



Australian  
Human Rights  
Commission

# ParentsNext, including its trial and subsequent broader rollout

Australian Human Rights Commission

Submission to the Senate Community Affairs References  
Committee

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# 1 Introduction

1. The Australian Human Rights Commission (the Commission)<sup>1</sup> welcomes the opportunity to make a submission to the Senate Community Affairs References Committee in response to the ParentsNext inquiry.
2. ParentsNext is a compulsory 'pre-employment' program applied to targeted recipients of the Parenting Payment. It can result in the suspension, reduction or permanent cancellation of a person's Parenting Payment for non-compliance.
3. This submission primarily responds to the third Term of Reference of the inquiry, regarding the appropriateness of the Targeted Compliance Framework (TCF) which can result in such punitive compliance action.<sup>2</sup>
4. It also considers the aims, safeguards and impacts of ParentsNext from a human rights perspective,<sup>3</sup> in particular considering the rights of women, children and Indigenous Australians.
5. These groups are disproportionately affected by ParentsNext, with women comprising approximately 96% of the 68,000 participants, and Aboriginal and Torres Strait Islander people comprising approximately 19% or 14,000 participants.<sup>4</sup>
6. The Commission acknowledges the intended and important objectives of ParentsNext, being to reduce welfare dependency and long-term unemployment, decrease intergenerational joblessness, increase female participation in the labour force and meet Closing the Gap targets.<sup>5</sup>
7. However, the Commission considers that certain aspects of ParentsNext are manifestly inconsistent with Australia's human rights obligations. These concerns relate principally to the right to social security, the right to equality and non-discrimination and children's rights.
8. In particular, the Commission considers that the compulsory and punitive nature of the program breaches the right to social security. The compliance framework permits social security to be reduced below the minimum essential level for parents caring for young children. This retrogressive measure affects some of the most vulnerable families in Australia, with severe detrimental impacts on their financial security and human rights. It also risks entrenching and exacerbating poverty and inequality among program participants.
9. The evaluation in support of the program relies on problematic evidence. It is inconclusive as to whether ParentsNext is actually

achieving its objectives, or whether it has had positive effects that outweigh placing the social security payments of parents at risk.

10. Further, alternative approaches are readily available that are less restrictive of the right to social security, such as incentive based models.
11. The disproportionate impact of ParentsNext on women and Indigenous Australians also raises serious concerns about the right to equality and non-discrimination.<sup>6</sup>
12. The Commission reiterates its previous submissions expressing concern about the compatibility of the TCF with human rights, including with respect to the Community Development Program.<sup>7</sup>

## 2 Recommendations

13. The Commission recommends that:

**Recommendation 1:** The Targeted Compliance Framework be removed from ParentsNext, so that participants cannot be subject to suspension, reduction or cancellation of their Parenting Payment for non-compliance with program requirements.

**Recommendation 2:** Participation in ParentsNext be on a voluntary, opt-in basis, rather than a mandatory basis.

**Recommendation 3:** The scope of ParentsNext be expanded to allow access by any disadvantaged parent facing barriers to employment who wishes to participate, rather than targeted on the basis of sex or race.

**Recommendation 4:** If Recommendation 1 is not accepted, the program safeguards be revised to better prevent inappropriate and unfair compliance action, including through:

- removing the automatic suspension of payments for non-compliance, prior to any review of whether suspension is appropriate
- providing notice in advance to a participant of a possible suspension, with an opportunity to respond and comply
- removing the ability for payments to be suspended as a result of assessments made by commercial providers, or alternatively enhancing oversight by the Department of Human Services of the suspension of payments and the imposition of demerit points by providers, including a formal system for review of demerits

- requiring that a participant capability review be carried out prior to the application of any penalty
- ensuring that providers and decision makers have the appropriate qualifications and training to carry out their role, in particular to perform capability interviews and assessments, including expertise in family violence, common health issues faced by participants and cultural competency to ensure a culturally safe and secure environment for Indigenous participants
- ensuring that providers are appropriately independent, for example through financial incentives being provided directly to participants rather than to providers.

**Recommendation 5:** The Government ensure appropriate engagement with and the inclusion of Indigenous communities and Aboriginal Community Controlled Organisations in the design, oversight and operation of ParentsNext, to allow for self-determination and participation in decision making.

**Recommendation 6:** Evaluation data from the ParentsNext trial be publicly released to enhance scrutiny and reform, including information on sample size, participant selection methodology, the de-individualised raw aggregated data corresponding to each survey question and the survey instrument/s.

**Recommendation 7:** A more methodologically rigorous evaluation of the expanded ParentsNext program be conducted by an independent research body, rather than the Government. This should include clear identification of the academic research and statistical evidence relied on to assess whether punitive compliance achieves the desired objectives of the program in a reasonable, necessary and proportionate manner.

**Recommendation 8:** The Government provide information about its plan to holistically address the structural barriers to decent work facing the participants of ParentsNext, including the resources it has committed to keeping families above the poverty line, ensuring access to education, affordable childcare and healthcare, recognising the value of unpaid care, and meaningful consultation with affected groups including Indigenous Australians.

## 3 Background

### 3.1 Parenting Payment

14. The Parenting Payment is the main form of income support available to a parent or primary carer of a young child. The amount of Parenting Payment received depends on the parent's income.
15. Single parents have to meet specified eligibility criteria to receive the Parenting Payment, including earning under approximately \$55,000 gross income per annum and having a child who is under eight years old.<sup>8</sup> The *maximum* fortnightly amount of Parenting Payment for a single person is \$768.50. A single parent with one child will only receive the maximum payment if their gross income is approximately \$5,000 or less per annum.<sup>9</sup> Approximately 71.5% of Parenting Payment recipients are single parents.<sup>10</sup>
16. The Parenting Payment is also available for partnered parents who meet the combined low income criteria, where a child is under six years old. Only one partner out of a couple is entitled to the Parenting Payment. The *maximum* fortnightly amount for a partnered person is \$496.70.<sup>11</sup>
17. ParentsNext is a 'pre-employment' support program that is compulsory for targeted recipients of the Parenting Payment. It *requires* certain recipients of the Parenting Payment to enter into and comply with a participation plan containing parenting, pre-employment and employment goals, to meet with a ParentsNext provider regularly, to report fortnightly on their income and plan progress, and to undertake compulsory activities in their plan.<sup>12</sup>
18. Such activities can include parenting courses, parents groups, financial management courses, medical appointments, part-time work, English programs, training or educational activities (e.g. school or TAFE) or engagement with government programs such as Jobactive.
19. A failure to comply with compulsory requirements can result in the suspension, reduction or cancellation of Parenting Payment benefits.
20. The vast majority of the 327,000 parents in receipt of the Parenting Payment are not subject to ParentsNext.<sup>13</sup> Therefore, they receive their entitlements without having to meet the requirements of the program.

### 3.2 Expansion of ParentsNext program

21. The group of people who are required to participate in the ParentsNext program is set out in the *Social Security (Parenting payment participation requirements—classes of persons) (No. 1) Instrument 2018 (Cth)* (the Instrument). The Instrument commenced on 1 July 2018.
22. The Instrument expanded ParentsNext from the trial phase commenced in 2016, where it applied to ten local government areas and around 22,000 parents.<sup>14</sup> The expanded program is expected to apply to around 68,000 parents annually from 1 July 2018.
23. The Instrument applies the program to a designated class of persons, by reference to criteria that include geographic area, work status, receipt of benefits and age of children.
24. A person who meets all of the following criteria is required to take part in the ParentsNext program. The person:
  - has been in receipt of the Parenting Payment for more than six months in a row
  - has not earned any income in the past six months
  - has a youngest child aged at least six months and under six years of age
  - lives in a 'Targeted Stream' or 'Intensive Stream' location and meets high risk/high priority criteria
  - is not taking part in Disability Employment Services, Australian Disability Enterprises or Jobactive stream C servicing
  - does not live in a remote area serviced by the Community Development Program.<sup>15</sup>
25. The Instrument designates 67 'listed local government areas'.<sup>16</sup> This includes the ten local government areas that were part of the initial trial and 57 additional local government areas. It provides that 'Intensive Stream' participants must reside in a Jobactive employment region *and* in a listed local government area. 'Targeted Stream' participants must reside in a Jobactive region, but not in a listed local government area. That is, the Targeted Stream will apply to Jobactive regions throughout Australia, other than in the listed local government areas where the Intensive Stream applies.
26. For those living in a 'Targeted Stream' location, the high risk/high priority criteria are established by *one* of the following. The person:
  - is an 'early school leaver'

- is part of a jobless family, and has a youngest child at least five years of age
  - has been assessed as highly disadvantaged by their Job Seeker Classification Instrument, and has a youngest child who is at least three years of age.<sup>17</sup>
27. For those living in an 'Intensive Stream' location, the high risk/high priority criteria are broader and established by *one* of the following. The person:
- is an early school leaver
  - has a youngest child aged at least five years of age
  - has been assessed as highly disadvantaged by their Job Seeker Classification Instrument.<sup>18</sup>
28. The application of ParentsNext to disadvantaged parents, and in particular to Indigenous women, is a recognised and intended program impact. For example, the expanded program has been described by the Government as being delivered:
- nationally, to the most disadvantaged parents in all 51 Employment Regions covered by Jobactive providers (the Targeted Stream)
  - as a more intensive service in 30 locations, which are highly disadvantaged or have a high proportion of Parenting Payment recipients who are Indigenous (the Intensive Stream).<sup>19</sup>
29. The Intensive Stream has 'a stronger focus on supporting parents, including Indigenous Parents, into work'.<sup>20</sup> This is said to be achieved by the provision of additional funds to Intensive Stream providers 'so they can assist parents to access and participate in services that will help them prepare for employment'.<sup>21</sup>
30. Such funds include \$1200 credit for each parent commencing in the program to reimburse spending on relevant goods or services, and \$300 'outcome payments' for each educational attainment or sustainable employment outcome achieved by a participant.<sup>22</sup>
31. Providers can apply these funds to expenditure on goods and services for participants in categories such as vocational or non-vocational training (e.g. food safety training or financial counselling), job-related mentoring, professional services (e.g. drug counselling) and work related expenses (e.g. police checks).<sup>23</sup>

32. Notably, these additional funds go to providers rather than individual parents. They can be spent by a provider 'flexibly' on Intensive Stream participants, rather than directly on a particular parent.<sup>24</sup>
33. The Commission understands that, generally, the incidental costs of participating in compulsory activities, including the costs of transport and childcare, are not covered by ParentsNext. Further, it understands that some educational requirements may need to be self-funded in part or full.
34. The application of ParentsNext to young parents who are 'early school leavers', as one category of eligible participants, is also deliberate. Pursuant to the definition in s 23 of the *Social Security Act 1991* (Cth), an 'early school leaver' is a person aged under 22 years who has not completed the final year of secondary school (or an equivalent level of education) and is not undertaking full time study.

