

Chapter 2 - Concluded matters

This chapter lists matters previously raised by the committee and considered at its meeting on 22 September 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 2) 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. 2) Bill 2014 (the bill) seeks to amend various Acts relating to social security, family assistance, veterans' entitlements and farm household support to make the following changes to certain Australian Government payments:

- pause indexation for three years of the income free areas and assets value limits for student payments, including the student income bank limits from 1 January 2015;
- pause indexation for three years of the income and assets test free areas for all pensioners (other than parenting payment single) and the deeming thresholds for all income support payments from 1 July 2017;
- provide that all pensions are indexed to the Consumer Price Index only by removing from 20 September 2017:
- benchmarking to Male Total Average Weekly Earnings; and
- indexation to the Pensioner and Beneficiary Living Cost Index.

Background

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

Committee view on compatibility

Right to social security

Changes to indexation of pensions

2.3 The committee sought the Minister for Social Services' advice as to whether the changes to indexation of pensions are compatible with the right to social security, and particularly:

- whether the proposed changes are aimed at achieving a legitimate objective;

- whether there is a rational connection between the limitation and that objective; and
- whether the limitation is a reasonable and proportionate measure for the achievement of that objective.

Minister's response

The proposed changes to indexation of pensions are aimed at standardising indexation arrangements across all social security payments and putting the income support system on a more sustainable footing by slowing down the growth of the Government's expenditure on social security.

The measure is designed to reduce fiscal pressures on future budgets in the context of demographic changes associated with an ageing population. The measure does this by slowing down the growth in Government expenditure on social security.

The limitation is both reasonable and proportionate. The measure does not affect eligibility or qualification requirements for the payment and therefore access to social security support remains unchanged. At the same time, the measure achieves legitimate objectives of helping to constrain growth in social security expenditure, to assist the system to remain sustainable.

Pensions will continue to be indexed twice a year and purchasing power will be maintained through indexation to movements in prices.¹

Committee response

2.4 The committee thanks the Minister for Social Services for his response. The committee considers that the measure is compatible with human rights and has concluded its examination of this measure.

Pausing indexation of income and asset test thresholds for a range of benefits

2.5 The committee sought the Minister for Social Services' advice as to whether the measures in Schedule 1 of the bill are compatible with the right to social security and the right to an adequate standard of living, and particularly:

- whether the proposed changes are aimed at achieving a legitimate objective;
- whether there is a rational connection between the limitation and that objective; and
- whether the limitation is a reasonable and proportionate measure for the achievement of that objective.

1 See Appendix 1, Letter from the Hon. Kevin Andrews MP, Minister for Social Services, to Senator Dean Smith (dated 28/08/2014) Attachment B 1.

Minister's response

The proposed pause of indexation of income and asset test thresholds for a range of benefits is aimed at slowing the growth in social security expenditure. The changes will help ensure Australia has a well-targeted means tested income support system that provides financial assistance to those most in need, while encouraging self-provision whenever possible.

The changes to the value of income and assets test free areas and thresholds for certain Australian Government payments assist in limiting growth in overall social security expenditure in the context of targeting payments according to need.

The measure is reasonable and proportionate for the achievement of the above objectives. Specific impacts for people depend on payment type and people's circumstances and will be experienced by people with sufficient private income/assets to be assessed under the relevant means test. Payments will not be reduced unless customers' circumstances change, such as their income or assets increasing in value.²

Committee response

2.6 The committee thanks the Minister for Social Services for his response. The committee considers that the measure is compatible with human rights and has concluded its examination of this measure.

Removal of eligibility for Newstart allowance for 22-24 year olds

2.7 The committee sought the Minister for Social Services' advice as to whether the removal of eligibility of 22-24 year olds for the Newstart allowance is compatible with the right to social security and the right to an adequate standard of living, and particularly:

- whether the proposed changes are aimed at achieving a legitimate objective;
- whether there is a rational connection between the limitation and that objective; and
- whether the limitation is a reasonable and proportionate measure for the achievement of that objective.

Minister's response

The proposed extension of the youth allowance (other) eligibility age is aimed at achieving consistency across payments, as well as encouraging young people to undertake or participate in education or training to ensure that they are able to achieve long term sustainable employment outcomes. The measure will provide unemployed young people with

2 See Appendix 1, Letter from the Hon. Kevin Andrews MP, Minister for Social Services, to Senator Dean Smith (dated 28/08/2014) Attachment B 2.

incentives and support to take advantage of the opportunities that Australia's labour market provides.

The changes to the Youth Allowance maximum age build on those already passed in the Social Security and Other Legislation Amendment (Income Support and Other Measures) Act 2012. These changes increased the maximum age of Youth Allowance (other), Sickness Allowance and ABSTUDY from 21 years of age to 22 years for young people.

