



11 March 2019

Committee Secretary

House of Representatives Standing Committee on Social Policy and Legal Affairs  
PO Box 6021a  
Parliament House  
Canberra ACT 2600

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Dear Committee Secretary,

***National Social Security Rights Network (NSSRN) submission to the inquiry into the review of the Social Security Commission Bill 2018.***

1. The NSSRN is a peak community organisation in the area of income support law, policy and administration. Our members are community legal centres across the country that provide free and independent legal assistance to people experiencing issues with social security and family assistance payments. The NSSRN draws on this front line experience in developing its submissions and policy positions.

***NSSRN's key recommendations:***

- (1) That the Commission adopt an evidence-based approach to reviewing social security payment rates, which takes into account considerations such as:
  - i. poverty lines, budget standards, and measures of deprivation,
  - ii. living costs, such as higher costs in regional and rural areas of Australia,
  - iii. the views of people affected by payment adequacy through direct consultation, and
  - iv. the level of purchasing power provided by an income increase
- (2) That the Commission is constituted to operate independently of government and free from political interference
- (3) That the definition of 'social security payment' in the Bill be amended to include income support payments under the *A New Tax System (Family Assistance) Act 1999* so that the Commission's review of social security payments includes family payments
- (4) That the Commission, as part of its review, should consider the impact of waiting periods on the adequacy of income support payments
- (5) That section 11 (3) of the Bill should be amended to only consider sources of income that are available to recipients, not sources that *may* be available to recipients
- (6) That section 8 of the Bill, Commission's scope and function, be expanded to empower the Commission to make referrals to relevant bodies to address systemic issues it identifies during the course of exercising its core duties and functions

- (7) That the Commission considers and undertakes independent research on innovative models of social security payments to ensure it is responsive to community living standards, such as considering assessment of payment rates on an individual basis only, rather than on relationship status

***Support for an evidence-based approach to setting an appropriate rate of social security payments***

2. The NSSRN supports the stated objective of the Bill to establish a Social Security Commission (the Commission) that is independent and provides expert and evidence-based advice to Government to identify the appropriate rate of social security payments.
3. The critical need for an independent body is evidenced by the fact that the rate of Newstart Allowance has not increased above inflation since 1994.<sup>1</sup>
4. Our members across Australia, which provide legal advice to people living on Newstart Allowance, commonly see clients who are struggling to pay for food, medicine, rent and public transport.
5. Clients who are parents living on Newstart Allowance often express concerns that they are unable to afford their children's school uniform or school excursions.
6. An evidence-based approach will enable the Commission to effectively assess the adequacy of social security payments, taking into account the circumstances of recipients. For example, in regional and rural areas of Australia, the cost of basic necessities such as food are higher.<sup>2</sup> Our members have reported that clients in remote areas particularly struggle to afford basic necessities such as food, transport, electricity bills and are unable to obtain medicines to treat their disabilities or seek specialist assistance.
7. We endorse Australian Council of Social Services' (ACOSS) submission in stating that, "this will include poverty lines, budget standards, and measures of deprivation. Most importantly, the Commission will need to systematically include (and seek) the views of people affected by payment adequacy. The Commission will need to analyse what people in receipt of payments need, how much people spend, how much people budget, etc."<sup>3</sup> We also endorse ACOSS' recommendation for the Commission to assess what households would be able to purchase should their income increase by a certain amount. For example, what impact would a \$75 or \$100 increase have on a household's ability cover living costs?<sup>4</sup>

***Independent review to prevent rates of payment resulting from politicisation of social security***

8. In NSSRN's view, the proposed Bill to establish a Commission may help to address our members' concerns regarding the politicisation of payments, which has led to some payments being more generous than others despite recipients being in similar circumstances and having similar cost of living needs.

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<sup>1</sup> Davidson, P., Saunders, P., Bradbury, B. and Wong, M, 'Poverty in Australia, 2018' (Report No. 2, Australian Council of Social Services/University of New South Wales Poverty and Inequality Partnership, 2018).

<sup>2</sup> National Rural Health Alliance, *Poverty in Rural and Remote Australia (November 2017) Rural Health* <<https://ruralhealth.org.au/sites/default/files/publications/nrha-factsheet-povertynov2017.pdf>>.

<sup>3</sup> Australian Council of Social Services, Submission No 7 to House of Representatives Standing Committee on Social Policy and Legal Affairs, *Inquiry into the Review of the Social Security Commission Bill 2018*, March 2019.

