

Introduction

1.1 The Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012 was introduced into Parliament on 31 May 2012. The amendments removed 'grandfathering' transitional arrangements for particular social security benefits with the result that from 1 January 2013, eligibility for Parenting Payment for all recipients ceases when the child of a partnered parent turns six or when the child of a single parent turns eight, and most recipients will be transferred to Newstart Allowance.

1.2 The Parliamentary Joint Committee on Human Rights (the committee) tabled an interim report on the bill on 20 September 2012 that recommended that the government defer these measures until the outcome of a related Senate inquiry into the adequacy of Newstart was known (see further below). The bill, however, passed both the Houses on 9 October 2012 and received Royal Assent on 24 October 2012.

1.3 When the committee examined the changes to Parenting Payment last year, it acknowledged that it could not finalise its views on this legislation until the related Senate inquiry was completed. With that in mind, the committee decided to issue an interim report at the time and revisit these issues in 2013.

1.4 This report updates the interim report to take account of the additional material available to the committee since September 2012. The report confirms the committee's interim views where relevant and presents the committee's final views on this legislation.

PJCHR scrutiny to date

1.5 On 15 June 2012 the Australian Council of Social Service and 14 other signatories (ACOSS) wrote to the committee seeking an inquiry under section 7 of the *Human Rights (Parliamentary Scrutiny) Act 2011* into the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012.

1.6 As an initial response to ACOSS' request, the committee held a public hearing in Canberra on 21 June 2012. The purpose of that hearing was to allow the committee to gather information that would enable it to properly consider the concerns raised in ACOSS' letter and to afford the government an opportunity to expand upon the claims made in the statement of compatibility that accompanied the bill. At that hearing the committee received evidence from representatives of ACOSS, the National Council of St Vincent de Paul Society, the National Council for Single Mothers and their Children, the Australian Human Rights Centre, the National Welfare Rights Centre, the Social Policy Research Centre and the Department of Education, Employment and Workplace Relations (the Department)¹.

1 The list of witnesses who gave evidence can be found in Appendix 1.

1.7 Following this hearing, the committee received additional information from both ACOSS and the Department in answer to questions on notice. The committee subsequently wrote to and received clarification from the Minister for Employment and Workplace Relations on several matters that had been highlighted through the committee's investigation of the bill.

PJCHR interim report

1.8 In undertaking its consideration of the bill the committee was mindful of the importance of establishing a robust analytical framework. The committee considered that such a framework would not only aid its analysis of the bill, but would enhance the committee's ability to adopt a consistent approach to the analysis of other legislation that engages similar human rights principles. The committee therefore devoted some time to considering how it would approach its examination of legislation and examining key sources on the application of the specific human rights and principles engaged by this bill.

1.9 In its interim report, the committee concluded that:

- If Newstart combined with other benefits is not sufficient to provide an adequate standard of living for affected individuals, the measures risk being a violation of human rights under article 9 of the International Covenant on Economic, Social and Cultural Rights.
- The committee was not yet convinced that the affected single parents would be able to maintain access to appropriate levels of social security support if placed onto Newstart.
- It would be premature for the government to introduce these measures prior to the completion of the related Newstart inquiry; the findings of that inquiry were due to be released on 29 November 2012.

1.10 The committee therefore recommended that the bill be delayed. As noted above, the bill nevertheless passed the Parliament on 9 October 2012.

UN concerns

1.11 In response to a complaint by ACOSS and other welfare groups,² the UN Special Rapporteur on Extreme Poverty and Human Rights and the UN Working Group on the Issue of Discrimination against Women in Law and Practice wrote to

2 Copy of the ACOSS letter is at:

http://acoss.org.au/uploads/Urgent%20communication%20to%20the%20UN%20Special%20Rapporteur%20on%20Extreme%20Poverty%20and%20Human%20Rights%20Final%20051012.pdf?utm_source=ACOSS+Media&utm_campaign=258ac43fe8-2012-10-05_MR_soleparents&utm_medium=email

the government asking for an explanation for the decision to transfer individuals from parenting payments to Newstart.³

1.12 The UN noted that these measures may be incompatible with Australia's international human rights obligations, including the right to social security, the right to an adequate standard of living and the right to non-discrimination.