Since 1998, there have been two different maximum ages for Youth Allowance - one for full-time students and one for young unemployed people. Once a young person reaches the maximum age for Youth Allowance as a job seeker, they transition to Newstart Allowance which is paid at a higher rate of payment.

Presently, around 78,500 unemployed youth aged 22-24 are paid Newstart or Sickness Allowance. Such a person would be advantaged by staying on Newstart Allowance instead of pursuing full-time study or employment, given the higher rate of these allowances. This measure removes this disincentive by placing all under 25 year olds on the same payment levels whether unemployed or studying full-time.

This proposal will affect new claimants from 1 January 2015, who will continue to receive Youth Allowance between the ages of 22 to 24 years. Grandfathering arrangements will apply to young people aged 22 years or over and in receipt of Newstart Allowance or Sickness Allowance as at 1 January 2015.

Youth Allowance is paid at a lower rate than Newstart Allowance however, a persons right to social security will remain. This is justified given the intent to ensure payment rates are aligned for young people in receipt of Youth Allowance aged under 25 years, regardless of their circumstances. Young people will continue to be supported, including a range of programs and other services provided by the Commonwealth and state governments, and grandfathering arrangements ensure that no young person will have their payment rate reduced as at 1 January 2015.³

Committee response

2.8 The committee thanks the Minister for Social Services for his response. The committee considers that the measure is compatible with human rights and has concluded its examination of this measure.

Twenty-six week waiting period for social security payments for under-30 year olds

2.9 The committee sought the Minister for Social Services' advice as to whether the 26-week waiting period for social security benefits for those under 30 is

3 See Appendix 1, Letter from the Hon. Kevin Andrews MP, Minister for Social Services, to Senator Dean Smith (dated 28/08/2014) Attachment B 2-3.

compatible with the right to social security and the right to an adequate standard of living, and particularly:

- whether the proposed changes are aimed at achieving a legitimate objective;
- whether there is a rational connection between the limitation and that objective; and
- whether the limitation is a reasonable and proportionate measure for the achievement of that objective.

Minister's response

The proposed 26 week waiting period for all new job seekers up to 30 years of age claiming Newstart Allowance, Youth Allowance (other) and Special Benefit who are considered to be job ready is aimed at increasing the level of young job ready people achieving gainful employment outcomes.

According to the *OECD Factbook 2013: Economic, Environmental and Social Statistics*, 'young people who are neither in employment nor in education and training are at risk of becoming social excluded individuals with income below the poverty-line and lacking the skill to improve their economic situation.' This measure seeks to address youth unemployment by encouraging young people to accept jobs rather than relying on income support at risk of becoming disengaged- both socially and economically.

Income support data (March 2013) supports that the targeted job ready group of young people that the measure is aimed at are more likely to achieve positive employment outcomes. Newstart Allowance and Youth Allowance (job seeker) data shows that a majority of these job ready young people exit payment within 6 months of being granted (52.9% for Newstart Allowance and 34 per cent for youth allowance (job seeker)), are more likely to have parental support (66.2% considered to be dependent on their parents for youth allowance purposes) and therefore less likely not to have access to an adequate standard of living. The 2011 Census data also supports that 29% of young Australians aged 18-34 years are still living in the parental home.

During the 26 week waiting period young job seekers will have access to the full range of employment services to support their job search efforts. After a person's waiting period is served, job seekers will be eligible to receive income support. This will continue to be paid until a person has been participating in 25 hours per week of Work for the Dole for 26 weeks. After this time, a non-payment period will be imposed for 26 weeks;

however a young person will have access to a wage subsidy⁴ for potential employers and access to relocation assistance.

Exemptions will be available to certain groups with extra responsibilities or those that are not able to work or study. Exemptions from the new waiting period will be available for people who have a partial capacity to work less than 30 hours a week, parents receiving Family Tax Benefit for a child, part time apprentices, principal carer parents, a job seeker with significant barriers to employment under the current employment services arrangements (or the Remote Jobs and Communities Programme equivalent), Disability Employment participants and Farm Household Allowance recipients. Evidence suggests that this measure will be most effective if it is supported by an appropriate level of employment services, targeted at job seeker deficits.⁵

The specific targeting of this measure to those young people who are job ready without any barriers to prevent them from gaining employment will mitigate the risk of limiting a person's right to social security. Young people will have access to the full range of programmes and assistance under the employment service model to enable them to find employment and access to a Health Care Card which provides people with access to the Pharmaceutical Benefit Scheme and other state based concessions.⁶