### **3.3 Targeted Compliance Framework**

35. The TCF applies to compulsory ParentsNext participants pursuant to the Instrument, the *Social Security Act 1991* (Cth) and the *Social Security (Administration) Act 1999* (Cth).<sup>25</sup>
36. The Department of Jobs and Small Business, the Department of Human Services, and ParentsNext providers enforce the application of the TCF to ParentsNext participants. Typically, ParentsNext providers are private, non-government entities.
37. The Parenting Payment will be suspended if a participant parent misses one requirement contained in their plan.<sup>26</sup> A failure to comply could include not attending an appointment, activity or interview. The suspension of payment is immediate and automatic. A parent must speak with their ParentsNext provider, and meet the missed requirement, before their Parenting Payment will recommence.
38. The reduction or cancellation of a payment works on a graduated basis through a system of demerit points.
39. Each parent starts in the 'green zone' with no demerits. The provider will issue a parent with a demerit point if the parent fails to meet a requirement in their plan and the provider is not satisfied that the parent has a 'valid reason' for missing the requirement.<sup>27</sup>
40. When one demerit point is received, the parent enters the 'warning zone'. Each demerit point lasts six months.
41. If three demerit points are received in a six month period, the parent must attend a 'capability interview' with their ParentsNext provider.

42. If a parent receives five demerits points within a six month period, they will be referred for a 'capability assessment' conducted by the Department of Human Services.
43. If the parent does not persuade the Department of Human Services that the requirements imposed are inappropriate, the parent may be moved into the 'penalty zone' and risk receiving a financial penalty or having their Parenting Payment cancelled altogether.
44. At such capability reviews, the parent will have the opportunity to discuss the reasons that they have not met their participation plan requirements, identify issues and review their plan to ensure that they can meet its requirements.
45. In the penalty zone, rather than receiving demerits, parents receive financial penalties for not meeting their participation plan requirements without a reasonable excuse. The financial penalties are tiered and deducted from the Parenting Payment as follows:
  - first penalty: loss of half of a fortnightly Parenting Payment
  - second penalty: loss of all of a fortnightly Parenting Payment
  - third penalty: cancellation of the Parenting Payment.
46. If a parent complies with a participation plan for three months, they will return to the green zone with no demerits.
47. Compliance is monitored through reporting. Where a participant is deemed able to self-report their attendance at an activity, reporting occurs through the Jobactive mobile phone App or the Jobactive website. Where a participant is not able to self-report, a provider can report on their behalf, in accordance with Departmental guidelines.<sup>28</sup> For example, providers are instructed that attendance at a provider appointment should be recorded when a person has arrived on time at the correct location, behaved appropriately and participated for the duration of the appointment.<sup>29</sup>
48. ParentsNext providers are also responsible for identifying failures to comply with plan requirements, which has the effect of suspending the payment that parents receive. ParentsNext providers are also responsible for the decision to impose demerit points.
49. The information provided by Department of Human Services about the demerit system states: '[i]f you disagree with a demerit you need to talk to your provider about it. We can't change or remove demerits'.<sup>30</sup> A complaint can be lodged with the Department of Jobs and Small Business about a demerit, but the Department will only refer the complaint back to the provider to action (which may include the

- provider reviewing their reason for the decision or decision-making processes).<sup>31</sup>
50. A financial penalty or cancellation of a payment can only be implemented by the Department of Human Services, rather than a provider. Before imposing any penalty for a failure to meet participation requirements, the Departmental decision maker must establish whether they are satisfied that the job seeker has a 'reasonable excuse' for failing to meet their requirements.
  51. The *Social Security (Administration) (Reasonable Excuse—Participation Payments) Determination 2018* (Cth) (the Determination) sets out factors that must be considered, and factors that must not be considered, when determining whether a 'reasonable excuse' is made out.
  52. Under subparagraph 5(2) of the Determination, mandatory considerations include: that the person did not have access to safe, secure and adequate housing; the literacy and language skills of the person; an illness, injury, impairment or disability; a psychiatric or psychological impairment or mental illness; drug or alcohol dependency; unforeseen family or caring responsibilities; criminal violence; and undertaking paid work or a job interview at the time of the failure.<sup>32</sup>
  53. Under paragraph 6 of the Determination, a decision maker must not take into account certain matters. This includes any factor that did not directly prevent the person from meeting their requirements at the time of their failure. It also includes drug or alcohol dependency, if the person has previously used drug or alcohol dependency as a 'reasonable excuse' and refused or failed to participate in available treatment.
  54. The *Social Security Act 1991* (Cth) also provides for longer term exemptions, which suspend the need for participants to meet requirements for the duration of the exemption. Exemptions may be provided for circumstances that include domestic violence, pre-natal and post-natal relief, temporary incapacity and other special circumstances.<sup>33</sup>
  55. ParentsNext providers have the power to grant a parent an exemption from their participation requirements, relying on Departmental guidance.<sup>34</sup>
  56. A person can apply to the Department of Human Services for review of a decision to suspend, reduce or cancel the Parenting Payment. The person will not receive a payment until the review is complete. A final review is available through the Administrative Appeals Tribunal.<sup>35</sup>

57. If a recipient's Parenting Payment is cancelled, they will have to submit a new application to re-establish their eligibility. They would face a waiting period of at least one month before receipt of payment.

## 4 The right to social security and related rights

58. The right to social security is recognised in several international legal conventions to which Australia is a party.
59. Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) provides:  
The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.<sup>36</sup>
60. The right to social security encompasses the right to access and maintain benefits in order to secure protection from social risks and contingencies.<sup>37</sup> It includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage.<sup>38</sup>
61. In accordance with articles 2(1) and (2) of ICESCR, States must take steps, to the maximum of their available resources, to achieve progressively the full realisation of the right to social security without any discrimination.<sup>39</sup>
62. The rights of women and Indigenous peoples to social security is particularly recognised and protected by article 5(e)(iv) of the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD), articles 11(1)(e) and 14(2)(c) of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) and article 21(1) of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).<sup>40</sup>
63. With respect to a child's right to social security, article 26 of the *Convention on the Rights of the Child* (CRC) provides:  
(1) States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.  
(2) The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.<sup>41</sup>
64. Under the CRC and other human rights treaties, parents and their children also have the right to: an accessible education, enjoyment of

the highest attainable standard of health, an adequate standard of living, protection of the best interests of the child, and the protection of families—particularly when they are responsible for the care and education of dependent children.<sup>42</sup>

65. The United Nations Committee on the Rights of the Child has also emphasised the particular social protection needs of young parents and their children:

Articles 24 and 27 of the Convention require that adolescent parents and caregivers be provided with basic knowledge of child health, nutrition and breastfeeding, and appropriate support to assist them in fulfilling their responsibilities towards the children they are responsible for and, when needed, material assistance with regard to nutrition, clothing and housing. Adolescent caregivers need extra support in order to enjoy their rights to education, play and participation.

In particular, States should introduce social protection interventions at key stages of the life cycle and respond to the specific requirements of adolescent caregivers.<sup>43</sup>
66. The Parenting Payment helps fulfil the right to social security under each of these international instruments, and supports the realisation of many other human rights.<sup>44</sup>
67. Through its redistributive character, social security also plays a vital role in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion.<sup>45</sup> More broadly, it reduces inequality and promotes human dignity, fairness and social justice.<sup>46</sup>
68. The UN Committee on Economic, Social and Cultural Rights (the Committee) has expanded on the nature and content of the obligations in article 9 of ICESCR in General Comment No 19.<sup>47</sup>
69. The Committee has stated that social security benefits cannot be defined narrowly, and must guarantee the equal enjoyment by all of minimum and adequate protection.<sup>48</sup>
70. States must protect, respect and fulfil the right to social security.<sup>49</sup> The obligation to *respect* requires that states refrain from interfering, directly or indirectly, with the enjoyment of the right to social security. The obligation to *protect* requires states to prevent third parties from so interfering. The obligation to *fulfil* requires the adoption of necessary measures, including a social security scheme, directed towards the full realisation of the right.
71. Public authorities are required to 'take responsibility for the effective administration or supervision of the [social security] system', in order to ensure consistency and certainty in service delivery.<sup>50</sup>

72. While the right to social security requires progressive realisation, ICESCR also imposes some obligations of *immediate* effect. These include that the right to social security will:
- be exercised without discrimination of any kind (article 2(2))
  - ensure the equal rights of men and women (article 3)
  - be fulfilled through taking deliberate, concrete and targeted steps towards the full realisation of the right (article 2(1)).<sup>51</sup>
73. Under article 4 of ICESCR, the right to social security can only be subject to limitations that are both:
- determined by law, only in so far as this may be compatible with the nature of these rights
  - solely for the purpose of promoting the general welfare in a democratic society.<sup>52</sup>
74. As acknowledged in the Explanatory Statement to the Instrument, any limitations on the right to social security must be proportionate, the least restrictive alternative, of limited duration and subject to review.<sup>53</sup>
75. There is a strong presumption that *retrogressive* measures taken against the right to social security are prohibited under ICESCR.<sup>54</sup> If deliberately retrogressive measures are taken, the Committee has stated that:
- [T]he State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources of the State party. The Committee will look carefully at whether: (a) there was reasonable justification for the action; (b) alternatives were comprehensively examined; (c) there was genuine participation of affected groups in examining the proposed measures and alternatives; (d) the measures were directly or indirectly discriminatory; (e) the measures will have a sustained impact on the realization of the right to social security, an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security; and (f) whether there was an independent review of the measures at the national level.<sup>55</sup>
76. With respect to social security for families and children, the Committee has stated:
- Benefits for families are crucial for realizing the rights of children and adult dependents to protection under articles 9 and 10 of the Covenant. In providing the benefits, the State party should take into account the resources and circumstances of the child and persons having

responsibility for the maintenance of the child or adult dependent, as well as any other consideration relevant to an application for benefits made by or on behalf of the child or adult dependent. Family and child benefits, including cash benefits and social services, should be provided to families, without discrimination on prohibited grounds, and would ordinarily cover food, clothing, housing, water and sanitation, or other rights as appropriate.<sup>56</sup>

77. With respect to the rights of Indigenous peoples and minorities to social security, the Committee has stated:

Particular care should be taken to ensure that Indigenous peoples and ethnic and linguistic minorities are not excluded from access to social security through direct or indirect discrimination, particularly through the imposition of unreasonable eligibility conditions or lack of adequate access to information.<sup>57</sup>

## 5 Key human rights concerns

### 5.1 Punitive compliance model

78. The Statement of Compatibility with Human Rights for the Instrument recognises that ParentsNext may limit the rights to social security and an adequate standard of living.<sup>58</sup>
79. It seeks to justify any limitation on the basis that the program pursues a 'legitimate objective', that there is a 'rational connection between the limitation and the objective' and that the limitation is 'reasonable, necessary and proportionate' to achieving this objective. This is an appropriate framework within which to examine limitations to human rights. However, it is necessary to closely examine these claims.
80. The Statement of Compatibility with Human Rights makes the following assertions:

*Reason for limitation—legitimate objective*

The objective of ParentsNext is to encourage and assist eligible parents who are in receipt of parenting payment and have young children to identify and make progress towards achieving their education and employment goals through participation in activities and connecting to local services. This is a legitimate objective because the attainment of educational qualifications and skills that support undertaking work assists parents to find employment when their children reach school age, and reduces the risk of long-term poverty and welfare dependency for themselves and their children.