1.13 The government does not appear to have responded to the UN's concerns to date.

3 Copy of the UN letter is at: [https://spdb.ohchr.org/hrdb/22nd/public -
UA Australie 19.10.12 \(2.2012\).pdf](https://spdb.ohchr.org/hrdb/22nd/public-_UA_Australie_19.10.12_(2.2012).pdf)

Overview of the amendments

1.14 The *Social Security Legislation Amendment (Fair Incentives to Work) Act 2012* amended the *Social Security Act 1991* to remove as of 1 January 2013 the 'grandfathering' transitional arrangements which were put in place on 1 July 2006 for certain Parenting Payment recipients.⁴

1.15 Parenting Payment (PP) is the main income support payment for parents with principal care of a young child. Since 1 July 2006 new recipients applying for PP were required to have principal care of a qualifying child aged less than six years for partnered recipients, and less than eight years for single recipients. Parents who had been in receipt of payment before 1 July 2006 (comprising one third of PP recipients) were 'grandfathered' on their pre-2006 conditions and were allowed to remain on payment until their youngest child turned 16, as long as they continued to meet all other eligibility criteria.

1.16 As part of the 2012-13 Budget, the government announced the removal of these grandfathering conditions from 1 January 2013. The *Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012* was introduced to give effect to this intention.

1.17 Some 63,000 PP recipients were affected by these changes on the commencement date of 1 January 2013 (as their children were already six or eight). These changes will eventually affect all 147,000 grandfathered PP recipients, the majority of whom are single parents.

1.18 Parents who are no longer eligible for PP may apply for Newstart Allowance (Newstart). Newstart is the primary working age income support payment. Recipients must satisfy an activity test and are required to search for jobs as a condition of payment, unless they are exempted from activity requirements.

Differences between Parenting Payment and Newstart Allowance

1.19 The thresholds for the income and assets tests are lower for Newstart than under PP. The cut-off point for Newstart is approximately \$36, 000 p.a, while the cut-

4 The Act also reduced the length of the liquid assets waiting period for certain income support applicants by doubling the maximum reserve threshold for liquid assets to \$5,000 for singles without dependants or \$10, 000 for others from 1 July 2013 (Schedule 2); and clarified the definition of 'termination payment' for the purposes of the income maintenance waiting period to ensure it includes any payments connected with the termination of a person's employment (Schedule 3). The changes contained in Schedules 2 and 3 (relating to the liquid asset and income maintenance waiting periods) would appear to be beneficial and do not appear to raise any human rights concerns. These provisions are not subject to consideration in this report.

off point for PP Single is \$47,000 p.a.⁵ Therefore, not all of the previously grandfathered PP recipients are eligible to receive Newstart. It is estimated that just under 30% of PP Single recipients will not be eligible to transfer to Newstart.⁶

1.20 Newstart provides for a lower payment rate than PP Single.⁷ The maximum rate per fortnight for PP Single is \$663.70 while the maximum rate per fortnight for Newstart is \$533.⁸ Newstart, however, provides the same payment rate as PP Partnered (\$444.70 per fortnight). The key impact of these measures is therefore on single parent families. For those coming from PP Single this means a lower rate of payment and similar participation or activity requirements.⁹

1.21 Newstart also has a stricter 'income free area', that is, the amount of money that may be earned without impacting a recipient's payment. On PP Single, parents may earn \$176.60 a fortnight, plus an additional \$24.60 for each additional child, before the payment is reduced by 40 cents in the dollar. This means parents can earn up to \$1,835.85 per fortnight (plus \$24.60 for each additional child) before their payments cease. Parents transitioned to Newstart, however, would start to see a reduction in payments after they earn more than \$62 a fortnight (also by 40 cents in the dollar), which means that they will be ineligible for the payment once they earn \$1,394.50 per fortnight.¹⁰

5 See Report of the Senate Education, Employment and Workplace Relations Legislation Committee Inquiry into the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012, August 2012, para 2.5.

6 Letter from the Minister for Employment and Workplace Relations to the Chair of the Parliamentary Joint Committee on Human Rights, 18 September 2012.

7 In general terms, parents transferring from PP Single to the maximum Newstart rate for single principal carers would lose \$118.70 a fortnight. With the exception of the pensioner education supplement, the same supplementary payments and services are available on PP Single and Newstart.