Committee response

2.10 The committee thanks the Minister for Social Services for his response.

2.11 However, the response does not provide any further information as to how young people are to sustain themselves during a six-month period without social security. The committee noted in its original assessment that information regarding the likely impact of the measure on individuals and their families, and how

4 Wage subsidy trials carried out in South Africa (*Stellenbosch Economic Working Papers: 02/14: Levinsohn/Rankin/Roberts/Schoer*) amongst young people showed that targeted wage subsidies are a powerful tool for getting job seekers into long term sustainable work. The key finding of the paper was that those who were allocated a wage subsidy were more likely (25%) to be employed both one year and two years, long after the subsidy had expired. Under this measure, the foregone income support payment is set aside to be used as a wage subsidy after 12 months of unemployment.

5 Analysis commissioned by the New Zealand Government (*Actuarial valuation of the Benefit System for Working-age Adults as at 30 June 2013: Greenfield/Miller/McGuire*), which would be broadly applicable to the Australian system, shows that if young unemployed people are not provided with the right mix of programmes and support, there is a high chance that they will end up trapped on welfare for much of their lives. Work for the Dole evaluations shows that referral to Work for the Dole has a powerful 'tree shaking' effect, with job seekers exiting income support rather than commencing in Work for the Dole.

6 See Appendix 1, Letter from the Hon. Kevin Andrews MP, Minister for Social Services, to Senator Dean Smith (dated 28/08/2014) Attachment B 3-4.

individuals subject to the measure will retain access to adequate shelter and food, is necessary in order to assess the human rights compatibility of this measure.

2.12 Accordingly, the committee considers that the measure is incompatible with the right to social security and the right to an adequate standard of living.

Change to eligibility criteria for the large family supplement

2.13 The committee sought the advice of the Minister for Social Services as to whether the change to the eligibility criteria for the family tax benefit large family supplement is compatible with the right to social security and the right to an adequate standard of living, and particularly:

- whether the proposed changes are aimed at achieving a legitimate objective;
- whether there is a rational connection between the limitation and that objective; and
- whether the limitation is a reasonable and proportionate measure for the achievement of that objective.

Minister's response

The proposed change to eligibility criteria for the large family supplement is aimed at ensuring that the family payments system remains sustainable in the long term and is better targeted to support those who need it most. As noted in the Statement of Compatibility, the United Nations Committee on Economic, Cultural and Social Rights has stated that a social security scheme should be sustainable. Ensuring the sustainability of the family payments system helps preserve the right to social security over the long term.

This measure will only impact on families with three or more children. No families will lose access to the family tax benefit system as a result of this measure, and all eligible families will continue to receive FTB Part A on a per child basis to assist with day to day costs.

The National Commission of Audit recommended abolishing the LFS as research into the direct costs of children has found that there are decreasing costs for each additional child.

The 2010 Henry Tax Review recommended that the LFS be reconsidered as the case for the payment was not strong. Reports by the National Centre for Social and Economic Modelling in 2002, 2007 and 2013 consistently found that additional children cost less than a first child. The reason for this is that families experience "economies of scale" in which fixed costs are spread among more children. After a first child many items have already been purchased and can be reused by subsequent children.

As the monetary impact on families affected will be relatively small, and the evidence base does not support the idea that LFS is necessary for larger families to achieve an adequate standard of living, the limitations on

the right to social security imposed by this measure are reasonable and proportionate.⁷

Committee response

2.14 The committee thanks the Minister for Social Services for his response. The committee considers that the measure is compatible with human rights and has concluded its examination of this measure.

Reduced access to family tax benefit Part B

2.15 The committee sought the advice of the Minister for Social Services as to whether the proposed reduction in access to family tax benefit Part B is compatible with the right to social security and the right to an adequate standard of living, and particularly:

- whether the proposed changes are aimed at achieving a legitimate objective;
- whether there is a rational connection between the limitation and that objective; and
- whether the limitation is a reasonable and proportionate measure for the achievement of that objective.

Minister's response

The proposed reduced access to family tax benefit Part B is aimed at encouraging parents to re-enter the workforce when a child reaches school age. This recognises that there are significant social and economic benefits to children and families when parents are in paid employment.

From 1 July 2017, all families with a youngest child aged six and over would no longer be eligible for FTB Part B as a result of this measure. Families with a youngest child above the new age limit who are currently eligible for FTB Part B will be grandfathered under the current rules until 30 June 2017.

Targeting FTB Part B to families with children below primary school age aims to increase workforce participation incentives and encourage self-reliance for families once their youngest child enters primary school. Most primary carers in Australia already return to the workforce once their children are in school, which is reflected in FTB Part B population data. This measure aligns with other government payments to encourage participation, such as Parenting Payment, which is now only available to single parents with a youngest child aged less than eight years or couples with a child aged less than six. This signifies that this measure is based on objective and reasonable grounds, as it reflects broad trends in the wider population.