*Rational connection between the limitation and the objective*

Current ParentsNext providers have reported that participants are frequently reluctant to participate in programs like ParentsNext, despite its benefits. Participants often come from families that are subject to intergenerational disadvantage, and may suffer from complex circumstances that act as barriers to employment and education (like homelessness, domestic violence, drug and alcohol dependency, mental health challenges, and/or language and numeracy difficulty). This can mean they are unable to identify ways to improve their education and work prospects, and are discouraged from seeking (or unable to seek) support.

The risk of compliance action has proved to be effective in ensuring participants engage with providers delivering ParentsNext and similar programs, and are able to benefit from the services that they offer (including support to address the barriers to employment and education identified above). Linking participation requirements to the continued receipt of income support payments also acts as a re-engagement mechanism to ensure participants continue to actively participate and are focussing on the long term outcomes for themselves and their children.

Qualitative research undertaken in the 10 locations in which ParentsNext has operated since April 2016 indicates that the program has positively impacted the level of confidence and self-esteem of participants. The majority of participants consider it to be an effective program. Ninety per cent of current ParentsNext providers agree that it improves participants' work readiness and their chances of finding and keeping a job; connects participants to assistance to address barriers to employment and education; and engages participants in activities to achieve their employment and education goals. The program has also delivered a notable increase in networks and partnerships formed, including working relationships between ParentsNext providers and parents' support networks.

To date, ParentsNext has helped around 22,000 participants to meet their individual employment and education goals and prepare for work, including by undertaking more than 39,000 activities like education, training and non-vocational services. Nearly 400 participants have left the program after finding stable employment [data as at 31 January 2018].

*Limitation is reasonable, necessary and proportionate*

Any limitations there may be to the right to social security and the right to an adequate standard of living, due to imposing requirements directed at overcoming barriers to employment, are reasonable and necessary in view of the evidence outlined above. The limitations are also proportionate for the reasons discussed below.

Persons in each class are only required to attend quarterly interviews with ParentsNext providers, sign a Parenting Payment Employment Pathway Plan containing a compulsory activity, and participate in that activity. This

is much less than standard participation requirements for those serviced by Jobactive employment service providers, which usually include more regular appointments, monthly job search requirements, and more intensive activities with minimum hourly requirements.

A ParentsNext provider is required to work actively with a person to understand their specific needs, the barriers to employment and education that they face, and their family circumstances in determining an appropriate compulsory activity. In signing the Parenting Payment Employment Pathway Plan, the person agrees that the compulsory activity is appropriate and undertakes to complete the activity. Activities may include, for example, updating existing skills or gaining recognition of prior skills; training or further study (particularly Year 12 or Certificate III qualifications for parents who have not completed the final year of secondary school); referrals to local services, like parenting services; literacy and numeracy courses; or referrals to services to address non-vocational barriers to employment like confidence building, health care or counselling.

In relation to the compliance action that may (or will) be taken if a person fails to comply with their participation requirements, if a participant's parenting payment is suspended, payment is often reinstated in full (including back payment) once the participant re-engages. Payment reduction or cancellation will not occur if the person has a reasonable excuse for the failure. A reasonable excuse includes, for example, where the person is suffering from a serious illness, or if the person has unforeseen family or caring responsibilities.

Further, participants will also be able to seek a review of any decision to apply a financial penalty or to cancel their payment. Finally, notwithstanding non-compliance, Family Tax Benefits payable to the person remain unaffected.

ParentsNext providers are made aware of the risk of participants not meeting participation requirements and work actively to support them to do so. Once commenced in the program, participants usually see its benefits very quickly and choose to actively engage for the benefit of themselves and their families.<sup>59</sup>

81. While acknowledging that ParentsNext could bring some benefits to its participants, the Commission considers that the explanatory materials fail to establish the compatibility of ParentsNext with the right to social security for several reasons. In summary:
- applying penalties to the Parenting Payment to achieve the purported program objectives is not justifiable
  - the punitive compliance framework permits social security to be reduced below the minimum essential level for parents caring for young children

- permitting this kind of reduction is a retrogressive measure that is contrary to Australia’s obligation of progressive realisation
  - the families affected are some of the most vulnerable in Australia, and the detrimental impacts on them will be severe
  - the evaluation of the program trial relies on problematic evidence and it is not possible to conclude that it is achieving its aims or that it has had a positive effect which outweighs the significant detriment to participants of placing their social security at risk
  - there are inadequate safeguards in the program to prevent inappropriate compliance action
  - alternatives are readily available that are less restrictive of the right to social security, including incentive based models.
82. These points are expanded on in more detail below.
83. The Commission is also concerned by media reports that ParentsNext participants are being compelled to sign privacy consent and notification forms, under threat of losing their Parenting Payment, to allow the disclosure of personal information to providers. Such information could include sensitive health information about themselves or their children.<sup>60</sup>
84. The Commission seeks further information from the Government as to why this interference with privacy is lawful and not arbitrary, including the measures taken to ensure that providers are appropriately collecting, using, disclosing and storing personal information.
- (a) *Breach of minimum essential level of social security and retrogressive measure*
85. The Parenting Payment is the main form of social security relied on by primary carers of young children, who otherwise have inadequate financial means.
86. The adequacy of Parenting Payment rates is questionable in the first place, without the addition of financial penalties.
87. Bodies such as the Australian Council of Social Service (ACOSS) use 50% of median household income as a measure of the poverty line. On this basis, in 2018 the poverty line was \$433 a week for a single adult living alone or \$909 a week for a couple with two children.<sup>61</sup>
88. Accordingly, those receiving the Parenting Payment are already likely to be living close to or below the poverty line. For example, in order to receive the *maximum* amount of the Parenting Payment of \$385 per

week, a single parent with one child would need to be earning less than \$5,000 per annum or less than \$100 per week.

89. If this single parent is earning \$5,000 per annum, then they would exceed the poverty line for a single person (without any children) by only around \$50 per week, without taking into account the costs of caring for a child. However, if the single parent is not working at all and is totally reliant on the Parenting Payment, then their income would already be significantly below the poverty line.
90. As noted earlier, around 71.5% of Parenting Payment recipients are single parents. It is a requirement of participation in the ParentsNext program that the participant has not engaged in work which generates employment income for at least 6 months. Therefore, ParentsNext participants are very likely to already be living below the poverty line recognised by ACOSS.
91. Research on poverty in Australia has consistently found that single parents are particularly prone to financial stress. In 2018, 28.8% of single parents experienced financial stress, defined to include an inability to pay bills, rent or mortgage repayments on time, going without meals, asking for financial help, and an inability to afford heating.<sup>62</sup>
92. Case studies gathered by the Commission and other organisations about the experience of Australian single parents relying on welfare confirm the financial and other stresses faced, and the harsh consequences of punitive compliance.<sup>63</sup>
93. The current United Nations Special Rapporteur on extreme poverty and human rights, Philip Alston, recently expressed specific concern about the inadequacy of social protection for single parents and their children in Australia, and the harsh impacts of ongoing cuts:

Indexation amendments aside, there appears to be a lack of evidence proving that single parent entitlements throughout the course of their child's life up until 18 years of age are adequate in amount and duration for all family members to realize their rights to family protection and assistance, an adequate standard of living, and adequate access to health care to begin with ...

To cut social protection spending where it is desperately needed by poor individuals such as single mothers supporting children in difficult circumstances is not compatible with human rights standards. ...

It is both a safety net for those who require temporary financial support and a means of living for people who are unable to earn their own livelihood on a long-term basis. It is not a charitable concession whose recipients should be demonised and subjected to further social exclusion.

Societies can choose to address the structural causes of poverty and commit to providing all of their members with a decent rights-affirming existence. Or they can blame the poor for their own plight, take steps to further marginalise and stigmatize them, and make it ever more difficult for them to enjoy their right to social security. Australia appears to be in the process of opting for the second of these alternatives ... .<sup>64</sup>

94. The former United Nations Independent Expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, has stated that:
- Under international human rights law, States have an obligation to immediately meet minimum essential levels of the rights of food, health, housing, education and social security. The enjoyment of these rights by all individuals is not conditional on the performance of certain actions or the meeting of requirements. Rather, these are inherent rights which are essential to the realisation of human dignity.
- In this context, non-compliance with conditionalities attached to social protection programmes must not result in the exclusion of beneficiaries from programmes and services which are essential to their enjoyment of minimum essential levels of basic human rights. The imposition of conditionalities, therefore, should be analysed with respect to the overall set of obligations of the State and the need to meet minimum essential levels of economic, social and cultural rights.<sup>65</sup>
95. The Commission considers that the suspension, reduction or cancellation of the Parenting Payment as a result of compliance action is not compatible with the nature of the right to social security, which protects a minimum essential level of social security. It reduces the level of support that has been deemed appropriate by the Government to support the costs of raising a young child, and also falls short of objective measures of adequacy.
96. As set out in General Comment No 19, there is also a presumption that retrogressive measures are prohibited under ICESCR. This means that particularly compelling justification is required to establish the validity of a measure that reduces the extent to which an economic, social and cultural right is already provided for.
97. By making the Parenting Payment conditional on compliance with compulsory requirements under the threat of penalty, ParentsNext 'winds back' both the amount and guarantee of pre-existing social security benefits. The Commission considers that no due justification has been provided for this deliberate retrogression.
98. This program is part of a concerning trend of diminished social security entitlements for single parents, including the move of approximately

100,000 single parents, mostly women, from the Parenting Payment to the lower Newstart Allowance in 2013.<sup>66</sup>

(b) *Severe detrimental effects on parents and children*

99. The Explanatory Statement fails to address the potentially grave impacts on the human rights of parents and children whose payments are suspended, reduced or cancelled. This raises concerns about the adequacy of the proportionality analysis conducted.
100. For example, the Explanatory Statement does not address the implications for a single parent with no other source of income who, as a result of compliance action, may be unable to afford basic necessities and services for themselves or their children. As a result, a child may be left without adequate food, water, shelter or medical care.
101. As discussed above, the Commission is concerned that program participants—who are among the most disadvantaged Parenting Payment recipients and are more likely to rely on the receipt of social security to afford basic goods and services—are the ones subjected to punitive action.<sup>67</sup>
102. Further financial hardship could occur as a result of punitive compliance under ParentsNext, for example due to automatic payment suspension after one non-compliance or the reduction of a fortnightly payment by half or whole.
103. While suspension might occur on a short-term basis, the detrimental impacts could still be severe. The assertion that suspended payments will be reinstated once compliance occurs does not solve the harm that could occur in the intervening period.
104. The automatic suspension approach can be contrasted with alternatives in different jurisdictions. For example, in New Zealand written notice must be provided five days ahead of any sanction being applied specifying information including the person's rights of review.<sup>68</sup>
105. In the most extreme situations, for example payment cancellation, punitive compliance could cause acute and long-term financial hardship and insecurity. Such outcomes risk exacerbating and entrenching cycles of poverty, inequality and intergenerational disadvantage.
106. Punitive compliance action may also reduce a person's resilience to the complex challenges they face, such as homelessness, domestic violence, drug and alcohol dependency, mental health challenges and

language or numeracy difficulty. These challenges are the exact 'barriers to employment' that ParentsNext purports to address.<sup>69</sup>

107. Available evidence shows that numerous ParentsNext participants have been subject to the compliance framework:

As of 31 August 2018, 84 participants had a demerit point. One participant had triggered a capability interview, having reached three demerit points in two months. This is the new process that came into effect in July. But their demerits were reset to zero, as the requirements were not suitable to their circumstances. Additionally 2,683 participants had received a payment suspension. This equates to 9.8 per cent of all participants at the time ...