8 See information on the Department of Human Services' website:
<http://www.humanservices.gov.au/customer/enablers/centrelink/parenting-payment/changes-to-parenting-payment>

9 Since July 2007 the vast majority of PP recipients have faced the same activity requirements as parents with children over five years of age on Newstart. The main difference between their circumstances and those of new applicants after 2006 was that this 'grandfathered' group received a higher payment with a more liberal income test. See ACOSS Briefing notes:
<http://www.acoss.org.au/images/uploads/Formatted%20briefing%20note%20sole%20parents%2021%20May%202012.pdf>

10 See information on the Department of Human Services' website:
<http://www.humanservices.gov.au/customer/enablers/centrelink/parenting-payment/changes-to-parenting-payment>

1.22 The government has provided two case studies to illustrate the financial impact of these changes.¹¹ The first example describes the circumstances of a grandfathered single parent on PP Single with a nine year old child. The parent satisfies their participation requirement of 30 hours per fortnight, earns \$500 per fortnight, and pays \$350 per week in rent. This recipient would receive \$140.79 less per fortnight following these changes. The second example describes the circumstances of a grandfathered single parent on PP Single with two children aged nine and 14. The parent satisfies their participation requirement of 30 hours per fortnight, earns \$500 per fortnight, and pays \$350 per week in rent. This recipient would receive \$139.77 less per fortnight following these changes.

1.23 Newstart is also subject to different indexing arrangements than PP. Newstart is indexed by movements in the Consumer Price Index (CPI). By comparison, pensions are indexed by the greater of the movement in the CPI, the Pensioner and Beneficiary Living Cost Index (PBLCI) or the Male Total Average Weekly Earnings (MTAWE). PP is more akin to pensions and is indexed to CPI movements and benchmarked to wages.¹² The effect of this is that pensions and PP have, since 1997, been increasing in line with wage rises while allowances such as Newstart have increased only in line with the CPI. ACOSS has pointed out that wages have risen more than inflation over the past two decades and given that Newstart has been indexed to CPI over this same period, its value has fallen further behind other household incomes:

Since 1994, the single rate of [Newstart] has fallen from 92% to 72% of the poverty line and from 26% to 21% of the fulltime median wage.¹³

1.24 This has resulted in a widening of the gap between the payments. The Henry Tax Review suggested that:

... some difference in the level of payments can be justified on the basis of differing needs and presenting different incentives to different groups ... Harder to justify is the fact that rates of pension and allowances are not merely different, but the gap between them is widening ... If the current indexation arrangements remain in place, it is likely that by 2040, a single pensioner would be paid more than twice as much as a single unemployed person. A continuous decline in Newstart Allowance against community standards would have major

11 See Report of the Senate Education, Employment and Workplace Relations Legislation Committee Inquiry into the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012, August 2012, paragraphs 2.12-2.13.

12 But PP is not indexed to the PBLCI.

13 See Report of the Senate Education, Employment and Workplace Relations References Committee inquiry into the adequacy of the allowance payment system, November 2012, paragraph 3.34.

implications for payment adequacy and the coherence—in terms of horizontal equity—of the income support system.¹⁴

1.25 The Australian Council of Trade Unions (ACTU) has pointed out that the real, CPI-adjusted value of Newstart has remained almost constant for the past two decades:¹⁵

In constant 2011 dollars, the unemployment benefit was around \$188 per week in March 1982, compared with \$244.85 in 2012. When the unemployment benefit became Newstart Allowance in July 1991, it was worth \$233.80 in 2011 dollars. Eighty per cent of the real increase in the payment rate therefore occurred in the 1980s; the payment has remained more or less constant in real (CPI-adjusted) terms for the past two decades.

Supplementary payments

1.26 A number of supplements, concessions and services are available to both eligible PP recipients and eligible Newstart recipients. These include: Family Tax Benefit A and B, Child Care Rebate, Child Care Benefit, job and training services, rent assistance and concessions. Therefore, under the combined package of assistance a single unemployed parent with two children on Newstart could receive a maximum of \$1,239.87 a fortnight, which approximates the national minimum wage of \$1,212.80.¹⁶

1.27 However, it is important to note that families with one parent working fulltime at the national minimum wage of \$1,212.80 receive more than this amount once family supplements and other forms of government assistance are taken into account. For example, a working single parent on the minimum wage with two children receives \$1,823 a fortnight – approximately \$500 more (or 30 per cent more) than a single parent family in the same situation who is unemployed and who receives the Newstart payment.¹⁷

New initiatives

1.28 The government has recently taken steps to provide some additional support to Newstart recipients to ‘assist vulnerable [individuals], including those on

14 Australia’s Future Tax System, 2009, at: http://taxreview.treasury.gov.au/content/FinalReport.aspx?doc=html/publications/papers/Final_Report_Part_1/index.htm

15 See Report of the Senate Education, Employment and Workplace Relations References Committee inquiry into the adequacy of the allowance payment system, November 2012, paragraph 3.32.