7 See Appendix 1, Letter from the Hon. Kevin Andrews MP, Minister for Social Services, to Senator Dean Smith (dated 28/08/2014) Attachment B 5.

As noted in the Statement of Compatibility, care requirements for children are higher when children are very young. This measure retains assistance for families when children are not yet school age, ensuring families are supported to access an adequate standard of living when caring duties may present a barrier to work.

In addition, a per child single parent supplement will be available for single parent families on the maximum rate of FTB Part A when their children are aged between six and 12. Low income single parents may continue to face increased barriers to work when children are in primary school. The single parent supplement recognises that these families may continue to require additional assistance to access an adequate standard of living during this time.

Families with a youngest child aged six and over will continue to be eligible for the payment for two years under grandfathering arrangements, giving them time to adjust to the change.

As the benefits of workforce participation are significant, and assistance is retained where workforce barriers are most pronounced, the limitations on the right to social security imposed by this measure are reasonable and proportionate.⁸

Committee response

2.16 The committee thanks the Minister for Social Services for his response. The committee considers that the measure is compatible with human rights and has concluded its examination of this measure.

Increase to age pension entitlement age

2.17 The committee sought the advice of the Minister for Social Services as to whether the increase in age eligibility for the age pension is compatible with the right to social security and the right to an adequate standard of living, and particularly:

- whether the proposed changes are aimed at achieving a legitimate objective;
- whether there is a rational connection between the limitation and that objective; and
- whether the limitation is a reasonable and proportionate measure for the achievement of that objective.

Minister's response

The proposed change to increase the Age Pension qualifying age to 70 is aimed at achieving savings that maintain the sustainability of the retirement income system into the future, and encourage increased workforce participation for senior Australians. The Australian income

8 See Appendix 1, Letter from the Hon. Kevin Andrews MP, Minister for Social Services, to Senator Dean Smith (dated 28/08/2014) Attachment B 6.

support system is a non-contributory, tax payer funded system and its ability to target income support to those most in need is key to achieving sustainability.

Australians are living longer, with an increasing proportion of the population over the current Age Pension qualifying age. Australian Bureau of Statistics (ABS) projections show that the proportion of people aged over 65 years is expected to increase from 14 % at 30 June 2012 (3.2 million), to between 22 and 25% by 2061 (between 9.0 million and 11 .1 million). As the proportion of the population over the Age Pension qualifying age increases, so too will Age Pension expenditure, placing the sustainability of the system at risk.

While demographic change has resulted in an increasing proportion of people over Age Pension qualifying age, who are receiving payments for longer, there are also many people who are working longer or are able to support themselves financially after they retire. Measures of quality of life, as life expectancy increases, provide insights into the capacity of older Australians to work. Australian Institute of Health and Welfare (AIHW) analysis of life expectancy and disability status indicates that, between 1998 and 2012, 37% of the gains in life expectancy were disability free years for women, and 54% for men. Increasing the Age Pension qualification age provides an incentive for people to remain working for longer.

People unable to support themselves financially under Age Pension age are supported by Australia's social security safety net. This means they are still able to access social security and their right to an adequate standard of living. Social security payments such as Newstart Allowance and Disability Support Pension will continue to be available to those under Age Pension qualifying age.⁹

Committee response

2.18 The committee thanks the Minister for Social Services for his response. The committee considers that the measure is compatible with human rights and has concluded its examination of this measure.

Right to equality and non-discrimination

Residency requirements for the disability support pension

2.19 The committee requested the Minister for Social Services' advice on the compatibility of the proposed changes to residency requirements for disability support pension recipients with the right to equality and non-discrimination and in particular, whether these measures are:

9 See Appendix 1, Letter from the Hon. Kevin Andrews MP, Minister for Social Services, to Senator Dean Smith (dated 28/08/2014) Attachment B 7.

- based on objective and reasonable grounds; and
- is a proportionate measure in pursuit of a legitimate objective.

Minister's response

Australia's social security system is based on residence and need. All working-age payments are designed to assist Australian residents with the cost of living in Australia and to assist people who are actively seeking work in Australia. Some working-age payments, such as Newstart Allowance, do not have general portability as the community reasonably expects recipients to be actively seeking work or participating in work-related activities in Australia. The proposed four week portability period is considered to be reasonable time to allow DSP recipients to deal with personal matters that may arise from time to time overseas.

