

Parliamentary Joint Committee on Human Rights Inquiry into ParentsNext: examination of Social Security (Parenting payment participation requirements - class of persons) instrument 2021

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Introduction

I am a law academic with expertise in human rights and the right to social security in particular. I have written widely on the topic of the right to social security with a focus on its relationship to non-discrimination, particularly on the grounds of gender but also other grounds including disability, race, social status, age, etc.¹

My views on the human rights concerns with ParentsNext² were cited in the Senate's Community Affairs References Committee Report following its inquiry into 'ParentsNext, including its trial and subsequent broader rollout' in March 2019.³ My comments on the human rights dimensions of the program have also been published in *The Conversation*.⁴

I have been invited by this Committee to make submissions on the legislative instrument being considered and in particular to comment on point 6 within the Inquiry's scope considering

¹ My work includes: B Goldblatt, (2016) *Developing the Right to Social Security - A Gender Perspective*, Routledge; B Goldblatt & L Lamarche (2014) *Women's Rights to Social Security and Social Protection* (Hart); B Goldblatt (2017) 'Social (In)Security and Inequality in Australia: The Limited Role of Human Rights in the Policy Debate' in Durbach, A & Edgeworth, B (eds), *Law and Poverty in Australia - 40 Years after the Poverty Commission*, (Federation Press) pp. 183-198; B Goldblatt, (2017) 'Claiming women's social and economic rights in Australia' *Australian Journal of Human Rights* 23:2, pp. 261-283.

² Beth Goldblatt, Submission to The Senate Community Affairs References Committee Inquiry into 'ParentsNext, including its trial and subsequent broader rollout', 23 January 2019 https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/ParentsNext/Submissions

³ Senate Community Affairs References Committee 'ParentsNext, including its trial and subsequent broader rollout', Report, March 2019, at footnotes 24, 37, 38, 40, 42, 55, 56, 58, 151, 161 and quoted at Paragraph 2.48.

⁴ Beth Goldblatt 'More than unpopular. How ParentsNext intrudes on single parents' human rights', January 16, 2019, <https://theconversation.com/more-than-unpopular-how-parentsnext-intrudes-on-single-parents-human-rights-108754>

The extent to which linking welfare payments to the performance of certain activities by the welfare recipient is consistent with international human rights law, particularly the rights to social security, an adequate standard of living, equality and non-discrimination, a private life, and the rights of the child.

The Social Security (Parenting payment participation requirements - class of persons) instrument 2021 makes an adjustment to the ParentsNext program by bringing together two streams of program participants (Intensive (primarily Indigenous) and Targeted (disadvantaged parents in non-remote locations)) into a new single stream called Compulsory Participants. Inclusion in this compulsory group of parents is based on educational attainment and period of time spent in receipt of social security payments. Being defined as a Compulsory Participant in the ParentsNext program requires parents to attend meetings with a provider and meet the participation requirements as set out in their parenting plan in order to access Parenting Payments. The government's Targeted Compliance Framework applies to these parents meaning failure to attend meetings or comply with the plan can lead to payment suspension, financial penalties and even cancellation of their Parenting Payment. While the adjustment to the program through this legislative instrument may streamline the program administratively and provide expanded access to the Participation Fund, it does not alter the major features of the program and in particular, the most controversial aspect of it, which is compulsory participation with severe consequences for non-compliance.

This submission addresses the human rights dimensions of the legislation that defines the group of Compulsory Participants of ParentsNext making this group subject to conditions for access to and ongoing receipt of Parenting Payment, a social security payment within the Australian social security architecture, directed at families with young children who are unable to support themselves.