That evaluation also indicates that 9.1 per cent of participants experienced a suspension of their payment during the first 15 months of the trial and that three commenced participants had their payment cancelled after failing to engage in the program for 13 continuous weeks.<sup>70</sup>

The number of parents subject to compliance is only likely to have increased following the program expansion to 68,000 participants.

108. During the trial phase, 27% of participants were granted at least one exemption from participation requirements.<sup>71</sup> This relatively large number of exemptions, granted to almost one third of participants in total, is indicative of the prevalence of the complex challenges faced by ParentsNext participants.
109. It is likely that an even higher proportion of participants would legitimately qualify for an exemption, for reasons such as domestic violence, but have not reported or completed the necessary administrative steps to obtain an exemption.
110. This raises concerns about the efficacy and efficiency of administering the program, given the recognition of a legitimate basis for granting so many exemptions. The exemptions permit a suspension of requirements which essentially results in ParentsNext participants being temporarily returned to the position of other Parenting Payment recipients.

(c) *Problematic evidence*

111. In the Explanatory Document and Statement of Compatibility with Human Rights, it states that the compliance model has 'proven to be effective' and 'reduces the risk of long-term poverty and welfare dependency'. However, it does not provide adequate evidence in support of these claims.

112. There are divergent expert views on the effectiveness and desirability of targeted social benefits and the imposition of punitive conditions.
113. Academic studies have found that the evidence as to whether sanction-backed conditionality achieves positive employment outcomes and improves quality of life is 'at best, extremely mixed'.<sup>72</sup>
114. Research carried out on the efficacy of welfare conditionality in the United Kingdom over five years, in collaboration with six universities, found that punitive sanctions did not result in the desired behavioural change in jobseekers.<sup>73</sup>
115. Conditionality was found to be largely ineffective in facilitating people's entry into or progression within the paid labour market over time.<sup>74</sup> Sanctions or the threat of sanctions were found to be counterproductive.<sup>75</sup>
116. Further, opposed to historical understandings of social security as unproductive public expenditure, spending on poverty alleviation has more recently been understood as a productive investment that creates long-term economic growth. For example, the United Nations Special Rapporteur on extreme poverty and human rights has stated:

It is widely recognised that spending on poverty alleviation brings future economic gains by allowing people to escape poverty thereby reducing future expenditure on crime and health care, improving productivity, and ultimately reducing the number of people reliant on welfare.<sup>76</sup>
117. The Department of Jobs and Small Business, which is responsible for administering ParentsNext, produced a report analysing the 'early impact' of the trial during the period from 4 April 2016 to 30 June 2017 (the Report).<sup>77</sup>
118. The methodology included conducting a participant opinion survey and comparing the results to a survey of the opinions of non-participant parents in 'statistically similar comparison groups'. Based on the results of these surveys and other administrative data, the Report made the following assertions:
  - ParentsNext improves parents' attitudes to workforce participation
  - ParentsNext improves parents' wellbeing
  - having education and employment goals is associated with higher proportions of ParentsNext participants undertaking study and training, and looking for work
  - ParentsNext participants were more likely to achieve at least one of four proxy measures indicating that they were studying, training or working

- participating in ParentsNext leads to increased chances of studying or training
  - participating in ParentsNext leads to increased chances of employment although this is not a mandatory requirement of the program
  - participating in ParentsNext leads to increased use of child care
  - the program design and operational processes of ParentsNext helped enable it achieve its objectives.<sup>78</sup>
119. The Commission holds concerns about the reliability of the data on which these conclusions are based. A key limitation of the Report is that none of the claimed outcomes were directly measured. That is, there was no comparison of the position of participating parents before and after the trial. Nor was this a randomised control trial where two groups with the same characteristics were examined, with only one group participating in the ParentsNext program.<sup>79</sup>
120. It appears that, rather than using either of these approaches, the comparators used were a number of 'constructed non-participant groups' said to have similar characteristics to the participants.<sup>80</sup> There was little information as to how comparison groups were selected.
121. Further, as the Report acknowledges, 'data for many of the ParentsNext outcomes were not available for the comparison groups' so various proxy measures were used instead, including for education and employment.
122. Some limitations of the analysis are acknowledged in the Report itself, including issues with 'the extent to which a valid comparison group and a common outcome measure that was useable and available, outside the program administrative data, could be constructed'.<sup>81</sup>
123. The Report further admits that quantifying the actual effects of ParentsNext was 'difficult' because:
- The diverse range of participants received flexible assistance and achieved outcome measures expressed in terms of goal setting and attainment. This made it hard to isolate the effects of participation in ParentsNext, and to distinguish 'Project provider' specific effects from more general 'program' effects.
124. Any comparisons drawn with Jobactive participants are not appropriately analogous, given the additional time, financial and other responsibilities on ParentsNext participants as primary carers of young children. The objectives of these programs are different and it is inappropriate to assess them against each other.

125. The Report does not disclose how many participants undertook the evaluation survey, how they were chosen, and the circumstances in which the survey was completed. The Report does not include a copy of the survey. It is therefore unclear whether the sample size was statistically significant, and whether the design and methodology of the survey was appropriate.
126. The tentative wording of the Report findings also signifies the difficulties encountered in drawing clear conclusions, such as 'participating in ParentsNext leads to *increased chances* of employment' [emphasis added].
127. Further, the primary piece of data relied on for this conclusion was not the number of participants obtaining greater levels of employment. Rather, the primary piece of data relied on was an answer to a survey question asking participants whether they considered that participation in the program had improved their chances of getting a job. In fact, data indicated that 93% of program participants did not have a single fortnight during which their income support was reduced as a result of increased earnings, over the period analysed.<sup>82</sup>
128. As this Committee has heard in previous inquiries, data of this nature is likely to be affected by a 'social desirability bias', where those responding to a survey are more likely to respond in a socially acceptable way or in a way they anticipate that officials conducting the survey want to hear.<sup>83</sup> The risk of such a bias increases when the survey is conducted by the body administering the program.
129. Further, the Report suggests that a key value of the program was encouraging participants to *think about* education, training and employment goal setting, which *increased the likelihood* of undertaking training, study or voluntary work or looking for work [emphasis added].
130. Such phrasing suggests that a definitive causal link has not been established between program participation and the articulated policy goals of increased female workforce participation, reduced welfare dependency and decreased intergenerational joblessness.
131. Joblessness is a complex and multidimensional problem. Even if ParentsNext results in increased pre-vocational goal setting and achievement, there are plainly larger structural social and economic issues that inform the viability of the objectives of the program.
132. Such issues include the availability and accessibility of suitable jobs in the appropriate regions. Structural racism, unlawful discrimination in employment on the basis of caring responsibilities, and the availability

of other social services such as affordable childcare and healthcare pose additional barriers.

133. There are also a range of gender equality gaps in Australia that affect women's rights to work, to just and favourable conditions of work and to an adequate standard of living for themselves and their family. The Commission has consistently highlighted issues for women in the workplace including: occupational segregation,<sup>84</sup> the gender pay gap, the undervaluing of unpaid care work, low representation of women in leadership positions,<sup>85</sup> access to adequate paid parental leave and lack of flexible leave,<sup>86</sup> the absence of superannuation from paid parental leave,<sup>87</sup> and the resulting gender gap in retirement savings.<sup>88</sup> It has made a number of previous recommendations to enhance women's economic security and workplace participation.<sup>89</sup>
134. Such underlying factors are outside the control of individual program participants. However, they are often not properly considered in narratives that stigmatise the receipt of social security and view reliance on benefits as a consequence of individual failings.
135. There is also an important qualitative difference between more unstable, casual, precarious forms of employment and 'decent work'. The International Labour Organization has defined decent work to include work that delivers fair income, security in the workplace, and equality of opportunity.<sup>90</sup> However, gaining work other than 'decent work' could satisfy the participation requirements of the ParentsNext, but not its broader objectives.
136. These concerns are further compounded by the fact that raw data for the evaluation was not released. This makes it difficult to properly assess the quality of the analysis. Further, the evaluation appears to have been conducted by the Department of Small Jobs and Business rather than an independent consultant or research body.
137. The Commission also understands that the decision to expand the scope of ParentsNext was reached before the evaluation report was made public, raising concerns that the expansion was not informed by transparent evidence-based policy.<sup>91</sup>
138. When examining the effectiveness of the program, there are a range of relevant metrics which were not reported. For example, while the Report acknowledges that 'some parents' were concerned about the compulsory nature of the program, it does not quantify the level of this concern. Similarly, while it says that 'most providers' considered that parents would not have engaged if it were not compulsory, it does not say what the views of parents were to this issue.<sup>92</sup>

139. The Report also does not seek to weigh any benefits of the program with the adverse impact on participants. Between April 2016 and January 2018 there were approximately 22,000 participants in the ParentsNext program. Less than 400 participants, or less than 2%, left the program after finding stable employment.<sup>93</sup>
140. By contrast, between April 2016 and June 2017, 22% of participants had at least one compliance report and 9.1% of participants were suspended from income support.<sup>94</sup> More than 40% of participants who had their income support suspended lost income for more than a fortnight, and 8% of participants who had their income support suspended lost income for more than four weeks.<sup>95</sup>
141. Social policy researchers have suggested that a proper assessment of the value of coercive conditionality requires a robust framework that is evidence based, ethically literate and context specific.<sup>96</sup>

(d) *Reasonableness, necessity and proportionality not established*

142. The Commission considers that it is not reasonable to apply punitive measures to parenting benefits, which support the costs of raising a child, particularly for employment related objectives.
143. It has also not been shown that the compulsory and punitive compliance model is necessary to achieve the goals of ParentsNext. There is potential to achieve the same objectives through other less restrictive means, such as an incentive model. It is not clear that such alternatives were comprehensively examined.
144. There are also issues with the proportionality of the program, beyond the above discussion of unjustifiably severe sanctions.
145. For example, the requirements of a participant's plan can be highly varied. While certain activities might be of lesser importance to the objectives of the program, any non-compliance can result in the same severe sanctions. Media reports of payment suspension for a week for failure to attend a children's 'story time' activity are one example.<sup>97</sup>
146. By way of further example, the justifications provided with respect to 'early intervention', for example to support 'early school leavers', are applicable to only a small proportion of participants. The vast majority of participants in the ParentsNext trial phase were in fact over 22 years of age—11.2% of parents were aged less than 22 years, 37% were aged 22–29 years, 40.3% were aged 30 to 39 and 11.4% were aged over 40 years.<sup>98</sup>

147. Any assessment of the proportionality of the ParentsNext program should also take into account the program costs. These costs are substantial. The costs of administration, being approximately \$414,596 per annum,<sup>99</sup> could instead be provided directly to recipients, immediately enhancing their ability to financially provide for the needs of their child. This would go some way to assisting parents to achieve an income that is above the poverty line.