The measure is based on the expectation that DSP recipients who have some capacity to work, including assisted employment, be available in Australia to engage in activities to maximise participation, such as work or training. Being outside Australia for extended periods of time reduces a person's availability and opportunity to be actively engaging in training and work-related activities and social participation in Australia.

Limiting the portability period to four weeks is also consistent with the proposed changes to introduce, where appropriate, participation requirements for DSP recipients who are under 35 years of age. They will need to actively participate in a program of support in Australia to build their skills and work capacity.

There will continue to be a number of exceptions that permit temporary absences longer than four weeks. For example, a person's portability period may be extended if they are overseas and cannot return to Australia due to unexpected events. There are also limited circumstances where a person may be allowed additional absences beyond the single four week absence in a 12-month period. These circumstances include attending an acute family crisis, seeking medical treatment not available in Australia or for a humanitarian purpose.

The Government does not consider the proposed changes to DSP portability to be directly or indirectly discriminatory in relation to DSP recipients, and the measure is not expected to have a disproportionate or unintended negative impact on DSP recipients compared to the general working-age payment population. Portability periods are set to suit the type of payment and the circumstances and may broadly be seen as on a continuum. For example, as mentioned Newstart Allowance has no general portability, DSP has mostly limited portability for temporary absences and Age Pension is portable indefinitely (noting that after an overseas absence of more than 26 weeks, the Age Pension is paid at a proportional rate based on the persons working life residence in Australia). The measure endeavours to ensure that DSP recipients who have some work capacity are available the great majority of the time in Australia to

participate in training, work-related and social activities when opportunities arise.

DSP recipients who have been assessed as having a severe and permanent disability and no future work capacity, or those who have a terminal illness, will continue to be able to apply for indefinite portability of their pension. As with Age Pensioners, the community does not reasonably expect this group of DSP recipients to be actively looking for work.¹⁰

Committee response

2.20 The committee thanks the Minister for Social Services for his response. The committee considers that the measure is compatible with human rights and has concluded its examination of this measure.

Age criteria for Newstart allowance and exclusion periods

2.21 The committee requested the advice of the Minister for Social Services as to the compatibility of the proposed measures in Schedules 8 and 9 with the right to equality and non-discrimination and in particular, whether these measures are:

- based on objective and reasonable grounds; and
- is a proportionate measure in pursuit of a legitimate objective.

Minister's response

The United Nations, for statistical purpose, defines youth as those persons between the ages of 15 and 24 years, without prejudice to other definitions by Member States. For the purposes of increasing the Youth Allowance (other) maximum age to 24 years, this is a case of aligning existing parameters for full-time students and full-time Australian Apprentices and adheres to the an internationally accepted definition of youth. Schedule 8 changes the qualification arrangements for Youth Allowance; however claimants in the affected groups will be maintaining access to social security.

For changes under Commonwealth law, the *Age Discrimination Act* states that treating individuals differently because of their age is allowed when in compliance with Commonwealth laws, including laws about taxation, social security and migration.

The Government is able to set these age limits when changing qualification and payability conditions under Social Security law. Whilst young people aged under 30 years will not immediately receive Newstart Allowance or Youth Allowance (other), their right to access social security has not been withdrawn, this is similar to the operation of existing waiting periods that are targeted towards specific groups. Affected young people will continue to have a right to an appropriate level of social security, set by

10 See Appendix 1, Letter from the Hon. Kevin Andrews MP, Minister for Social Services, to Senator Dean Smith (dated 28/08/2014) Attachment B 8-9.

Government. Young people will continue to have this access without illegitimate differential treatment and without affecting their other rights.¹¹

Committee response

2.22 The committee thanks the Minister for Social Services for his response.

2.23 However, the committee notes that, for human rights purposes, 'discrimination' is impermissible differential treatment among persons or groups that results in a person or group being treated less favourably than others, based on one of the prohibited grounds for discrimination.¹²

2.24 The committee notes that measures that impact differentially on individuals based on their age are likely to be incompatible with the right to equality and non-discrimination. The committee noted in its initial examination of the bill that, to establish that the apparent discrimination against people on the basis of their age is not arbitrary, an assessment of how the proposed age cut-offs are necessary, reasonable and proportionate to achieve a legitimate objective would be required. The committee considers that the response does not provide an adequate justification.

2.25 Accordingly, the committee considers that the measures in Schedules 8 and 9 are incompatible with the rights to equality and non-discrimination on the basis of age.

Reduced access to family tax benefit Part B

2.26 The committee requested the advice of the Minister for Social Services on the compatibility of the measure in Schedule 10 with the right to equality and non-discrimination and, in particular, whether these measures are:

- based on objective and reasonable grounds; and
- is a proportionate measure in pursuit of a legitimate objective.