Human rights concerns

As the Minister acknowledges in the Statement of Compatibility with Human Rights accompanying the proposed legislative instrument, the ParentsNext program impacts upon the right to social security (Article 9 of ICESCR) and the right to an adequate standard of living (Article 11 of ICESCR) due to the compulsory participation and compliance aspects of the legislation which can result in social security entitlements being suspended, reduced or

cancelled.⁵ The Minister goes on to argue that the conditions attached to the program and the consequences of non-compliance are in fact permissible limitations on the participants' rights. Before responding to this argument this submission briefly outlines some of the expert and scholarly concern with conditions attached to receipt of social security payments.⁶

Conditional social security and human rights

Conditions attached to social security are suspect from a human rights perspective. Former UN Special Rapporteur on extreme poverty and human rights Magdalena Sepúlveda and Carly Nyst have argued that rights should not be conditional on performance of certain actions since they attach inherently to all people.⁷ Social security conditions remove people's agency and assume that the poor are not capable of rational decision-making. Conditions can place unnecessary burdens and may be inappropriately designed. They have suggested that incentives to participate in government services should be used rather than measures that exclude people. This is related to the wider obligation of the state to create services that assist vulnerable members of society. Withholding entitlements cannot be a correct response to poor provision of such services or low uptake of services which may be an indicator of inappropriate or inadequate services.

Oxford University Human Rights Professor Sandra Fredman has also challenged social security conditionality from a women's rights perspective.⁸ She has argued that conditional cash transfers add to the burdens carried by women for the care of children. Social security rights that are non-discriminatory and advance substantive equality should support and empower women, a disadvantaged group, rather than demand more from them through onerous conditions (such as attendance at appointments and services). Rights-based approaches should aim to address the underlying inequalities that give women primary responsibility for the care of children and others and contribute to their poverty. Conditional schemes that reinforce this inequality and add to the care burden should be replaced with schemes that support the work of care and encourage men to take on these roles.

⁵ At p.9.

⁶ This outline is drawn from Beth Goldblatt 'The Right to Social Security' in M Langford and K Young (eds) *The Oxford Handbook of Economic and Social Rights*, (OUP, forthcoming).

⁷ Magdalena Sepúlveda and Carly Nyst, *The Human Rights Approach to Social Protection* (Finland: Ministry for Foreign Affairs, 2012).

⁸ Sandra Fredman, "Engendering Social Welfare Rights," in *Women's Rights to Social Security and Social Protection*, eds. Beth Goldblatt and Lucie Lamarche (England: Hart Publishing, 2014), 19.

More broadly, locating the causes of poverty at the individual level with the poor rather than acknowledging the structural determinants within the market and society as a whole leads to inappropriate responses.⁹ The right to social security, understood in relation to the values underlying human rights including dignity, equality and autonomy, should not be accompanied by the imposition of punitive behavioural conditions.

Australia's use of punitive conditions attached to social security payments is a long-standing concern of the United Nations' Committee on Economic, Social and Cultural Rights (CESCR), the treaty body responsible for monitoring state parties' compliance with the right to social security (article 9) in the International Covenant on Economic, Social and Cultural Rights (ICESCR). In 2009 the CESCR noted in its report on Australia that:¹⁰

The Committee is concerned that existing conditionalities for the payment of benefits have a negative impact on disadvantaged and marginalized individuals and groups.(art.9) ... The Committee strongly recommends that the State party review conditionalities such as "mutual obligations" in the welfare to work programme and the "quarantining" of welfare payments under the Northern Territory Intervention that may have a punitive effect on disadvantaged and marginalized families, women and children.

In its most recent concluding observations on Australia in 2017, the CESCR raised concerns about conditional social security and recommended that Australia:¹¹

Consider maintaining only an opt-in income management scheme with appropriate oversight of decision-making and monitoring, and review existing and envisaged conditionalities for eligibility to social assistance and unemployment benefits and penalties for non-compliance, and ensure that all beneficiaries receive adequate benefits, without discrimination;

These statements point to a long-standing concern with Australia's human rights compliance related to the conditions attaching to its social security payments.

Limitations on the right to social security

⁹ Stephen Devereux and J Allister Macgregor, "Transforming social protection: Human wellbeing and social justice," *The European Journal of Development Research* 26, no. 3 (2014): 296-310, at 301-2.

