



Equality Rights Alliance

Women's Voices for Gender Equality

**Submission of Equality Rights Alliance to the inquiry
of the Parliamentary Joint Committee on Human
Rights into the *Social Security (Parenting payment
participation requirements – class of persons)*
*Instrument 2021***

30 April 2021

Equality Rights Alliance

Equality Rights Alliance (ERA) is Australia's largest network advocating for women's equality, women's leadership, and recognition of women's diversity. We bring together 65 non-government organisations and social enterprises with a focus on the impact of policy or service delivery on women.

ERA believes the advancement of women and the achievement of equality are matters of fundamental human rights and advocates for gender equality, women's leadership and government policy responses that support women's diversity.

We are one of the six National Women's Alliances, funded by the Commonwealth Office for Women.

Recommendations:

- 1. Review the entire ParentsNext scheme and all associated legislative instruments to determine compatibility with Australia's human rights obligations and with its international commitments made in the Agreed Conclusions of the 63rd Commission on the Status of Women.**
- 2. That this Committee require the Commonwealth to demonstrate with evidence that participation in the ParentsNext program and compliance with requirements within the ParentsNext program constitute proportional actions which are the least restrictive option available.**
- 3. That this Committee review the imposition of conditions on receipt of social security payments by Centrelink across all payments, pensions and programs at two-yearly intervals on an ongoing basis, to ensure that those conditions constitute proportional actions which are the least restrictive option available and that they are of limited duration as required by the UN Committee.**

This submission is endorsed in whole or in part by the members of the Equality Rights Alliance:

- Aboriginal Legal Rights Movement
- Alevi Federation of Australia
- Australasian Council of Women and Policing
- Australian Baha'i Community – Office of Equality
- Australian Centre for Leadership for Women
- Australian Federation of Medical Women
- Australian Motherhood Initiative for Research and Community Involvement
- Australian National Committee for UN Women
- Australian Women Graduates
- Australian Women's Health Network
- CARE Australia
- Children by Choice
- COTA Australia
- FECCA Women's Committee
- Feminist Legal Clinic
- Fitted for Work
- Girl Guides Australia
- Good Shepherd Australia New Zealand
- Homebirth Australia
- Human Rights Law Centre
- Immigrant Women's Speakout Association NSW
- International Women's Development Agency
- Jessie Street National Women's Library
- Justice Connect
- Marie Stopes Australia
- Maternal Health Matters Inc
- Maternal Scholars Australia
- Maternity Choices Australia
- Migrant Women's Lobby Group of South Australia
- National Association of Services Against Sexual Violence
- National Council of Churches of Australia Gender Commission
- National Council of Jewish Women of Australia
- National Council of Single Mothers and Their Children
- National Council of Women of Australia
- National Foundation for Australian Women
- National Older Women's Network
- National Union of Students (Women's Department)
- NSW Council of Social Services
- NGO Women's Rights & Gender Equality Network
- Of One Mind (WOW Australia)
- Project Respect
- Public Health Association of Australia (Women's Special Interest Group)
- Reproductive Choice Australia
- Sexual Health and Family Planning Australia
- Sisters Inside
- Soroptimist International
- United Nations Association of Australia Status of Women Network
- Victorian Immigrant and Refugee Women's Coalition
- VIEW Clubs of Australia
- Violence Prevention Australia
- Women in Adult and Vocational Education
- Women in Engineering Australia
- Women on Boards
- Women Sport Australia
- Women with Disabilities Australia
- Women's Equity Think Tank
- Women's Electoral Lobby Australia
- Women's Equity Think Tank
- Women's Housing Ltd
- Women's Information Referral Exchange
- Women's International League for Peace and Freedom
- Women's Legal Services Australia
- Women's Property Initiatives
- Working Against Sexual Harassment
- YWCA Australia
- Zonta International Districts 22, 23 and 24



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Submission

Equality Rights Alliance thanks the Parliamentary Joint Committee on Human Rights for the opportunity to make this brief submission to the inquiry into the *Social Security (Parenting payment participation requirements – class of persons) Instrument 2021* ('the instrument').

ERA has significant concerns about the compatibility of Centrelink's general approach to compliance with Australia's human rights commitments.

ERA is concerned about the ongoing framing of social protections as entitlements rather than rights. Where programs such as ParentsNext are administered in a manner which imposes significant compliance burdens, they are not compliant with the right to social protections, regardless of the intention of the legislation in question. While participation in the ParentsNext program remains a compulsory condition of receipt of the single parenting payment, Australia's obligation to justify the very high threshold for imposing conditionality is engaged and must be addressed.

Australia's international human rights obligations

Through international human rights frameworks, Australia has committed to an intersectional and gender-responsive approach to social security and protections.