Minister's response

The objective of limiting access to FTB Part B to families with a youngest child under six is to encourage parents to re-enter the workforce when a child reaches school age. There are significant social and economic benefits to children and families when parents are in paid employment. The aim of the new allowance is to recognise that single parent families

11 See Appendix 1, Letter from the Hon. Kevin Andrews MP, Minister for Social Services, to Senator Dean Smith (dated 28/08/2014) Attachment B 9.

12 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.

often have fewer resources to meet living costs, and have a reduced capacity to work because of their caring responsibilities.

The Committee notes that limiting FTB Part B to families with children under six years of age is likely to disproportionately affect women, as they are more likely to be single parent primary carers. Most primary carers in Australia already return to the workforce once their children are in school, which is reflected in FTB Part B population data. This signifies that this measure is based on objective and reasonable grounds, as it reflects broad trends in the wider population.

In addition, the introduction of an FTB Part A single parent supplement per child aged six to 12 may counteract the disproportionate economic impact of this measure on women, as it is likely to be received by more households headed by women than men.

As this measure is based on objective and reasonable grounds, and disproportionate economic impacts on women are counteracted with the introduction of a single parent supplement, these measures are compatible with the right to equality and non-discrimination.¹³

Committee response

2.27 The committee thanks the Minister for Social Services for his response. The committee considers that the measure is compatible with human rights and has concluded its examination of this measure.

Right to education

Removal of the pensioner education supplement

2.28 The committee sought the advice of the Minister for Social Services as to whether removing the PES is compatible with the right to education, and particularly:

- whether the proposed change is aimed at achieving a legitimate objective;
- whether there is a rational connection between the limitation and that objective; and
- whether the limitation is a reasonable and proportionate measure for the achievement of that objective.

Minister's response

The proposed cessation of PES is aimed at ensuring the long term sustainability of the social security system by improving the Commonwealth's fiscal position by an estimated \$281.2 million over five years from 2013-14 and simplifying the structure of the system, and in recognition of better targeted and individualised means of assisting

12 See Appendix 1, Letter from the Hon. Kevin Andrews MP, Minister for Social Services, to Senator Dean Smith (dated 28/08/2014) Attachment B 10.

vulnerable cohorts to participate in training or education that have to a large extent subsumed the original intent of the PES.

Since the introduction of PES, several policy changes have been introduced that reduce the amount of time that parents remain out the workforce. This includes introducing participation requirements and providing employment services to support recipients of Parenting Payment to improve their employability from when their youngest child is aged six.

The combination of the development of more individualised and focused support to assist pensioners and parents to engage in study and prepare for the workforce, and the ongoing provision of student payments, makes the removal of PES a rational response to achieving the objective of simplifying and improving the sustainability of the social security system.

The Australian Government also provides other assistance for students with the cost of their fees. Commonwealth Supported Places are offered for university level qualifications, vocational education and training qualifications and post-graduate level courses at university through HECS-HELP, VET-FEE HELP and FEE-HELP loans. These loan schemes assist eligible students to pay or defer paying the full cost of their tuition fees.

An individual's decision to undertake study, whether at university or at a vocational institution, is influenced by many factors, including family circumstances, previous educational history and career aspirations. It is not possible to isolate the impact of the removal of one Government payment on overall enrolments as this is an effect that cannot be predicted by the Department.

While the change may have a minor impact on a small, targeted group of people who access education at a particular point in time, it is consistent with Australia's human rights obligations as it is a reasonable, proportionate and necessary response to achieving a broader objective when considered in the context of the range and level of income support and other assistance available to pensioners and those undertaking study. Australia's underlying system of secondary and tertiary education remains robust and flexible.¹⁴

Committee response

2.29 The committee thanks the Minister for Social Services for his response. The committee considers that the measure is compatible with human rights and has concluded its examination of this measure.

Removal of the education entry payment

2.30 The committee sought the advice of the Minister for Social Services as to whether removing the EES is compatible with the right to education, and particularly:

13 See Appendix 1, Letter from the Hon. Kevin Andrews MP, Minister for Social Services, to Senator Dean Smith (dated 28/08/2014) Attachment B 11.

- whether the proposed changes are aimed at achieving a legitimate objective;
- whether there is a rational connection between the limitation and that objective; and
- whether the limitation is a reasonable and proportionate measure for the achievement of that objective.

Minister's response

The proposed cessation of EdEP is aimed at ensuring the long-term sustainability of the social security system by improving the Commonwealth's fiscal position by an estimated \$65.4 million over five years from 2013-14 and simplifying the structure of the system, in recognition of significant enhancements to education-related assistance and support available to income support recipients and pensioners, including the Employment Pathway Fund (EPF).