<sup>4</sup> Ibid.

9. Two people in similar circumstances who are in severe financial hardship and have experienced a crisis can receive two different rates of Crisis Payment.<sup>5</sup> Crisis Payment is equal to one week of payment of the person's pension, benefit or allowance.<sup>6</sup> For example, the current system will allow for a mother who has escaped domestic violence and is on Parenting Payment to be paid a higher rate of Crisis Payment than a mother in exactly the situation but is on Newstart Allowance. This is an unfair discrepancy in payment rate given that both recipients are sole carers in extreme crisis.
10. Some unfair outcomes result from means-testing arrangements which are more generous for pensions compared to allowances.<sup>7</sup> This is clearly evidenced in the difference between the rate of payment for Disability Support Pension and Newstart Allowance.<sup>8</sup>
11. Our members often provide advice to people with disabilities on Newstart Allowance who are unable to meet the eligibility criteria for Disability Support Pension. Often there are similarities between the circumstances of a person with disabilities on Newstart Allowance and a person on Disability Support Pension payment. Both individuals have high medical costs associated with managing and treating their impairments, yet the person living on Newstart is at a significant disadvantage as they are living off \$39 a day<sup>9</sup>, rather than up to \$61 on Disability Support Pension.
12. For example, our member centre in Tasmania reports that it provided advice to a 60-year-old man who was living on Newstart Allowance and had severe cardiac problems, joint pain, auditory and vision impairments. The client had to make a decision to pay for his heart medication over his audio metric testing. As he had multiple impairments and was unable to get 20 points under one Impairment Table he had the additional requirement of having to participate in a program of support before qualifying for the Disability Support Pension. However, due to his impairments he is unable to do this. His claim for Disability Support Pension was rejected resulting in him having to continue to rely on Newstart Allowance. This payment is inadequate to meet the cost of his medical expenses.
13. NSSRN is hopeful that if the Bill is passed, the independent advice of the Commission will lead to such unfair discrepancies being removed or minimised.<sup>10</sup>

### ***Inclusion of family payments***

14. Family payments provided under the *Family Assistance Act 1999* are no less important as a source of income support than any other payment. To ensure they are also paid at an appropriate rate they should be reviewed by the Commission, along with payments made under the *Social Security Act 1991*.
15. Our members assist some people in very vulnerable circumstances who rely solely on family payments and cannot access any other income support.
16. For example, our members advised several clients who have a child with an Australian citizen but are unable to access Centrelink payments due to their visa status. In recognition of the child's father

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<sup>5</sup> Crisis Payment is a one-off non-refundable payment, equal to one week's payment (without add ons) of the person's pension, benefit or allowance. Refer to *Guide to Social Security Law* 1.2.6.30, accessed 8 March 2019 <<http://guides.dss.gov.au/guide-social-security-law/1/2/6/30>>.

<sup>6</sup> Ibid.

<sup>7</sup> *Guide to Social Security Law* 4.2.3, accessed 8 March 2019 <<http://guides.dss.gov.au/guide-social-security-law/4/2/3>>.

<sup>8</sup> For a single person over 22 years of age with no children and on Disability Support Pension will receive \$858 per fortnight. Refer to *Guide to Social Security Law* 5.1.8.10, accessed 8 March 2019 <<http://guides.dss.gov.au/guide-social-security-law/5/1/8/10>>.

<sup>9</sup> For a single person over 22 years of age with no children and on Newstart Allowance will receive \$550.20 per fortnight. Refer to *Guide to Social Security Law* 5.1.8.20, accessed 8 March 2019 <<http://guides.dss.gov.au/guide-social-security-law/5/1/8/20>>.

<sup>10</sup> Australian Council of Social Services, above n 3.

being an Australian citizen, Family Tax Benefit (FTB) is payable to the sole carer. In particular, our New South Wales member reports that it assisted a mother who was a sole carer and newly arrived migrant who had escaped domestic violence to lodge a claim for FTB. Until she could successfully claim FTB, the mother was unable to afford food for herself and her child, diapers, clothing and rent, and was seeking assistance from charities to make ends meet.