The right to social security is set out in article 9 of the Convention on Economic, Social and Cultural Rights, to which Australia is a signatory.ⁱ Article 9 is significant, because it establishes social security as a human right, as opposed to an optional grant or endowment by States. According to the Office of the Commonwealth Attorney General:

"[The UN Committee on Economic, Social and Cultural Rights has stated] there is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under ICESCR. In this context, a retrogressive measure would be one taken without adequate justification that had the effect of reducing existing levels of social security benefits... If any deliberately retrogressive measures are taken, the country has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are justified, in the context of the full use of the maximum available resources of the country".ⁱⁱ

Under the Convention on the Elimination of Discrimination Against Women, Australia has committed to *"take all appropriate measures to eliminate discrimination against women in the field of employment... in particular... the right to social security"*,ⁱⁱⁱ and under Goal 5 of the Sustainability Development Agenda, to:

recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility with the household...^{iv}

In early 2019, the sixty-third session of the UN Commission on the Status of Women (CSW63) negotiated Agreed Conclusions on the theme of *social protection systems, public services and sustainable infrastructure for gender equality and the empowerment of women and girls*. In adopting the conclusions, Australia agreed to:

Ensure the right to social security in national legal frameworks, as well as ensure universal access to social protection, supported by national strategies, policies, action plans and adequate resources, to enhance gender equality and the empowerment of women and girls;^v

Australia has also made significant commitments to social protections for unpaid work and carers, including mothers, older women, and on welfare conditionality. Under the 2030 Sustainable Development Agenda, Australia committed specifically to social protection schemes which support unpaid workers and carers, with a view to recognising and valuing unpaid work and care:

Ensure access to social protection for unpaid caregivers of all ages, including coverage for health care and pensions, and in this regard strengthen social protection schemes that promote, as appropriate, the economic, social and legal recognition of unpaid care and domestic work, and allow such work to be valued within contributory schemes;^{vi}

Further, at CSW63 Australia committed to social protections which reduce economic inequalities, namely to,

Promote legal, administrative and policy measures that strengthen unemployment protection schemes and ensure women's full and equal access to pensions, including access to income security for older women... and reduce gender gaps in coverage and benefit levels;^{vii}

Under Article 26 of the Convention on the Rights of the Child (CRC), Australia is obliged to

'(1)...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.'

Finally, we note that this review takes place in circumstances where the Australian Government has committed to:

Assess the need for and promote the revision of conditionalities, where they exist, related to cash transfer programmes, inter alia, to avoid reinforcing gender stereotypes and exacerbating women's unpaid work; and ensure that they are adequate, proportional and non-discriminatory and that non-compliance does not lead to punitive measures that exclude women and girls who are marginalized or in vulnerable situations;^{viii}

Conditionality as an unjustified limitation on the right to social security

The parenting payment is a social security measure which recognises the unpaid care burden assumed by parents (particularly women) and which operates to provide some small mitigation of the economic inequality experienced by women, who are more likely than men

to take time out of the workforce to provide unpaid care.^{ix} It also operates to protect the recipient's children.

Where **access to the parenting payment** is contingent on a parent participating in a particular program, that requirement constitutes a condition imposed on access to the payment which gives rise to an obligation on Australia to justify that limitation to the right to social security. No such justification has been articulated by the Commonwealth.

Where **successful participation in the ParentsNext program** is contingent on meeting conditions such as requirements to attend meetings and other activities, the practical application of the program may become punitive and constitute an restriction on the right to social security, once again giving rise to an obligation on Australia to justify that limitation to the right. Again, no such justification has been articulated by the Commonwealth.

The broader assumption underpinning Centrelink's compliance approach is that social security payments are an entitlement rather than a right. This view is inconsistent with Australia's human rights commitments. The Office of the Commonwealth Attorney General confirms that any conditionality on social protections must be rigorously justified, explaining that:

*"qualifying conditions for benefits must be reasonable, proportionate and transparent...countries may subject economic social and cultural rights only to such limitations 'as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society'. The UN Committee has stated that such limitations must be **proportional** and the **least restrictive alternative** where several types of limitations are available, and even where such limitations are permitted, they should be of **limited duration** and **subject to review**."*^x [emphasis added]

The obligation here is not on individual women or on researchers to produce evidence that the qualifying conditions are disproportionate. According to both the UN Human Rights Committee and the Attorney General's Department, the onus is squarely on the Commonwealth to prove that the measure is justified.

Conditionality which results in discriminatory impacts

We note that the disparity of impacts on women of the ParentsNext program, and particularly the disproportionate impacts on Aboriginal and Torres Strait Islander women, may constitute discrimination in the terms on which the right to social security is available and in the practical application of social security programs generally.

It is inconsistent with Australia's obligation to ensure secure basic social protection and the right to an adequate standard of living^{xi} that the outcome of Centrelink's compliance approach is that some people are left without money to pay for immediate basic needs such as food or rent. We note that the Parliamentary Joint Standing Committee on Human Rights has previously raised concerns that payment suspensions for non-compliance with Welfare to Work programs are administered without a waiver for consideration of hardship or vulnerability.^{xii} In the case of ParentsNext, the fact that the program is administered by external providers exacerbates the risk that waiver will be denied or inappropriately administered.