(e) *Program safeguards inadequate*

148. Compounding the above concerns are the ParentsNext program safeguards, which the Commission considers inadequate to ensure that compliance action does not breach the human rights of participants.
149. ParentsNext providers have a significant amount of discretion to deny or grant access to the Parenting Payment.
150. This includes through the identification of failures to comply with plan requirements, leading to the automatic suspension of payments, and the application of demerit points. If a participant disagrees with a decision to issue a demerit point, they are required to seek a review through their provider. The Department of Human Services has stated that it has no power to change or remove demerits.<sup>100</sup>
151. The Commission also understands that what constitutes a 'valid reason' for non-compliance is a matter for determination by providers, on the basis of policy guidance from the Department.<sup>101</sup>
152. The Department has stated that it cannot review a decision to impose a demerit point if the provider ascertains that there is no valid reason for non-compliance, as this is not a decision made under social security law.<sup>102</sup> Rather, any complaint made by a participant about demerits will be referred back to the provider for consideration.
153. As set out in General Comment No 19, the obligation to protect the right to social security requires a state to prevent third parties, including private entities who are acting as their agents, from interfering with the right.<sup>103</sup>
154. The Commission has previously commented that scrutiny by the Department of Human Services over the penalisation of participants by Community Development Program providers provided an important safeguard to prevent the imposition of penalties.<sup>104</sup>
155. It is more suitable that compliance action be carried out, assessed or reviewed externally by government decision makers with appropriate

- expertise, rather than commercial providers who have their own interests, including funding incentives.
156. It is also problematic that up to three demerit points can be issued by providers without first carrying out a capability interview or assessment, to ensure that participants are fully capable of carrying out their plan requirements.
  157. This approach does not allow for adequate consideration of the potential reasons for non-compliance, particularly where the TCF is intended to focus on those who are 'persistently and wilfully noncompliant ... while providing protections for the most vulnerable'.<sup>105</sup>
  158. In order to achieve this outcome, decision makers will need to deliver timely and well-informed decisions that accurately distinguish between persistent and willful non-compliance and chronic incapacity.
  159. Early capability assessments and other mechanisms should be in place for adequate discretion to be exercised in cases where factors outside participants' control have affected their ability to comply. Complex reasons such as intergenerational trauma, structural racism, poverty, substance abuse, and poor health on an ongoing basis may exist. These factors should be identified and considered before any penalty is implemented.
  160. It is also critically important that those assessing the capacity of participants to fulfil program requirements are appropriately qualified and trained to take into account both the cultural obligations of the local population, and the prevalence and impact of various forms of trauma within Aboriginal and Torres Strait Islander communities.
  161. The Commission also considers that further measures are required that allow for increased Indigenous self-determination and participation in decision making. These are key tenets of UNDRIP which the Australian Government endorsed in 2009.<sup>106</sup>
  162. UNDRIP articulates how the human rights principles in CERD and ICESCR apply to Indigenous Peoples, in particular the four principles of: self-determination; free, prior and informed consent; respect for and protection of culture; and non-discrimination and equality. Such measures not only promote the realisation of human rights, they also underpin effective community development.
  163. Despite a stated intention by the Department of Employment to promote culturally appropriate servicing and look for providers that 'strongly engage with local and Indigenous communities',<sup>107</sup> it is not

clear that local communities and Aboriginal-controlled organisations are being engaged to operate ParentsNext.

164. Nor do program safeguards ensure sufficient flexibility is provided to Aboriginal communities to make decisions as to what constitutes a legitimate program requirement.

## 5.2 Discriminatory impacts on women and Indigenous Australians

165. ICESCR protects the right to social security *without discrimination* of any kind and ensures the equal rights of men and women to economic, social and cultural rights; these are obligations of immediate effect.<sup>108</sup>
166. This means that the right to social security is to be enjoyed equally, regardless of protected attributes including sex, race, colour, national or ethnic origin or age.
167. The right to equality and non-discrimination in relation to social security is also recognised and protected under articles 1, 2 and 5(e)(iv) of CERD, articles 2 and 26 of the CRC and articles 2, 3, 11(1)(e) and 14(2)(c) of CEDAW.
168. The *Sex Discrimination Act 1984* (Cth) (SDA) is based on Australia's international commitments under CEDAW. Section 5 prohibits direct and indirect discrimination because of a person's sex in certain areas of public life. Relevantly, s 26 of the SDA prohibits discrimination in the administration of Commonwealth laws and programs. The SDA also aims to promote recognition and acceptance within the community of the principle of the equality of men and women.<sup>109</sup>
169. Direct discrimination happens when a person, or a group of people, is treated less favourably than another person or group because of their background or certain personal characteristics.
170. Indirect discrimination occurs when there is an unreasonable rule or policy that is the same for everyone but has an unfair effect on people who share a particular attribute.
171. The *Racial Discrimination Act 1975* (Cth) (RDA) is based on Australia's international commitments under CERD. Section 9 of the RDA prohibits direct and indirect discrimination on the grounds of race. Section 10 of the RDA protects the right to equality before the law. There are three key questions that need to be asked to assess whether initiatives are consistent with the RDA:<sup>110</sup>
- where the measure is established by legislation, does it guarantee equality before the law<sup>111</sup>

- is the measure implemented in such a way that avoids both direct and indirect discrimination<sup>112</sup>
  - is the measure exempt as a special measure<sup>113</sup>
172. Sections 14 and 15 of the *Age Discrimination Act 2004* (Cth) (ADA) prohibit direct and indirect discrimination because of a person's age.
173. The Commission considers that the targeted, disproportionate and adverse impacts of ParentsNext may breach Australia's obligations under the RDA, SDA, ADA and ICESCR, particularly with respect to non-discrimination against women, Indigenous Australians and young parents.
174. A significant number of compulsory participants are women and/or Indigenous Australians. Women are estimated to comprise approximately 96% of the 68,000 participants; approximately 19% or 14,000 participants are Indigenous Australians.<sup>114</sup> Notably, the proportion of participants who identify as Indigenous is higher than the estimate of 10,000 Indigenous women that is set out in the Explanatory Statement. The program also specifically targets young parents who have not completed high school.
175. The result of the statutory criteria is that more stringent obligations are imposed on targeted participants under threat of financial penalty. Accordingly, the rights of parents and children who are mandatory participants are unequally limited when compared to other recipients of the Parenting Payment.
176. As acknowledged in the Explanatory Statement, the program eligibility criteria is directly discriminatory on the basis of age.<sup>115</sup> In particular, the application of ParentsNext to 'early school leavers' means that persons under 22 years of age are treated less favourably than older parents in the same circumstances.
177. The Statement of Compatibility with Human Rights acknowledges that the intentional selection of Intensive Stream locations on the basis that they have a high proportion of parenting payment recipients who are Indigenous Australians amounts to direct discrimination on the basis of race. That is, there has been a positive decision to select Indigenous people for a program that involves punitive elements.
178. The Statement of Compatibility also acknowledges that the program could amount to indirect discrimination on the basis of sex because the vast majority of those affected will be women.<sup>116</sup> That is, while the criteria for selection to the program applies to both men and women, it results in a disproportionate over-representation of women.

179. The Statement of Compatibility recognises that the direct and indirect discriminatory impacts of the program may limit the rights of these groups to equality and non-discrimination.<sup>117</sup> However, it seeks to justify the limitations as follows:

It is appropriate to restrict the eligibility for ParentsNext to particular groups of parents as the program is designed to provide those groups with support to address the specific disadvantage they face. ...

The majority of parents in jobless families are women and, at any one time there are around 11,000 teenage parents on parenting payment. Around 80 per cent of these parents have not completed Year 12 or equivalent qualifications, and over 25 per cent have only primary school as their highest level of education. Teenage parents who are unemployed are far more likely to have poor employment prospects, low educational attainment, low incomes, poor health and low educational and employment outcomes for their children – contributing to the risk of long term welfare dependency for themselves and their children.

It is also appropriate that twenty of the Intensive stream locations were selected based on the proportion of parenting payment recipients who were Indigenous as one of the objectives of the program is to help Close the Gap in Indigenous employment. Indigenous women have lower employment rates than Indigenous men and non-Indigenous Australians. Indigenous Australians are around 5 five times more likely than non-Indigenous Australians to be on parenting payment, with around 45,000 Indigenous parents on the payment. ...

Given the high level of need amongst Indigenous parents, it is appropriate that the Australian Government identify locations to deliver the Intensive Stream of ParentsNext where a high proportion of parenting payment recipients are Indigenous. This will result in Indigenous parents being more likely to receive assistance from ParentsNext, receiving that assistance sooner, and receiving a higher level of assistance than if they had been in the Targeted stream.<sup>118</sup>

[citations omitted]

180. The Statement of Compatibility with Human Rights concludes that:

The identification of specific groups of parents, including by reference to their age, their children's age, their race, and indirectly, their sex, is reasonable, necessary and sufficiently precise to assist those parents to improve their family wellbeing, educational attainment and employment prospects and to begin to disrupt the intergenerational disadvantage from which many suffer...<sup>119</sup>

181. In the Commission's view, this explanation only goes so far as to identify the disadvantage facing these particular groups, rather than adequately justifying how the imposition of ParentsNext will resolve

this disadvantage. An underlying assumption of this analysis is that the program is a net benefit to all participants and therefore selecting participants based on race or sex does not amount to unlawful discrimination.

182. However, as discussed above, the application of the TCF has not been shown to be reasonable, necessary and proportionate. For the same reasons, the evidence does not demonstrate that differential treatment on the basis of sex or race is warranted.

