

Senate Community Affairs References Committee

Inquiry into ParentsNext, including its trial and subsequent broader rollout

23 January 2019

Submission from Associate Professor Beth Goldblatt, Faculty of Law, University of
Technology Sydney

Introduction

I am a law academic with expertise in human rights and the right to social security in particular. I have published widely on the issues affecting women facing poverty and the erosion of their social security rights in Australia and elsewhere.¹

This submission concerns the human rights dimensions of the compliance framework attached to the ParentsNext program. It argues that compulsory participation in the program operates harshly against vulnerable parents and their children and intrudes on their rights to social security, non-discrimination and related human rights. It asks this Committee to recommend the removal of the compulsory features of the program alongside other reforms to the program that render it more appropriate and beneficial to parents who wish to participate in it.

Background

The compulsory features of ParentsNext that assume parents must be forced to accept state assistance follow decades of activation and participation policies that have been built into Australia's social security system for working age people.² In the last decade these have become harsher and more targeted – such as towards drug users – and have also included measures that control payments and remove agency from people such as through income management. In the latter case and in the case of ParentsNext, policies are sometimes tested on Indigenous communities, arguably the most disadvantaged people in Australia, and then rolled out to other communities. These policies raise serious concerns about government's understanding of social security as a human right that should be equally available to all Australians.

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

² P Mendes (2017) *Australia's Welfare Wars: The Players, the Politics and the Ideologies* (3rd ed.) (UNSW Press).

Human Rights Concerns

The Minister's Explanatory Statement³ when introducing *Social Security (Parenting payment participation requirements – classes of persons) Instrument 2018 (No. 1)* which expanded the compliance framework of the *Social Security Act 1991* (s500(2)) to ParentsNext also contains a human rights compatibility statement.⁴ It concludes that the new law is compatible with human rights since:⁵

It promotes the right to work, the right to education, and the rights of the child. To the extent that it limits rights to social security and an adequate standard of living, or the right to equality and non-discrimination, those limitations are for a legitimate objective, have a rational connection to achieving the objective, and are reasonable, necessary and proportionate to achieve the objective. That objective is to assist parents with young children to identify their education and employment goals and to attain these goals by participating in activities and connecting to relevant local services.

Although such human rights compatibility issues are normally scrutinised by the Parliamentary Joint Committee on Human Rights, it is arguably important for this Inquiry to also consider the human rights implications of the program within a general consideration of its appropriateness and adequacy. Human rights are not the preserve of one committee of Parliament alone and Australia's international human rights obligations should be a central consideration in the work of the whole of Parliament.

I agree with the Minister's statement that the legislation introducing compliance requirements to ParentsNext limit the rights to social security and an adequate standard of living and the right to equality and non-discrimination as set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and other treaties to which Australia is a party. I do not agree that such limitations are justifiable (ie: reasonable, proportionate, rationally connected to the objective or serving a legitimate objective).

Conditional programs that can remove social security entitlements are suspect when viewed through a human rights lens. The right to social security is an entitlement provided by a society to its members who are in need due to a range of circumstances such as illness, disability, unemployment, old age and caring responsibilities. This right, as with others in the ICESCR, must be 'exercised without discrimination' including on the basis of sex, race, language and national or social origin. Social security conditions remove people's agency and assume that the poor are not capable of rational decision-making. Incentives to participate in government services should be used rather than measures that exclude people. Conditions can place unnecessary burdens and may be inappropriately designed. It is the obligation of the state to create services that assist people and withholding entitlements cannot be a correct response to the failings or inadequacies of government measures to solve social challenges.⁶

The ParentsNext program as it is currently set up is discriminatory in its reach and impact on women, the overwhelming majority of participants. Women make up this majority due to the gender imbalance in child care responsibility in Australia and sole mothers and their

³ Dated 13/03/2018.

⁴ At 7-12.

⁵ At 12-13.

⁶ Magdalena Sepúlveda and Carly Nyst (2012) *The Human Rights Approach to Social Protection* (Ministry for Foreign Affairs of Finland).

households are amongst the poorest and most disadvantaged in our country.⁷ A policy that might leave such households without income support is harsh and is likely to violate human rights. The program also disproportionately targets Indigenous people meaning it is discriminatory on the basis of race. The program also discriminates against the children of poor, sole parent families who may lose out on income support where parents fail to meet participation requirements. Their rights to social security are also at risk. Similarly, disadvantaged parents who are new to Australia and face challenges of linguistic and cultural diversity may encounter further disadvantage through having to participate in the program.

The current and previous United Nations' Special Rapporteurs on extreme poverty and human rights (Professor Philip Alston and Dr Magdalena Sepúlveda Carmona) have written to the Australian government regarding the ongoing cuts to Parenting Payments as retrogressive measures that undermine women's human rights. The ParentsNext program with its compulsory element and capacity to remove income entitlements to needy parents and their children is likely to face further criticism from UN bodies.

Conclusion

The ParentsNext program is in violation of a range of human rights. Instead of showing fairness and compassion to those parents who already struggle with poverty and hardship, the government is responding with paternalism and punishment. Our social security system should be designed to promote rather than remove human rights. It is strongly suggested that this Inquiry recommend the removal of the compulsory compliance elements of the program while also addressing any other aspects of the program that are not serving to support the needs of parents and their children.

⁷ Davidson, P., Saunders, P., Bradbury, B. and Wong, M. (2018), *Poverty in Australia, 2018*. ACOSS/UNSW Poverty and Inequality Partnership Report No. 2, Sydney: ACOSS
https://www.acoss.org.au/wp-content/uploads/2018/10/ACOSS_Poverty-in-Australia-Report_Web-Final.pdf