EdEP was introduced in 1993 to provide financial assistance to eligible pensioners and unemployed Australians to assist with the up-front costs of study and help remove financial barriers to education. The role of EdEP has to a large extent been subsumed by the broader regime of Government-funded study and training support, including for Australians who wish to undertake tertiary or vocational education.

The vast majority of allowance recipients and recipients of Parenting Payment with children aged over six years old are registered with a JSA provider and therefore have access to the EPF at their provider's discretion. The EPF can play a similar role offsetting some of the costs associated with commencing study or training, such as course materials, fees and essential equipment. In addition, the EPF provides better targeted and individualised assistance than the EdEP as it is based on the specific needs and barriers to employment of an individual job seeker.

Pensions, allowances, the EPF and student payments will continue unaffected by the removal of EdEP.

The Australian Government also provides other schemes to assist students with the cost of their fees. Commonwealth Supported Places are offered for university level qualifications, vocational education and training qualifications and post-graduate level courses at university through HECS-HELP, VET-FEE HELP and FEE-HELP loans. These loan schemes assist eligible students to pay or defer paying the full cost of their tuition fees.

The 2014-15 Budget also seeks to introduce additional measures to assist students with the costs of study, including the Commonwealth Scholarship scheme. Higher education institutions will be required to commit \$1 in every \$5 of additional revenue to a new Commonwealth Scholarship scheme to provide tailored, individualised support to students including needs-based scholarships to help meet costs of living, fee exemptions, tutorial support, and assistance at other critical points in their university

career. Subject to the passage of legislation, these Commonwealth scholarships will be available from 1 January 2016.

The removal of EdEP is not anticipated to have any impact on rates of enrolment. EdEP is a small, annual, one-off payment and alternative and other ongoing support is available. It is a reasonable and proportionate measure to ensure the ongoing sustainability of the social security system because a wide range of better targeted support will continue to be offered to those who choose to undertake study.¹⁵

Committee response

2.31 The committee thanks the Minister for Social Services for his response. The committee considers that the measure is compatible with human rights and has concluded its examination of this measure.

14 See Appendix 1, Letter from the Hon. Kevin Andrews MP, Minister for Social Services, to Senator Dean Smith (dated 28/08/2014) Attachment B 11-12.

Trade Support Loans Act 2014

Portfolio: Industry

Introduced: House of Representatives, 18 June 2014

Purpose

2.32 The Trade Support Loans Bill 2014 (the bill) establishes the Trade Support Loans Program to provide concessional, income-contingent loans of up to \$20 000 over four years to certain apprentices. The loans will be repayable when the individual's income reaches the Higher Education Loan Program repayment threshold.

Background

2.33 The committee reported on the bill in its *Ninth Report of the 44th Parliament*, and subsequently in its *Tenth Report of the 44th Parliament*.

2.34 The Trade Support Loans Bill 2014 passed both Houses of Parliament on 15 July 2014 and received Royal Assent on 17 July 2014.

Committee view on compatibility

Right to education

Support for apprentices through the institution of concessional income contingent loan scheme

2.35 The committee sought the advice of the Minister for Industry as to the compatibility of the bill with the right to education, and particularly whether the Trade Support Loans Scheme offers equivalent terms to the 'Tools for Your Trade Program' (or otherwise might be regarded as a limitation or retrogressive measure in relation to the right).

Minister's response

In addressing the right to education and its interaction with the TSL Act, the Committee has requested further advice on whether the Trade Support Loans Programme offers equivalent protection of human rights to the 'Tools for Your Trade Program'.

The Trade Support Loans Programme offers equivalent protection of human rights through its inclusion of similar eligibility criteria to those for the Tools For Your Trade personal benefit payment under the Australian Apprenticeships Incentives Programme. The criteria diverge in only one place, and that is that New Zealand citizens are not eligible under Trade Support Loans.

The removal of New Zealand citizens potentially impacts human rights under the Trade Support Loans Programme but it is important to note that the decision to exclude New Zealand citizens in the eligibility criteria was taken to ensure that those who benefit from Australian taxpayer funded Trade Support Loans are Australian citizens or permanent residents. In

addition, because of the repayment requirements of the programme with repayments collected through the Australian taxation system, there would be New Zealand citizens who would not repay Trade Support Loan debts if they returned to New Zealand and did not continue paying tax in Australia. The successful continuation of the programme depends on the repayment of loans by those who reach the income repayment threshold.¹⁶

Committee response

2.36 The committee thanks the Minister for Industry for his response.

2.37 The committee notes that the minister's response provides some information as to the eligibility criteria in relation to the TSL scheme. However, the response does not provide a comprehensive assessment of whether the substance of the TSL scheme provides equivalent, greater or less protection of the right to education than the 'Tools for Your Trade Program' which it was intended to replace. The committee notes that information on, and an assessment of, the key features of each scheme and their impact on access to education would have been relevant to this analysis. In particular, the committee notes that the new TSL loans scheme replaces what had been a monetary payment with a loan, and may therefore provide different levels of support in respect to access to and attainment of educational qualifications. To the extent that the TSL scheme may be considered a limitation in respect of the right to education, it would have also have been relevant for the minister to provide an assessment as to whether any such limitation was reasonable, necessary and proportionate in pursuit of a legitimate objective. However, no such information has been provided.