17. The recent passing of the *Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2018*, increased the Newly Arrived Residents Waiting Period (NARWP) from two to four years for working age payments (including the payment of last resort, Special Benefit). For people experiencing domestic violence, mostly women and children, this will make it more difficult to access Special Benefit. It is even more likely that people in these circumstances will be relying on FTB, since FTB is easier to access and the waiting period is two years.
18. NSSRN recommends that the definition of 'social security payment' in the Bill be amended to include income support payments under the *Family Assistance Act 1999*. Specifically, payments to be included are FTB, parts A and B (as well as any add-on payments tied to FTB such as the Energy Supplement, end-of-year supplements and Rent Assistance). Given that FTB is paid to help families with the cost of raising children, this amendment is needed to ensure that FTB is paid at a level where Australian families have an acceptable standard of living.

***Impact of legislated waiting periods – NARWP and waiting period for people who have more than \$5,000 in liquid assets***

19. Consideration of the impact of waiting periods is necessary for the Commission to successfully achieve its goal as set out in the Bill's Explanatory Memorandum, that is, providing effective support for those in need.<sup>11</sup>
20. In our members' experience those who live day to day financially are most impacted by waiting periods, which adversely affects their standard of living.
21. As noted above, given the recent increase in the NARWP, it is likely that the inability of migrants to access income support would make it difficult for them to cover basic essentials such as food and housing.
22. For example, our member in New South Wales provided representation to a migrant who was subjected to a two-year waiting period (under the old rules). The women's relationship with her brother (who was also her assurer) broke down during the first six months of her arrival to Australia. When the migrant contacted our member centre, it reports that she was living in a garage, surviving off the charity of friends and the local church. Our member represented the migrant at the General Division of the Administrative Appeals Tribunal (AAT-2). The AAT-2 decided that even though the migrant was living in a garage and was homeless, her circumstances were better than before and therefore she was not eligible for Centrelink.
23. It should be within the Commission's terms of reference to examine the impact of waiting periods while reviewing the adequacy of income support payments.

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<sup>11</sup> "We pride ourselves on providing support for those in need. As a nation, we must ensure that the social safety net is sufficient in times of need. The current system of setting payment rates has fallen behind community expectations. Payments should be responsive to the broader changes in community living standards, maintain purchasing power in line with wage and cost of living increases and ultimately provide a stable domestic environment." Refer to Explanatory Memorandum, Social Security Commission Bill 2018 (Cth).

***Payment adequacy should only be considered on an individual's available income***

24. Part two, section 11 (3) of the Bill states that the Commission “must take into account, to the extent it considers appropriate, the terms upon which each payment reviewed is provided (including means-testing for the recipient or withdrawal of payment(s) and any other sources of income that may be available to the recipients”.<sup>12</sup>
25. We endorse ACOSS’ recommendation that “the means testing arrangements should form the sole basis that the Commission assesses the effect of other income (or assets) the income support recipient receives (or holds).” Otherwise, there could be scope for income support payment adequacy to be assessed on the basis of income sources that should not be considered when assessing if someone has an adequate standard of living. This includes family resources that the person may or may not have access to (outside of that assessed under the *Social Security Act 1991*), unpaid child support, income that may be available in a shared living arrangement (eg., kitties for bills, food, etc.) and superannuation that someone under the preservation age may or may not be able to access if in financial hardship”.<sup>13</sup>
26. This is consistent with the approach taken in cases in which our members have provided assistance where recipients of Age Pension are able to have substantial assets disregarded when calculating their pension rate under the hardship provision. The hardship provision recognises where it is unreasonable to expect the pensioner to rearrange their financial affairs to use the asset to produce income.
27. In NSSRN’s view, section 11 (3) of the Bill should be amended to only consider sources of income that are available to recipients, rather than speculatively considering sources that ‘may be available’ to recipients. This will ensure that the Commission’s assessment of payment adequacy reflects the actual circumstances of recipients.

***Power to make referrals where the Commission identifies other systemic issues***

28. Our members regularly identify systemic barriers to their clients accessing Centrelink and the income support system. This includes the impact of transitioning to online services and automated processes, and the reduced access to Centrelink’s social workers. Inevitably, these issues impact on a person’s standard of living.
29. Since the Commission will have access to a wealth of data about the operation of the social security system, it will be well placed to also identify such systemic issues; such as excessive wait times for accessing services and processing of claims, concerns about online processes, quality of information provided by Centrelink or system inefficiencies. It would be beneficial for the Commission to have the power to make referrals to address any systemic issues it identifies while exercising its core duties and functions.
30. This potential contribution to early intervention would help to prevent the manifestation of such systemic issues, enabling earlier access to income support for vulnerable people, improving the efficiency of the system and service delivery models, resulting in savings for the Department.

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<sup>12</sup> Refer to Explanatory Memorandum, Social Security Commission Bill 2018 (Cth).

