

To: [Committee, Human Rights \(SEN\)](#)
Subject: Parliamentary Joint Committee on Human Rights - COVID19 Legislative Scrutiny
Date: Saturday, 25 April 2020 11:12:35 AM

Dear Committee

I am regrettably writing to you to raise concerns about the legality of the government's recent economic supports, and how they are being administered potentially violates several articles of the Convention on the Rights of Persons with Disabilities by explicitly excluding those receiving disability related income support payments (Disability Support Pension & Carers Payment). Over the last few weeks there has been thousands of comments by concerned carers and people with disabilities that the loss of income, and or the increases to basic necessities due to COVID19 will force many on them into ill health or death. One of the comments that stuck out has been summarised below.

The Commonwealth of Australia announced through the Hon Prime Minister Scott Morrison that due to the unprecedented threat to Australia and Australians caused by COVID19 and its subsequent WHO Pandemic declaration, the Federal Government would provide economic emergency support to those who have been impacted by the COVID19 in Australia. The Commonwealth of Australia introduced a Coronavirus Supplement; a fortnightly \$550 payment for 6 months to support individuals stating "These changes ensure that job seekers can reliably access income support, safely look for work, fill critical vacancies as they emerge, develop their skills and job preparedness, contribute to their community and help the economy to bounce back stronger." This is an extract from the official transcript.

However, to be eligible for this emergency support program you must be receiving 1 of 11 eligible support payments. If you are not on one of these eligible support payments you may qualify for a one-off \$750 economic Support payment. The key difference between these payments that are provided through 'Services Australia' are that those who receive a Disability support pension, or Carers payment; both require medical certification of disability, even though all of these payments allow people to gain employment; are excluded from this on-going emergency support service on their qualifying status of disability. Whereas those who have been impacted without having a certified disability impacting them have been offered ongoing emergency support measures.

This brings up several potential violations of by the Australian Government under its obligations of the Convention on the Rights of Persons with Disabilities. Article 11 states: States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters. The WHO pandemic declaration is considered a Humanitarian emergency as this creates situations of risk that could result in death for large portions of the population.

By the Commonwealth excluding those with disability payments they are in violation of article 8 in that they are not recognising the contributions to the workforce and marketplace those with disabilities have made and are continuing to make. This payment should be available to all who have been affected, especially if COVID19 is preventing

them from active employment especially if that is health advice from the government or qualified medical practitioner using the WHO or RACGP COVID19 guidelines.

With the Government refusing to broaden the 'emergency' Coronavirus supplement to include those with a disability payments, they are breaching their obligations under Article 4 to ensure the realisation of all human rights by refusing 1(b) to modify existing laws that constitute discrimination against those with disabilities. The Government is not recognising those with disabilities to be equal with those without by excluding them under the legislation for this emergency support as they are not in equal receivership of the protections and benefits of this emergency support.

Based on recently published Department of Social Services data there are nearly 100,000 DSP recipients and 50,000 carers who receive a part-payment of their pension respectively, due to employment income. The employment rate of those with disability in the last quarter was 48% compared to the employment rate for non-disabled Australians at 79%. By the Government failing to include those with disabilities the coronavirus supplement the Commonwealth is failing to recognise the contributions of those with Disabilities in the workplace, as this payment is to support job seekers. The rationale for the coronavirus supplement states "job seekers", not "JobSeeker". This is a crucial point as job seeker is the definition of someone seeking employment. If a disabled person is now unemployed, or stood down they too would be seeking employment or would fit the defined purpose of this emergency support payment. Whereas JobSeeker is a form of income support afforded to those without a disability who do not qualify for the Disability Support Pension. Being a DSP or carer recipient does not exclude someone from working as the legislation allows for recipients to earn an income. This exclusion violates Articles 8.1(b) and Article 8(a(iii)). The Hon Minister Ruston through a statement said that the coronavirus supplement is being paid "in recognition that the economic impact of the Coronavirus pandemic will directly impede people's chances of finding and retaining paid employment". This neglects the fact that nearly 150,000 carers and those with disabilities receive a part-pension due to employment income, potentially many of these have lost hours or income directly resulting from COVID19 closures, or medical advice recommending isolation. For these people especially if the rationale for the payment is in recognition of their contribution to the workforce, why has it only been extended to those receiving payments that do not require an assessment of disability.