183. In its 2017 report on Australia, the Committee on the Elimination of Racial Discrimination raised concerns about the equal access of Indigenous and Torres Strait Islander peoples to social security, stating:

The Committee is deeply concerned that Indigenous Peoples continue to experience high levels of discrimination across all socioeconomic indicators, including education, healthcare, employment and housing. Among others, the Committee is concerned about the low life expectancy, the low school attainment and high drop-out rates at all school levels, and the housing conditions, including overcrowding, especially those living in the Northern Territory, where the homelessness rate is nearly 15 times the national average. The Committee is also concerned that Indigenous Peoples including those living in remote areas face discrimination in access to social security benefits, notably through the mandatory income management scheme and the Community Development Programme.<sup>120</sup>

184. In its 2018 report on Australia, the Committee on the Elimination of Discrimination against Women also raised concerns about women's economic security in light of cuts to social welfare, health, education and justice budgets. It was especially concerned about the following:

- (a) The impact of those measures on women and the lack of any gender-impact analysis of those measures;
- (b) Budget cuts in services that focus on women's rights and cuts in the funding of women's organizations;
- (c) The fact that single-headed households, 83 per cent of which are headed by women, in particular are suffering the impact of the recent rise in prices for utilities and the loss of financial support, resulting in high debt levels and in one in five children experiencing food insecurity;
- (d) The fact that young mothers must pay back student loans, even with low income levels, the high rate at which they abandon their studies and that they receive childcare subsidies only if they are employed, which places them at risk of long-term welfare dependency and of their children being subject to out-of-home placement as a result of their situation of poverty;

- (e) The high rate of homelessness among women, with the fastest - growing homelessness rate being among women over the age of 55.<sup>121</sup>
185. In 2017, the Commission conducted a review of children’s rights, focusing on young parents.<sup>122</sup> It highlighted the many challenges faced in realising the rights of young parents and their children, and the need for tailored, targeted and coordinated support services. The Commission recommended that ParentsNext be made accessible to and tailored to the specific needs of young parents, in particular those living in rural or remote Australia, on a voluntary and non-punitive basis.<sup>123</sup> The Commission also recommended that the Government conduct research into the distinct needs and characteristics of young parents that present barriers to employment pathways, and the kinds of targeted interventions that are most likely to assist.<sup>124</sup>
186. Any differential treatment on the basis of a relevant attribute would be less objectionable if the Government were seeking to introduce a ‘special measure’, in order to achieve substantive equality.<sup>125</sup> However, the Government has not sought to place any reliance on the concept of special measures. In the Commission’s view, for the reasons discussed above, the current operation of ParentsNext is not a measure directed towards achieving substantive equality between women and men or between Indigenous Australians and other Australians.
187. The Commission considers that the additional mandatory requirements and punitive compliance model of ParentsNext do not amount to legitimate differential treatment.
188. The current operation of ParentsNext does not guarantee full and equal enjoyment of human rights and fundamental freedoms of women and Indigenous Australians. Instead, it may amount to a denial of equal enjoyment. As such, the program is not a justifiable limit and is inconsistent with Australia’s human rights obligations.

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- <sup>1</sup> The Commission is Australia's national human rights institution with 'A' status accreditation, and is established by the *Australian Human Rights Commission Act 1986* (Cth) (the AHRC Act). The Commission has responsibilities under the AHRC Act to examine the enjoyment and exercise of human rights, including by Aboriginal and Torres Strait Islander peoples.
  - <sup>2</sup> Senate Community Affairs References Committee, Parliament of Australia, *ParentsNext, including its trial and subsequent broader rollout* (4 December 2018) Terms of Reference (c).
  - <sup>3</sup> Senate Community Affairs References Committee, Parliament of Australia, *ParentsNext, including its trial and subsequent broader rollout* (4 December 2018) Terms of Reference (a), (b)(vii)-(ix) and (d).
  - <sup>4</sup> Department of Employment, 'ParentsNext National Expansion' (Discussion Paper, 12 September 2017) 8 [2.2]; Department of Jobs and Small Business, *Explainer: ParentsNext* (16 January 2019) <<https://www.jobs.gov.au/newsroom/explainer-parentsnext>>. Notably, original Government projections of the number of Indigenous participants appear to be an underestimate. While the Explanatory Statement provides an estimate of 10,000 Indigenous women, as at 31 December 2018, over 14,000 (19%) of parents in the program identified as Indigenous: Department of Jobs and Small Business, *Explainer: ParentsNext* (16 January 2019) <<https://www.jobs.gov.au/newsroom/explainer-parentsnext>>.
  - <sup>5</sup> Department of Jobs and Small Business, 'ParentsNext Evaluation Report' (Report, 2017) 50.
  - <sup>6</sup> As at June 2018, 82,541 people are on the partnered parenting payment, 244,296 are on the single parenting payment: Department of Social Services, *DSS Demographics* (June 2018) data.gov.au <<https://data.gov.au/dataset/ds-dga-cff2ae8a-55e4-47db-a66d-e177fe0ac6a0/details>>.
  - <sup>7</sup> Australian Human Rights Commission, Submission No 16 to Senate Community Affairs Legislation Committee, *Social Security Legislation Amendment (Community Development Program) Bill 2018* (Cth), 26 September 2018; Australian Human Rights Commission, Submission to Department of Prime Minister and Cabinet, *Discussion Paper: Remote Employment and Participation*, 9 February 2018.
  - <sup>8</sup> See s 500(1) of the *Social Security Act 1991* (Cth); see also Department of Human Services, *Parenting Payment: Income and Assets Tests* (14 November 2018) <<https://www.humanservices.gov.au/individuals/services/centrelink/parenting-payment/how-much-you-can-get/income-and-assets-tests#a1>> (calculated from \$2,139.85 gross income a fortnight).
  - <sup>9</sup> Department of Human Services, *Parenting Payment: Income and Assets Tests* (14 November 2018) <<https://www.humanservices.gov.au/individuals/services/centrelink/parenting-payment/how-much-you-can-get/income-and-assets-tests#a1>>.
  - <sup>10</sup> Department of Jobs and Small Business, 'ParentsNext Evaluation Report' (Report, 2017).
  - <sup>11</sup> Department of Human Services, *Parenting Payment: How much you can get* (8 November 2018) <<https://www.humanservices.gov.au/individuals/services/centrelink/parenting-payment/how-much-you-can-get>>.
  - <sup>12</sup> It is also possible to access ParentsNext as a voluntary participant, if you are a person who is in receipt of the Parenting Payment, has a child under 6 years old and resides in an 'Intensive Stream' location. This submission is primarily concerned with the human rights of persons who are required to participate in the program, who comprise approximately 97% of participants; see (Department of Jobs and Small Business, 'ParentsNext Evaluation Report' (Report, 2017) 30.
  - <sup>13</sup> Department of Social Services, *DSS Demographics* (June 2018) data.gov.au <<https://data.gov.au/dataset/ds-dga-cff2ae8a-55e4-47db-a66d-e177fe0ac6a0/details>>.
  - <sup>14</sup> *Social Security (Parenting payment participation requirements—classes of persons) Specification 2016* (No. 1) (Cth).

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- <sup>15</sup> Department of Human Services, *ParentsNext* (9 January 2019) <<https://www.humanservices.gov.au/individuals/services/centrelink/parentsnext>>.
- <sup>16</sup> *Social Security (Parenting payment participation requirements—classes of persons) (No. 1) Instrument 2018* (Cth) s 7(1)(a). The listed local government areas are: (a) Alice Springs (NT), (b) Darwin (NT), (c) Palmerston (NT), (d) Brighton (Tas), (e) Burnie (Tas), (f) Armadale (WA), (g) Bassendean (WA), (h) Bayswater (WA), (i) Belmont (WA), (j) Broome (WA), (k) Canning (WA), (l) Cockburn (WA), (m) East Fremantle (WA), (n) Fremantle (WA), (o) Gosnells (WA), (p) Greater Geraldton (WA), (q) Kalamunda (WA), (r) Kwinana (WA), (s) Melville (WA), (t) Mosman Park (WA), (u) Mundaring (WA), (v) South Perth (WA), (w) Swan (WA), (x) Victoria Park (WA), (y) Playford (SA), (z) Port Adelaide Enfield (SA), (aa) Port Augusta (SA), (bb) Whyalla (SA), (cc) Burdekin (QLD), (dd) Cairns (QLD), (ee) Cassowary Coast (QLD), (ff) Douglas (QLD), (gg) Logan (QLD), (hh) Mackay (QLD), (ii) Rockhampton (QLD), (jj) Toowoomba (QLD), (kk) Townsville (QLD), (ll) Greater Shepparton (VIC), (mm) Hume (VIC), (nn) Mildura (VIC), (oo) Ashfield (NSW), (pp) Ballina (NSW), (qq) Bankstown (NSW), (rr) Bellingen (NSW), (ss) Byron (NSW), (tt) Clarence Valley (NSW), (uu) Coffs Harbour (NSW), (vv) Dubbo (NSW), (ww) Gloucester (NSW), (xx) Great Lakes (NSW), (yy) Greater Taree (NSW), (zz) Kempsey (NSW), (aaa) Kyogle (NSW), (bbb) Leichhardt (NSW), (ccc) Lismore (NSW), (ddd) Marrickville (NSW), (eee) Nambucca (NSW), (fff) Orange (NSW), (ggg) Port Macquarie (NSW), (hhh) Randwick (NSW), (iii) Richmond Valley (NSW), (jjj) Shellharbour (NSW), (kkk) Sydney (NSW), (lll) Wellington (NSW), (mmm) Tamworth (NSW), (nnn) Tweed (NSW), (ooo) Wyong (NSW). The ParentsNext program groups these 67 local government areas into 30 broader locations.
- <sup>17</sup> *Social Security (Parenting payment participation requirements—classes of persons) (No. 1) Instrument 2018* (Cth) s 6.
- <sup>18</sup> *Social Security (Parenting payment participation requirements—classes of persons) (No. 1) Instrument 2018* (Cth) s 7.
- <sup>19</sup> Department of Jobs and Small Business, *2017-18 Budget—Employment Overview* (29 October 2018) <<https://www.jobs.gov.au/2017-18-budget-employment-overview>>.
- <sup>20</sup> Department of Employment, 'ParentsNext National Expansion' (Discussion Paper, 12 September 2017) 13 [4.5.1].
- <sup>21</sup> Department of Employment, 'ParentsNext National Expansion' (Discussion Paper, 12 September 2017) 13 [4.5.2].
- <sup>22</sup> Department of Employment, 'ParentsNext National Expansion' (Discussion Paper, 12 September 2017) 13 [4.5.1]–[4.5.2].
- <sup>23</sup> The full list of relevant reimbursement categories for the Participation Fund for the Intensive Stream are: Work Experience, Work Related Expenses, Professional Services, Job-Related Mentoring, Non-Vocational Training, Non-Accredited Training, Participant Support, Child Care Costs, Accredited Training and Accredited Interpreter Services. See Department of Jobs and Small Business, 'Participation Fund Guideline (Intensive Stream Only)' (ParentsNext Guideline, 25 June 2018) <[https://docs.jobs.gov.au/system/files/doc/other/participation\\_fund.docx](https://docs.jobs.gov.au/system/files/doc/other/participation_fund.docx)>.
- <sup>24</sup> Department of Jobs and Small Business, 'Participation Fund Guideline (Intensive Stream Only)' (ParentsNext Guideline, 25 June 2018) <[https://docs.jobs.gov.au/system/files/doc/other/participation\\_fund.docx](https://docs.jobs.gov.au/system/files/doc/other/participation_fund.docx)>.
- <sup>25</sup> *Social Security (Parenting payment participation requirements—classes of persons) (No. 1) Instrument 2018* (Cth); *Social Security Act 1991* (Cth) ss 500, 500A, 501, 502; *Social Security (Administration) Act 1999* (Cth) Pt 3, Div 3A.
- <sup>26</sup> Department of Jobs and Small Business, *FAQ: Targeted job seeker compliance framework* (13 August 2018) <<https://www.jobs.gov.au/newsroom/faq-targeted-job-seeker-compliance-framework>>; Department of Jobs and Small Business, 'Appointments and Activities Guideline' (ParentsNext Guideline, 25 June 2018) <<https://docs.jobs.gov.au/documents/appointments-and-activities-guideline>>.