It is deeply concerning that these consequences of compliance failure are also being passed on to children, to whom the Commonwealth has a separate and distinct obligations relating to the right to social security.

Further, we note the impact that payment suspensions may have on women and people who are experiencing additional gender inequalities in the form of domestic and family violence, and create additional danger for those who are leaving situations of violence by curtailing access to income.

Indirect Discrimination

The Instrument specifically defines a class of persons who will be subject to a particular condition (participation in the ParentsNext program) as a precondition to receipt of the parenting payment (single). The class of people identified in s.6 of the Instrument is narrowly and precisely defined. A key element of the definition is that those covered by the program must be single parents. Given that the vast majority of single parent families are led by mothers, the effect of this definitional clause is to ensure that the impacts of the program are indisputably gendered. The *Sex Discrimination Act 1984* (SDA) outlaws indirect discrimination on the basis of sex.^{xiii} We understand that the number of women participating in the ParentsNext program do indeed significantly outnumber the men in the program. We note that the onus under s. 7B of the SDA is on the Commonwealth to demonstrate that the condition is reasonable in the circumstances. We note that the relevant circumstances to consider in this analysis should include the Commonwealth's international commitments regarding the right to social services under the International Convention on Economic, Social and Cultural Rights and the right to non-discrimination in the provision social security^{xiv}. We ask the Committee to require the Department of Social Services to demonstrate that the ParentsNext program, which indirectly discriminates against women, is reasonable in the circumstances.

Conclusion

The linking of payments to compliance with activities which discriminate and cause extreme disadvantage to particular groups of people including single mothers, women with disability and women who have experienced casual and insecure work is unacceptable. ERA calls on the Committee to view payments as social protection floors which are human rights that the Australian government has an obligation to ensure, rather than costs or charitable concessions which can be punitively stripped without due consideration of a person's circumstances or the impacts on their ability to fully enjoy their human rights.

ⁱ General Assembly. 1966. *International Covenant on Economic, Social and Cultural Rights*, Art. 9, A/RES/2200A(XXI), available at: <https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>, accessed 18 September 2019.

ⁱⁱ Attorney-General's Department. 2019. 'Right to Social Security', Australian Government: 2019, available from: <https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/PublicSectorGuidanceSheets/Pages/Righttosocialsecurity.aspx>, accessed 18 September 2019.

ⁱⁱⁱ *Convention on the Elimination of All Forms of Discrimination Against Women – Part II*, (Art.11.1, (e)), A/RES/34/180, available at <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

^{iv} General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development - Goal 5. Achieve gender equality and empower all women and girls*, (5.4), A/RES/70/1, available at [www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/1&referer=http://www.un.org/en/documents/index.html&Lang=E](http://www.un.org/en/documents/index.html&Lang=E)

^v United Nations Economics and Social Council, *Commission on the Status of Women Sixty-third Session – Strengthen normative, legal and policy frameworks*, (para.47, (f)), E/CN.6/2019/L.3/, available at <https://undocs.org/en/E/CN.6/2019/L.3>

^{vi} *ibid* para.47, (l)

^{vii} *ibid* para.47, (jj)

^{viii} *ibid* para.47, (mm)

^{ix} The disproportionate share of unpaid work performed by women in Australia has been identified as a key element of the wage gap in Australia. See for example Bettina Cass and Trish Hall *Report on valuing unpaid caring work in order to address women's unequal participation in the workplace and the gender gap in retirement savings* Australian Human Rights Commission 2013

humanrights.gov.au/sites/default/files/UnpaidCaringVolume1_2013.pdf. We note that the disproportionate share of unpaid work performed by women in Australia has been exacerbated by COVID19. See Australian Bureau of Statistics Household *Impacts of COVID-19 Survey 19 February 2021* www.abs.gov.au/statistics/people/people-and-communities/household-impacts-covid-19-survey/dec-2020#unpaid-work

^x Attorney-General's Department. 2019. 'Right to Social Security', Australian Government: 2019, available from: <https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/PublicSectorGuidanceSheets/Pages/Rightsocialsecurity.aspx>, accessed 18 September 2019.

^{xi} General Assembly. 1966. *International Covenant on Economic, Social and Cultural Rights*, Art. 9, A/RES/2200A(XXI), available at: <https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>, accessed 18 September 2019.

^{xii} Hurley, M. 'Supercharging discrimination: the Targeted Compliance Framework and the impact of automated decision making', *Power to Persuade*, 21 August 2019, available from: <https://www.powertopersuade.org.au/blog/supercharging-discrimination-the-targeted-compliance-framework-and-the-impact-of-automated-decision-making/20/8/2019>, accessed 26 August 2019.

^{xiii} s. 5(2)

^{xiv} The Convention on the Elimination of Discrimination Against Women Article 11 (e)