These exclusion for those on disability payments violates Article 9.1(b), in that the financial emergency services provided through Services Australia; that have been provided to all others has an exclusion of those receiving disability payments. Two \$750 one-off payments compared to twelve \$550 payments, and an additional one-off \$750 support payment is not a measure on an 'equal basis with others' as part of the advised emergency supports for all those affected by COVID19. This disparity also violates Article 28 as the Government does not recognise the impacts on the Standard of living for people with disability themselves and or their families as the one-off payments do not adequately support people with disabilities standard of living due to rising costs and scarcity attributed to COVID19. Furthermore the disparity in income support does not provide a continuous improvement in their living conditions, as those with disability have been excluded from ongoing emergency support on the basis of their income support payment, which requires a diagnosis of a disability to access and therefore the only point of difference between these payments is disability.

Some members of the Disability community are stating that in one regard they are receiving advice from the Government and the medical profession stating that they are especially vulnerable to the Coronavirus and need to isolate, however due to no extra ongoing supports and due to increased costs for food, medical needs and therapies, that

may or may not be covered under the NDIS; many are at risk of potentially losing their life are continuing to be forced to work or interact within the community, or struggling to access adequate supports during this time. Which could be breaching Article 10 as their inherent right to life is being jeopardised due to, the sufficient support that they have been excluded from on the basis of disability status. Forcing people with Disability further into poverty does not ensure persons with disability effectively enjoy life. This also impacts their physical and mental health as these can contribute to ill-health and death, depression and further isolation from the community thus violating Article 17 and Article 19(b), as non-disabled persons are being afforded supports if they need to isolate or if their industry/business has been forcibly shut down. This means that those with disability cannot afford the essential medical and social services or capital costs that are incurred as a result of this isolation, that may not be covered by the NDIS, as approximately 10% of those on the Disability Support Pension are NDIS Participants. This is not the onus of the NDIA, it is the responsibility of the government.

As some persons with disability have to choose between work and isolation; or life and death because the government is not providing supports to those they are advising to isolate, namely disabled persons, the Government could potentially be violating Article 27 as the government is not providing any supports to those with disabilities to remain employed. Furthermore whilst the government is advising isolation, those who cannot afford to stop working are currently working in unsafe and unhealthy working conditions; as their or a family members susceptibility means the chance of contracting and spreading it to a vulnerable person is substantially increased, which increases the likelihood of ill-health and therefore creates an unsafe working condition in the current pandemic.

This is a brief summary of some concerns and points raised by numerous persons of the disabled community who are currently negatively impacted by COVID19 and feel that the Government's response is dangerously inadequate for those with disability, and question whether the measures are legal given there is such an explicit exclusion of those with disability support payments from accessing ongoing financial emergency services provided by the Commonwealth of Australia to counter the negative impacts of the pandemic. The main concern is if these supports can be afforded to all Australians, in recognition of those who are employed, why are those on Disability related supports only provided with one off support. There is a sense in the community that Australia's response has explicitly segregated the community into those with, and those without disability, with support reliant on the answer to that status. There are concerns that these measures also constitute cruel or degrading treatment compared to those without disability, who may be in the same position but eligible for ongoing financial support.

Currently a Single parent who has just lost their job will now receive \$1100 per fortnight. A Single parent who has lost their job & has a child with a Disability who they care for will receive \$944 per fortnight. It is not in the best interest of the child, and their family as a person with a disability that they are financially punished for having a disability, potentially breaching Article 7. Minister Ruston stated "Pensions, including DSP and Carer Payment, are long-term payments and are typically paid at the highest rate of support in the system -- significantly higher than the JobSeeker base rate -- because recipients are not expected to work to support themselves due to age, disability or caring responsibilities," however this does not preclude someone from seeking paid employment and shows that the government and minister do not recognise that especially for those on the DSP or CAR who are also employed, that their working contributions are not recognised on the basis of disability.

Furthermore the largest employers of those with disabilities and carers are larger business such as Woolworths or Wesfarmers, as they have the flexibility within their organisation to take on those seeking more flexible working hours due to disability needs and therefore based on their employers income a plethora of DSP and CAR recipients have missed out on the JobKeeper assistance. The Hon Josh Frydenberg said if you are not eligible for the

JobKeeper payment you will be eligible for the Coronavirus supplement; yet if you have a disability payment you are not eligible.

The governance of this legislation is in direct violation of several articles of the Convention on the Rights of Persons with Disabilities. At the very least, unless the government extends the coronavirus supplement to those receiving the DSP, CAR who are/were employed and have been negatively impacted, who have been receiving a part-payment of their pension, then these people have been explicitly excluded from supports on the basis of disability. At the very least under the obligations ratified by Australia the coronavirus supplement should be extended to those who are on disability type payments and are or were employed and have been negatively impacted due to the pandemic.

Kind Regards

Mr Bradley