 1) Bill 2014

Portfolio: Social Services

Introduced: House of Representatives, 18 June 2014

Purpose

2.1 The Social Services and Other Legislation Amendment (2014 Budget Measures No. 1) Bill 2014 (the bill) seeks to amend various Acts relating to social security, family assistance, veterans' entitlements, military rehabilitation and compensation and farm household support. The bill would:

- cease payment of the seniors supplement for holders of the Commonwealth Seniors Health Card and the Veterans' Affairs Gold Card from 20 June 2014;
- rename the clean energy supplement as the energy supplement, and permanently cease indexation of the payment from 1 July 2014;
- pause indexation for three years of the income-free areas and assets-value limits for all working age allowances (other than student payments), and the income test free area and assets value limit for parenting payment single from 1 July 2014;
- index the parenting payment single to the Consumer Price Index only, by removing benchmarking to Male Total Average Weekly Earnings from 20 September 2014;
- pause indexation for three years of several family tax benefit free areas from 1 July 2014;
- review disability support pension recipients under age 35 against revised impairment tables and apply the Program of Support requirements from 1 July 2014;
- limit the six-week overseas portability period for student payments from 1 October 2014;
- extend and simplify the ordinary waiting period for all working age payments from 1 October 2014; and

- pause indexation for two years of the family tax benefit Part A and family tax benefit Part B standard payment rates from 1 July 2014.

2.2 The bill would also add the Western Australian Industrial Relations Commission decision of 29 August 2013 as a pay equity decision under the *Social and Community Services Pay Equity Special Account Act 2012*, to allow payment of Commonwealth supplementation to service providers affected by that decision.

Background

2.3 The committee reported on the bill in its *Ninth Report of the 44th Parliament* and *Twelfth Report of the 44th Parliament*.

Committee view on compatibility

Right to equality and non-discrimination

Potential indirect discrimination against women

2.4 The committee sought the further advice of the minister as to whether the measures in the bill are compatible with the rights to equality and non-discrimination on the basis of gender and family responsibilities.

Minister's response

The Committee is seeking further advice as to whether the measures in the bill are compatible with the rights to equality and non-discrimination on the basis of gender and family responsibilities.

Consistent with my response to the Committee that I provided in July 2014, the proposed changes affect all recipients, regardless of their gender. The measures are aimed at ensuring that social security is targeted, sustainable and consistent over the long term, consistent with statements from the UN Committee on Economic, Cultural and Social Rights.

The measures will help ensure ongoing assistance is targeted to those who need it most, and the impacts are sufficiently small as to be proportionate to the objective of preserving access to the payments system over the long term.

These measures are compatible with the rights to equality and non-discrimination on the basis of gender and family responsibilities and apply irrespective of gender, reflecting a commitment to payments with no gender bias.¹

Committee response

2.5 **The committee thanks the Minister for Social Services for his response.**

2.6 The committee acknowledges that the measures apply equally to all Australians regardless of gender and, accordingly, that the measures in the bill appear neutral on their face.

¹ See Appendix 1, Letter from the Hon. Kevin Andrews MP, Minister for Social Services, to Senator Dean Smith (dated 21/10/2014) 1.

2.7 However, as previously noted, the International Covenant on Civil and Political Rights defines 'discrimination' as a distinction based on a personal attribute (for example, race, sex or religion),² which has either the purpose (called 'direct' discrimination) or the effect (called 'indirect' discrimination) of adversely affecting human rights.³ The UN Human Rights Committee has explained indirect discrimination as 'a rule or measure that is neutral on its face or without intent to discriminate', which exclusively or disproportionately affects people with a particular personal attribute.⁴

2.8 As discrimination may arise indirectly as well as directly, the committee reiterates its concern that the measures in the bill may have a greater impact on women than men because women are more likely to be recipients of social security, and particularly of payments provided to the primary caregiver of children.

2.9 In this respect, the committee notes that the minister's advice that the measures do not directly discriminate against women does not address the issue of indirect discrimination raised by the committee. In particular, the response does not provide any information as to the potentially disproportionate effect of the measures on women, and how any such disproportionate effect may be regarded as permissible in human rights terms (that is, may be regarded as reasonable, necessary and proportionate).

2.10 Based on the information provided, the committee therefore considers that the measure may be indirectly discriminatory on the basis of having a disproportionate impact on women. On this basis, the committee considers that the measure may be incompatible with the right to equality and non-discrimination.

² The prohibited grounds are race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Under 'other status' the following have been held to qualify as prohibited grounds: age, nationality, marital status, disability, place of residence within a country and sexual orientation.

³ UN Human Rights Committee, *General Comment 18*, Non-discrimination (1989).

⁴ *Althammer v Austria* HRC 998/01, [10.2].