2.38 The committee therefore considers that, based on the information provided, the Trade Support Loan Scheme may be incompatible with the right to education.

Rights to equality and non-discrimination

Availability of loans to qualifying apprenticeships on the trade support loans priority list

2.39 The committee requested the advice of the Minister for Industry as to whether, in establishing and maintaining the Trade Support Loan (TSL) priority list, there will be appropriate policy safeguards or measures to ensure that the list does not, in practice, indirectly discriminate against women.

Minister's response

In addressing the rights to equality and non-discrimination and their interaction with the TSL Act, the Committee has also requested advice on whether, in establishing and maintaining the Trade Support Loans Priority

1 See Appendix 1, Letter from the Hon. Ian Macfarlane MP, Minister for Industry, to Senator Dean Smith (dated 09/09/2014) 1.

List, there will be appropriate policy safeguards or measures to ensure that the list does not, in practice, indirectly discriminate against women.

The purpose of the Trade Support Loans Programme is to ensure the ongoing supply of trade-qualified workers to the Australian economy to support Australia's future productivity and competitiveness. The programme particularly targets occupations that have long lead times and are important to the future economy. The eligibility criteria do not discriminate directly against women, as long as they are undertaking an apprenticeship in an occupation listed on the TSL Priority List and that they meet the residency criteria.

As the committee points out, the majority of those currently undertaking apprenticeships in occupations on the TSL Priority List are male (preliminary internal data for 2013-14 show 82% of commencements in apprenticeships in priority occupations are males). While the Government would agree that participation by women in the workforce is an important human rights issue, the addition of occupations that employ more women would distance the programme from its stated policy goal as outlined above.

In this period of fiscal constraint, it is important that the Government targets spending to achieve its goals and that the TSL Priority List supports this targeting of funds. Addressing the shortage of women in priority occupations on the List is a long-term goal that will come through cultural change and a multi-pronged approach by Government, employers and educators, and not in the short-term through broadening eligibility for the Trade Support Loans Programme.

It is important to note the Trade Support Loans Programme is only one of several measures that underpin this Government's agenda to support the ongoing supply of skilled workers to the economy. Among these are measures better aimed at supporting occupations that currently employ a majority of women. One of these is the Australian Apprenticeships Incentives Programme, which supports employment and training opportunities. In making recent changes to this programme, which included the removal of the Tools For Your Trade incentive paid to apprentices, the Government has been careful to maintain support for the priority areas of aged care, child care, disability care and enrolled nurses. As the Committee will be aware, the majority of employees in these occupations are women. Another measure is the Australian Apprenticeships Ambassadors Programme, which show-cases successful apprentices including a large number of women in non-traditional trades.¹⁷

2 See Appendix 1, Letter from the Hon. Ian Macfarlane MP, Minister for Industry, to Senator Dean Smith (dated 09/09/2014) 1-2.

Committee response

2.40 The committee thanks the Minister for Industry for his response.

2.41 The committee notes the minister's acknowledgement that men are disproportionately represented in apprenticeships in occupations on the TSL Priority List, and account for 82 per cent of commencements based on preliminary internal government data for 2013-14. These figures confirm that, while the Trade Support Loan (TSL) Priority List may be neutral on its face, in practice it is likely to limit women's access to the scheme (that is, to indirectly discriminate), given the extent to which occupational segregation continues to persist across a number of industries in Australia.

2.42 The committee concurs with the minister's view that equal participation of women in the workforce is an important human rights issue. However, the committee notes that the mere highlighting of the problem as one to be addressed by long-term cultural change is insufficient to address such inequalities. Indeed, by indirectly discriminating against women through reduced access, the scheme may, in practice, entrench existing inequalities.

2.43 In this respect, the committee notes that the minister's provides no human rights assessment of whether the identified limitation on the rights to equality and non-discrimination is reasonable, necessary, and proportionate in pursuit of a legitimate objective.

2.44 The committee therefore considers that the Trade Support Loan Scheme is incompatible with the rights to equality and non-discrimination.