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- <sup>27</sup> Department of Jobs and Small Business, 'Guideline: Targeted Compliance Framework' (ParentsNext Guideline, 16 July 2018) <[https://docs.jobs.gov.au/system/files/doc/other/targeted\\_compliance\\_framework.pdf](https://docs.jobs.gov.au/system/files/doc/other/targeted_compliance_framework.pdf)>.
- <sup>28</sup> Department of Jobs and Small Business, 'Appointments and Activities Guideline' (ParentsNext Guideline, 25 June 2018) <<https://docs.jobs.gov.au/documents/appointments-and-activities-guideline>>.
- <sup>29</sup> Department of Jobs and Small Business, 'Appointments and Activities Guideline' (ParentsNext Guideline, 25 June 2018) <<https://docs.jobs.gov.au/documents/appointments-and-activities-guideline>>.
- <sup>30</sup> Department of Human Services, *Demerits and penalties for not meeting mutual obligation requirements* (9 January 2019) <<https://www.humanservices.gov.au/individuals/enablers/demerits-and-penalties-not-meeting-mutual-obligation-requirements/44416>>.
- <sup>31</sup> Department of Jobs and Small Business, 'Guideline: Targeted Compliance Framework—Mutual Obligation Failures' (JobActive and ParentsNext Guideline, 13 August 2018) 19.
- <sup>32</sup> *Social Security (Administration) (Reasonable Excuse—Participation Payments) Determination 2018* (Cth) s 5(2).
- <sup>33</sup> *Social Security Act 1991* (Cth) Pt 2.10 Div 3A.
- <sup>34</sup> Department of Employment, 'ParentsNext National Expansion' (Discussion Paper, 12 September 2017) 19 [5.8].
- <sup>35</sup> Department of Jobs and Small Business, *FAQ: Targeted job seeker compliance framework* (13 August 2018) <<https://www.jobs.gov.au/newsroom/faq-targeted-job-seeker-compliance-framework>>.
- <sup>36</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).
- <sup>37</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No 19: The right to social security (article 9)*, 39<sup>th</sup> sess, UN Doc E/C.12/GC/19 (4 February 2008) 2 [2].
- <sup>38</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No 19: The right to social security (article 9)*, 39<sup>th</sup> sess, UN Doc E/C.12/GC/19 (4 February 2008) 4 [9].
- <sup>39</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) articles 2(1) and 2(2).
- <sup>40</sup> *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) article 5(e)(iv); *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) articles 11(1)(e), 14(2)(c); *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61<sup>st</sup> sess, 107<sup>th</sup> plen mtg, Supp No 49, UN Doc A/RES/61/295 (13 September 2007) article 21(1).
- <sup>41</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) article 26; see also protection of the best interests of the child: *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) article 3(1).
- <sup>42</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) articles 3, 28, 24, 27, 18(1); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) articles 10(1), 11, 12.
- <sup>43</sup> Committee on the Rights of the Child, *General Comment No 20 (2016) on the implementation of the rights of the child during adolescence*, UN Doc CRC/C/GC/20 (6 December 2016) 15 [55].
- <sup>44</sup> See for example, UN Committee on Economic, Social and Cultural Rights, *General Comment No 19: The right to social security (article 9)*, 39<sup>th</sup> sess, UN Doc E/C.12/GC/19 (4 February 2008) 1 [1], 9 [28]; see also David Kinley Ben Saul and Jacqueline Mowbray, *The International Covenant on*

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- Economic, Social and Cultural Rights: Commentary, Cases and Materials* (Oxford University Press, 1<sup>st</sup> ed, 2014) 611.
- <sup>45</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No 19: The right to social security (article 9)*, 39<sup>th</sup> sess, UN Doc E/C.12/GC/19 (4 February 2008) 2 [3].
- <sup>46</sup> David Kinley, Ben Saul and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials* (Oxford University Press, 1<sup>st</sup> ed, 2014) 611.
- <sup>47</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No 19: The right to social security (article 9)*, 39<sup>th</sup> sess, UN Doc E/C.12/GC/19 (4 February 2008).
- <sup>48</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No 19: The right to social security (article 9)*, 39<sup>th</sup> sess, UN Doc E/C.12/GC/19 (4 February 2008) 2 [4], 4 [9].
- <sup>49</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No 19: The right to social security (article 9)*, 39<sup>th</sup> sess, UN Doc E/C.12/GC/19 (4 February 2008) 13–14 [43]–[51].
- <sup>50</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No 19: The right to social security (article 9)*, 39<sup>th</sup> sess, UN Doc E/C.12/GC/19 (4 February 2008) 4 [11].
- <sup>51</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No 19: The right to social security (article 9)*, 39<sup>th</sup> sess, UN Doc E/C.12/GC/19 (4 February 2008) 12 [40].
- <sup>52</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) article 4.
- <sup>53</sup> Explanatory Statement, *Social Security (Parenting payment participation requirements—classes of persons) (No. 1) Instrument 2018* (Cth) 8.
- <sup>54</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No 19: The right to social security (article 9)*, 39<sup>th</sup> sess, UN Doc E/C.12/GC/19 (4 February 2008) 13 [42].
- <sup>55</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No 19: The right to social security (article 9)*, 39<sup>th</sup> sess, UN Doc E/C.12/GC/19 (4 February 2008) 13 [42].
- <sup>56</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No 19: The right to social security (article 9)*, 39<sup>th</sup> sess, UN Doc E/C.12/GC/19 (4 February 2008) 6 [18].
- <sup>57</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No 19: The right to social security (article 9)*, 39<sup>th</sup> sess, UN Doc E/C.12/GC/19 (4 February 2008) 11 [35].
- <sup>58</sup> Explanatory Statement, *Social Security (Parenting payment participation requirements—classes of persons) (No. 1) Instrument 2018* (Cth) 8.
- <sup>59</sup> Explanatory Statement, *Social Security (Parenting payment participation requirements—classes of persons) (No. 1) Instrument 2018* (Cth) 8–9.
- <sup>60</sup> Luke Henriques-Gomes, 'ParentsNext: single mothers say they were forced to allow 'sensitive' data to be collected', *The Guardian* (online) 28 January 2019  
<<https://www.theguardian.com/australia-news/2019/jan/28/parentsnext-single-mothers-say-they-were-forced-to-allow-sensitive-data-to-be-collected>>.
- <sup>61</sup> Australian Council of Social Service and UNSW Sydney, 'Poverty in Australia 2018' (Report No 5, 2018).
- <sup>62</sup> Geoff Gilfillan, 'Findings of the 2018 HILDA Statistical Report' (Report, Parliament of Australia, 31 July 2018)  
<[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1819/2018HILDAStatisticalReport](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1819/2018HILDAStatisticalReport)>; Roger Wilkins and Inga Lass, 'The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 16: the 13<sup>th</sup> Annual Statistical Report of the HILDA Survey' (Report, Melbourne Institute for Applied Economic and Social Research, 2018).
- <sup>63</sup> Australian Human Rights Commission, 'Children's Rights Report' (2017) 156; Juanita McLaren, Susan Maury and Sarah Squire, 'Outside systems control my life: Single mothers' stories of Welfare to Work' (Report, Good Shepherd Australia New Zealand, 2018).
- <sup>64</sup> Philip Alston, *Mandates of the Special Rapporteur on extreme poverty and human rights*, UN Doc OL AUS 5/2017 (17 October 2017)

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- <<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23386>>.
- <sup>65</sup> Magdalena Sepúlveda Carmona, Carly Nyst and Heidi Hautala, 'The Human Rights Approach to Social Protection' (Report, Ministry for Foreign Affairs of Finland, 1 June 2012)  
<<https://www.ohchr.org/Documents/Issues/EPoverty/HumanRightsApproachToSocialProtection.pdf>> (prepared in response to UN Human Rights Council, *Human rights and extreme poverty*, Resolution 8/11, 28<sup>th</sup> mtg UN Doc A/HRC/RES/8/11 (18 June 2008)).
- <sup>66</sup> See a history of welfare reduction for single parents in a letter from the Special Rapporteur on extreme poverty and human rights to the Australian Government: Philip Alston, *Mandates of the Special Rapporteur on extreme poverty and human rights*, UN Doc OL AUS 5/2017 (17 October 2017)  
<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23386>>.
- <sup>67</sup> As acknowledged by the Government, parents mandatorily subject to ParentsNext are already likely to be experiencing high levels of vulnerability: Department of Employment, 'ParentsNext National Expansion' (Discussion Paper, 12 September 2017) 18 [5.6].
- <sup>68</sup> *Social Security Act 2018* (NZ) s 252; see also Community Law Centres o Aotearoa, *Community Law Manual Online: Trouble with Work and Income: Penalties, Investigations and Overpayments—Penalties ("Sanctions")* (2018-2019) Community Law New Zealand  
<<http://communitylaw.org.nz/community-law-manual/chapter-21-dealing-with-work-and-income/trouble-with-work-and-income-penalties-investigations-and-overpayments/penalties-sanctions/>>.
- <sup>69</sup> Explanatory Statement, *Social Security (Parenting payment participation requirements—classes of persons) (No. 1) Instrument 2018* (Cth) 9.
- <sup>70</sup> Commonwealth, *Parliamentary Debates*, Senate, 13 September 2018 (Senator Siewert).
- <sup>71</sup> Department of Jobs and Small Business, 'ParentsNext Evaluation Report' (Report, 2017) 14.
- <sup>72</sup> Beth Watts and Suzanne Fitzpatrick, *Welfare Conditionality* (Routledge, 1<sup>st</sup> ed, 2018) 143.
- <sup>73</sup> Economic and Social Research Council, 'Final findings report: Welfare conditionality project 2013–2018' (June 2018) 28.
- <sup>74</sup> Economic and Social Research Council, 'Final findings report: Welfare conditionality project 2013–2018' (June 2018) 4.
- <sup>75</sup> Economic and Social Research Council, 'Final findings report: Welfare conditionality project 2013–2018' (June 2018) 28.
- <sup>76</sup> Philip Alston, *Mandates of the Special Rapporteur on extreme poverty and human rights*, UN Doc OL AUS 5/2017 (17 October 2017) 30  
<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23386>>.
- <sup>77</sup> Department of Jobs and Small Business, 'ParentsNext Evaluation Report' (Report, 2017) 9.
- <sup>78</sup> Department of Jobs and Small Business, 'ParentsNext Evaluation Report' (Report, 2017) 12–15.
- <sup>79</sup> Department of Jobs and Small Business, 'ParentsNext Evaluation Report' (Report, 2017) 62.
- <sup>80</sup> Department of Jobs and Small Business, 'ParentsNext Evaluation Report' (Report, 2017) 30.
- <sup>81</sup> Department of Jobs and Small Business, 'ParentsNext Evaluation Report' (Report, 2017) 59 [96].
- <sup>82</sup> Department of Jobs and Small Business, 'ParentsNext Evaluation Report' (Report, 2017) 45.
- <sup>83</sup> For example, see the analysis of the program evaluations of the trials of the Cashless Debit Card considered by this Committee in its inquiry into the Social Services Legislation Amendment (Cashless Debit Card) Bill 2017 (Cth).
- <sup>84</sup> See, for example, Australian Human Rights Commission, Submission No 36 to Senate Standing Committee on Economics, *Inquiry into economic security for women in retirement*, 30 October 2015. Gender segregation in the workplace is a persistent feature of the Australian workforce. Gender segregation occurs at occupation, role and industry levels. In 2015, less than 30% of

workers in the Workplace Gender Equality Agency's reporting organisations worked in gender balanced organisations.