<sup>13</sup> Australian Council of Social Services, above n 3.

31. We recommend that section 8 of the Bill, Commission's scope and function, should be expanded, and a subsection should be inserted to empower the Commission to make referrals to relevant bodies to address systemic issues it identifies during the course of its core duties and functions.

### ***Need for Australia's social security system to be responsive to changes in community living standards***

32. The Commission can play an important role in ensuring Australia's social security system is responsive to changes in community living standards.
33. NSSRN endorses ACOSS's submission, which states that payments should be responsive to the broader changes in community living standards, maintain purchasing power in line with wage and cost of living increases and ultimately provide a stable domestic environment.<sup>14</sup>
34. Research conducted by ACOSS on the impact of raising benefit rates established that "over time, wages have grown faster than prices. Accordingly, the nation's policy settings ensure that those Australians who are on allowances have seen their living standards squeezed relative to average living standards".<sup>15</sup>
35. In order for the Commission to effectively advise Parliament about changes to community living standards, it will need to consider and, where beneficial, conduct its own independent research. This will enable it to propose innovative models for social security payments and accurately assess the impact of increasing income support for people in receipt of payment.
36. For example, the Commission might take into account the recommendation recently made by Australia's National Research Organisation for Women's Safety (ANROWS) in its research report, "*Domestic violence, social security law and the couple rule*", that "further research should be funded to investigate the possibility that the basis of eligibility for all social security payments should be individuals only, rather than individuals and couples".<sup>16</sup> The current model where single people are paid a higher rate of social security than members of a couple are based on outdated and patriarchal assumptions of pooled resources, which do not reflect the reality of many modern relationships.
37. Such research will be essential to ensuring that the Commission's advice to Government is evidence-based and genuinely responsive to changes in community living standards.

### ***The Bill's compatibility with Australia's human rights obligations***

38. NSSRN's view is that the establishment of the Commission, which provides evidence-based advice on the appropriate rate at which social security payments should be set, is likely to improve Australia's performance against its human right obligations.
39. Specifically, the rights to social security and an adequate standard of living contained in Articles 9 and 11 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), to which Australia is a signatory. These provisions of ICESCR require Australia as a State Party to recognise and take appropriate steps to ensure the realisation of the right of everyone to social security<sup>17</sup> and

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<sup>14</sup> Ibid.

<sup>15</sup> Davidson et al., above n 1.

<sup>16</sup> Lyndal Sleep, Heather Douglas, Zoe Rathus, 'Domestic violence, social security law and the couple rule' (Research paper, Australia's National Research Organisation for Women's Safety, 2019).

<sup>17</sup> In the International Covenant on Economic, Social and Cultural Rights, the right to social security is provided at article 9, stating that "[t]he States Parties to the present Covenant recognize the right of everyone to social security, including social insurance." Refer to *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

the right of everyone to an adequate standard of living, which includes adequate food, clothing and housing, and to the continuous improvement of living conditions.<sup>18</sup>

40. Further, the independence of the Commission’s review of payment rates, if conducted free of independent interference, is likely to help address some of the breaches of human rights obligations which currently occur, for example when the social security system indirectly discriminates on the basis of race<sup>19</sup> or sex<sup>20</sup> (including punitive measures which primarily penalise Indigenous people and women), or do not provide an adequate standard of living for people with disabilities<sup>21</sup> (such as people with disabilities on Newstart Allowance unable to access Disability Support Pension).

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<sup>18</sup> Article 11 provides “[t]he States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.” Refer to *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

<sup>19</sup> In the Convention on the Elimination of Racial Discrimination, article 5 provides that “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (e) Economic, social and cultural rights, in particular: (iv) The right to public health, medical care, social security and social services.” Refer to *Convention on the Elimination of Racial Discrimination*, opened for signature 21 December 1965, 2106 UNTS 3 (entered into force 4 January 1969).

<sup>20</sup> The Convention on the Elimination of All Forms of Discrimination against Women specifically provides for the protection of women in rural areas at article 14. Refer to *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979.

<sup>21</sup> In the Convention on the Rights of Persons with Disability, the right to social security for persons with disabilities is provided at article 28, stating that “States Parties recognise the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realisation of this right without discrimination on the basis of disability ... States Parties recognise the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realisation of this right, including measures...” Refer to *Convention on the Rights of Persons with Disabilities and its Optional Protocol*, opened for signature 30 March 2007, UNTS (entered into force 3 May 2008).