¹⁰ E/C.12/AUS/CO/4, 12 June 2009, at para 20.

¹¹ E/C.12/AUS/CO/5, 11 July 2017, at para. 32(c).

The human rights approach suggests that programs such as ParentsNext, if aimed at supporting participants to advance their education and capacity to work, should be voluntary. The Minister's compatibility statement fails to demonstrate that the program in its current form is the least rights' intrusive approach in the circumstances. The argument that parents need to be compelled to access supports and services is not based on clear evidence and is not convincing from a human rights perspective based on equality and non-discrimination. If people struggle to access services because of their disadvantages, then this raises questions about the design of services and about underlying inequalities and social problems that generate such disadvantages. In 2018 the CEDAW Committee recommended that Australia take further measures to support single mothers:¹²

- (c) Strengthen the support provided to families and single-headed households to ensure an adequate standard of living, reduce out-of-home placements and address food insecurity;
- (d) Adopt targeted measures and programmes for the economic empowerment of single mothers, including measures that allow them to complete higher education, and restore access to childcare subsidies for women who are not employed;

Rather than support the unpaid work of caring for young children such as with government funded childcare and greater financial support, as suggested by the CEDAW Committee, the government has further burdened this group with punitive conditions that are humiliating, intrusive and undermine rather than empower parents by telling them they need help to undertake the task of being parents. This deepens stigma and disadvantage when in fact this vulnerable group of parents should be empowered and supported to participate fully in the society.

Placing burdens on parents, usually young mothers, who are disproportionately Indigenous or from migrant backgrounds, contributes to their intersectional discrimination rather than addresses it.¹³ These concerns evidence intrusions into rights to equality and non-discrimination which are central to all the human rights treaties applicable here and cannot be subject to limitation. Punishing children in the affected families is also an impermissible violation of their rights to social security in the Convention on the Rights of the Child,¹⁴ and leads to discrimination between children in families subject to this law and others who are

¹² CEDAW/C/AUS/CO/8, 25 July 2018, para. 46 (c) and (d).

¹³ CEDAW, General recommendation No. 25: Article 4, paragraph 1, of the Convention (temporary special measures), para 11.

¹⁴ CRC, Article 26.

not.¹⁵ The government has failed to show that this is the least intrusive way to address the needs of sole parents and their children and has not justified its violations of their rights. The view that vulnerable social security recipients must be coerced into meeting their ‘obligations’ to the society is a significant misunderstanding of social security as a human right; and of the unpaid work of care performed by this group that contributes to the society.

The Minister, in responding to this Committee (dated 11/03/2021), stated that:

Compulsory participation requirements are necessary to ensure that the most disadvantaged parents receive the support they need. While an incentive based approach may encourage some parents to volunteer, it would be significantly less effective in targeting support to those most in need.

The Minister based this assertion on the opinion that ‘Parents who have experienced long-term disadvantages may not be fully aware of the program’s benefits and opportunities for further support, and as a result can be reluctant to participate voluntarily’.

Since the Minister is clearly unsure why there has not been high voluntary take-up of the program it is suggested that consultation with affected parents would be important to understand their reasons. If lack of awareness is in fact a factor then better promotion of the program seems to be a less rights-intrusive response than enforced participation.

Conclusion

In my written and oral submissions to the 2019 Senate Inquiry into ParentsNext I expressed the view that the program violated a range of human rights and that the compulsory compliance elements of the program should be removed alongside measures to improve the program to better serve the needs of vulnerable parents and their children. The changes introduced in the 2021 legislative instrument do not alter my view as they continue to force extremely disadvantaged parents of babies and young children to comply with conditions or face curtailment of their entitlement to payments. As before, I am of the strong view that the program should be reviewed as to its adequacy and effectiveness; and if it is to continue should be voluntary, and possibly incentive-based, if it is to meet Australia’s human rights obligations. Any review must be based on thorough consultation with participants to ensure that it is of value to parents rather than a burden, an approach to participation that is central to human-rights.

¹⁵ CRC, Article 2.