- <sup>85</sup> See Workplace Gender Equality Agency, 'Australia's Gender Equality Scorecard: Key findings from the Workplace Gender Equality Agency's 2015–16 reporting data' (November 2016) 4; Australian Institute of Company Directors, '30% by 2018 gender diversity progress report' (Quarterly Report, Vol 8, 2017). <<https://aicd.companydirectors.com.au/advocacy/board-diversity/30-per-cent-by-2018-gender-diversity-target-slipping-out-of-reach>>. A survey undertaken by Chief Executive Women found that women hold just 12% of line roles and 30% of functional roles in executive leadership teams: Chief Executive Women, 'Senior Executive Census 2017' (Census, 2017) <<https://cew.org.au/wp-content/uploads/2017/09/CEW-Executive-Census-2017.pdf>>.
- <sup>86</sup> Australia's Sex Discrimination Commissioner has advocated for the relaxation of existing laws that require women to work for 12 months before they are eligible to access parental leave. See Susie O'Brien, 'Working parents need support', *Herald Sun* (9 September 2017).
- <sup>87</sup> See Productivity Commission, 'Paid Parental Leave: Support for Parents with Newborn Children' (Inquiry Report No 47, 28 February 2009) 4.1. <<http://www.pc.gov.au/inquiries/completed/parental-support/report>>. The *Paid Parental Leave Act 2010* (Cth) came into effect as a result of the Productivity Commission's 2009 Inquiry Report, which recommended a paid postnatal period of 18 weeks. The Commission supported the Inquiry Report's recommendation that superannuation entitlements be provided to mothers, subject to certain conditions. See Productivity Commission, 'Paid Parental Leave: Support for Parents with Newborn Children' (Inquiry Report No 47, 28 February 2009) 2.12 <<http://www.pc.gov.au/inquiries/completed/parental-support/report>>.
- <sup>88</sup> Australian Human Rights Commission, 'Australia's Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)' (Independent Report to the Committee on the Elimination of Discrimination against Women, 5 July 2010) <<https://www.humanrights.gov.au/australia-s-implementation-convention-elimination-all-forms-discrimination-against-women-cedaw-2010>>; Australian Human Rights Commission, Submission No 35 to Senate Finance and Public Administration References Committee, *Inquiry into gender segregation in the workplace and its impact on women's economic equality*, 6 March 2017 <<https://www.humanrights.gov.au/submissions/gender-segregation-workplace-and-its-impact-women-s-economic-equality>>.
- <sup>89</sup> See Australian Human Rights Commission, Submission No 377 to Productivity Commission, *Inquiry into Paid Maternity, Paternity and Parental Leave* (24 November 2008); Australian Human Rights Commission, 'Investing in care: Recognising and valuing those who care' (Report, 2013); Australian Human Rights Commission, 'Supporting Working Parents: Pregnancy and Return to Work National Review' (Report, June 2014); Australian Human Rights Commission, 'Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability' (Report, 2 May 2016); Australian Human Rights Commission, Submission No 36 to Senate Standing Committees on Economics, *Inquiry into the economic security for women in retirement* (30 October 2015); Australian Human Rights Commission, Submission No 35 to Senate Finance and Public Administration References Committee, *Inquiry into gender segregation in the workplace and its impact on women's economic equality* (6 March 2017).
- <sup>90</sup> International Labour Organisation, *Decent work* <<https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>>.
- <sup>91</sup> Good Shepherd Australia New Zealand, Submission to Department of Employment, *Response to Discussion Paper for ParentsNext National Expansion*, October 2017, 13 <<https://www.goodshep.org.au/media/1929/g sanz-submission-response-to-parents-next-discussion-paper-final.pdf>>.
- <sup>92</sup> Department of Jobs and Small Business, 'ParentsNext Evaluation Report' (Report, 2017) 36.

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- <sup>93</sup> Department of Jobs and Small Business, 'ParentsNext Evaluation Report' (Report, 2017) 9–10.
- <sup>94</sup> Department of Jobs and Small Business, 'ParentsNext Evaluation Report' (Report, 2017) 38.
- <sup>95</sup> Department of Jobs and Small Business, 'ParentsNext Evaluation Report' (Report, 2017) 38.
- <sup>96</sup> Beth Watts and Suzanne Fitzpatrick, *Welfare Conditionality* (Routledge, 1<sup>st</sup> ed, 2018) 146.
- <sup>97</sup> Luke Henriques-Gomes, 'Single parents forced to attend 'story time' or lose Centrelink payments', *The Guardian* (online) 6 November 2018 <<https://www.theguardian.com/australia-news/2018/nov/06/single-parents-forced-to-attend-story-time-or-lose-centrelink-payments>>.
- <sup>98</sup> Department of Jobs and Small Business, 'ParentsNext Evaluation Report' (Report, 2017) 64.
- <sup>99</sup> Explanatory Statement, *Social Security (Parenting payment participation requirements—classes of persons) (No. 1) Instrument 2018* (Cth) 25.
- <sup>100</sup> Department of Human Services, *Demerits and penalties for not meeting mutual obligation requirements* (9 January 2019)  
<<https://www.humanservices.gov.au/individuals/enablers/demerits-and-penalties-not-meeting-mutual-obligation-requirements/44416>>.
- <sup>101</sup> The Government has stated that providers are expected to assess whether a demerit should apply using the same principles as those that underpin 'reasonable excuse' decisions made by government decision makers, which are governed by the *Social Security (Administration) (Reasonable Excuse—Participation Payments) Determination 2018* (Cth); Department of Social Services, *Social Security Guide (Version 1.251): 3.1.13.90 Reasonable Excuse* (2 January 2019) Guides to Social Policy Law <<http://guides.dss.gov.au/guide-social-security-law/3/1/13/90>>; See policy guidance on capability interviews: Department of Jobs and Small Business, 'Guideline: Capability Interviews' (ParentsNext Guideline, 16 July 2018)  
<[https://docs.jobs.gov.au/system/files/doc/other/capability\\_interview.pdf](https://docs.jobs.gov.au/system/files/doc/other/capability_interview.pdf)>.
- <sup>102</sup> Department of Jobs and Small Business, 'Guideline: Targeted Compliance Framework—Mutual Obligation Failures' (JobActive and ParentsNext Guideline, 13 August 2018) 19.
- <sup>103</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No 19: The right to social security (article 9)*, 39<sup>th</sup> sess, UN Doc E/C.12/GC/19 (4 February 2008) 13 [45].
- <sup>104</sup> Australian Human Rights Commission, Submission No 16 to Senate Community Affairs Legislation Committee, *Social Security Legislation Amendment (Community Development Program) Bill 2018* (Cth), 26 September 2018, 13 [53]–[54].
- <sup>105</sup> Department of Jobs and Small Business, 'Guideline: Targeted Compliance Framework' (ParentsNext Guideline, 16 July 2018)  
<[https://docs.jobs.gov.au/system/files/doc/other/targeted\\_compliance\\_framework.pdf](https://docs.jobs.gov.au/system/files/doc/other/targeted_compliance_framework.pdf)>.
- <sup>106</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61<sup>st</sup> sess, 107<sup>th</sup> plen mtg, Supp No 49, UN Doc A/RES/61/295 (13 September 2007).
- <sup>107</sup> Department of Employment, 'ParentsNext National Expansion' (Discussion Paper, 12 September 2017) 10.
- <sup>108</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) articles 2(2), 3, 9; UN Committee on Economic, Social and Cultural Rights, *General Comment No 19: The right to social security (article 9)*, 39<sup>th</sup> sess, UN Doc E/C.12/GC/19 (4 February 2008) 12 [40].
- <sup>109</sup> *Sex Discrimination Act 1984* (Cth) s 3(d).
- <sup>110</sup> For a more detailed explanation of the relationship between the *Racial Discrimination Act 1975* (Cth) and welfare initiatives, see Australian Human Rights Commission, 'Social Justice and Native Title Report 2015' (Report, 2015) 51 <<https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/social-justice-and-nati-1>>.
- <sup>111</sup> *Racial Discrimination Act 1975* (Cth) s 10.
- <sup>112</sup> *Racial Discrimination Act 1975* (Cth) s 9.
- <sup>113</sup> *Racial Discrimination Act 1975* (Cth) s 8.

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- <sup>114</sup> Department of Employment, 'ParentsNext National Expansion' (Discussion Paper, 12 September 2017) 8 [2.2]; Department of Jobs and Small Business, *Explainer: ParentsNext* (16 January 2019) <<https://www.jobs.gov.au/newsroom/explainer-parentsnext>>.
- <sup>115</sup> Explanatory Statement, *Social Security (Parenting payment participation requirements—classes of persons) (No. 1) Instrument 2018* (Cth) 12.
- <sup>116</sup> Explanatory Statement, *Social Security (Parenting payment participation requirements—classes of persons) (No. 1) Instrument 2018* (Cth) 12.
- <sup>117</sup> Explanatory Statement, *Social Security (Parenting payment participation requirements—classes of persons) (No. 1) Instrument 2018* (Cth) 11.
- <sup>118</sup> Explanatory Statement, *Social Security (Parenting payment participation requirements—classes of persons) (No. 1) Instrument 2018* (Cth) 12; see footnotes 2–5 of the Explanatory Statement.
- <sup>119</sup> Explanatory Statement, *Social Security (Parenting payment participation requirements—classes of persons) (No. 1) Instrument 2018* (Cth) 13.
- <sup>120</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations on the eighteenth to twentieth periodic reports of Australia*, UN Doc CERD/C/AUS/CO/18-20 (8 December 2017) 6 [23].
- <sup>121</sup> Committee on the Elimination of Discrimination against Women, *Concluding observations on the eighth periodic report of Australia* 70<sup>th</sup> sess, UN Doc CEDAW/C/AUS/CO/8 (25 July 2018) .
- <sup>122</sup> Australian Human Rights Commission, 'Children's Rights Report' (2017).
- <sup>123</sup> Australian Human Rights Commission, 'Children's Rights Report' (2017) 18 (Recommendation 10).
- <sup>124</sup> Australian Human Rights Commission, 'Children's Rights Report' (2017) 18 (Recommendation 5).
- <sup>125</sup> *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) articles 1(4) and 2(2) and *Racial Discrimination Act 1975* (Cth) s 8; *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) article 4 and *Sex Discrimination Act 1984* (Cth) s 7D.