16 Joint Agency submission (DEEWR, DHS, FaHCSIA, DIISRTE) to the Senate Education, Employment and Workplace Relations References Committee, *Inquiry into the adequacy of the allowance payment system*, August 2012, page 98.

17 Joint Agency (DEEWR, DHS, FaHCSIA, DIISRTE), Response to Question taken on notice at the EEWRR inquiry 17 September 2012.

[Newstart], to manage unforeseen expenses and increasing costs'.¹⁸ The Social Security and Other Legislation Amendment (Income Support Bonus) Bill 2012¹⁹ introduced a new lump sum payment, the Income Support Bonus, to be paid twice yearly to certain income support recipients from March 2013. The new payment will provide an extra \$210 per year (or \$4 a week) for single Newstart recipients and \$175 per year (or \$3 a week) for a member of a couple.

1.29 The committee considered this bill in its *First Report of 2013* and noted that it would promote the enjoyment of the right to social security and the right to an adequate standard of living. The committee, however, sought further clarification from the Minister as to whether the total income available to the recipients of the bonus is sufficient to satisfy minimum essential levels of social security and the minimum requirements of the right to an adequate standard of living in Australia, and the basis on which on which the government makes that assessment.²⁰ In response, the Minister provided information about the type of schemes and payments that are available to recipients of the income support bonus but did not address the specific questions that the committee had raised regarding the adequacy of the overall income support provided to individuals.²¹

18 Minister for Employment and Workplace Relations, 'Second reading speech: Social Security and Other Legislation Amendment (Income Support Bonus) Bill 2012', House of Representatives, Debates, 29 November 2012, p. 13 891, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F9b96ae59-96ca-4e39-b984-8b520b432ef5%2F0035%22>

19 The bill was introduced into the House of Representatives on 29 November 2012 and received Royal Assent on 5 March 2013.

20 At: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=humanrights_ctte/reports/2013/1_2013/c12.htm

21 See PJCHR Report 3/13 at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=humanrights_ctte/reports/2013/3_2013/index.htm

Related parliamentary inquiries

1.30 Coinciding with the committee's consideration of the human rights implications of the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012, the Senate initiated separate inquiries into this bill and the related matter of the adequacy of the allowance payment system, including Newstart.

1.31 The committee noted that the two Senate inquiries had elicited submissions and evidence from a broad range of organisations and individuals with relevant knowledge and expertise around the policy issues engaged by the bill. The committee therefore did not propose to duplicate these inquiries by inviting public submissions or holding further public hearings on the bill.

Senate Education, Employment and Workplace Relations Legislation Committee inquiry on the bill

1.32 On 19 June 2012, the Senate Education, Employment and Workplace Relations Legislation (EEWRL) Committee commenced an inquiry into the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012. The inquiry attracted submissions from 37 individuals and organisations and received evidence from seven organisations at a public hearing in Melbourne on 9 August 2012, including ACOSS and other co-signatories to ACOSS' letter of 15 June 2012. The committee tabled its report on 22 August 2012.²²

1.33 The EEWRL Committee's report expressed concern about the decrease in income support resulting from transferring single parents from PP to Newstart and recommended that the government consider deferral of these measures until the Senate Education, Employment and Workplace Relations References Committee completed its inquiry into the adequacy of Newstart and other payments, and the government had an opportunity to respond to any recommendations that might be forthcoming.

1.34 The PJCHR's interim report on the bill took into account the findings of the EEWRL Committee inquiry.

22 Senate Education, Employment and Workplace Relations References Committee, *Report of the inquiry into the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012 [Provisions]*, 23 August 2012.

Senate Education, Employment and Workplace Relations References Committee inquiry into the adequacy of the allowance payment system, including Newstart²³

1.35 On 26 June 2012, the Senate Education, Employment and Workplace Relations References Committee (EEWRR Committee) commenced an inquiry into, among other things, the adequacy of the allowance payment system for jobseekers and others, including the adequacy of Newstart. The inquiry received 78 submissions and held four public hearings in Sydney, Melbourne and Canberra. The committee tabled its report on 29 November 2012.²⁴

1.36 The issue of the *adequacy* of Newstart and related allowances was extensively canvassed in the inquiry by the EEWRR Committee. The EEWRR Committee stated:

At its core this inquiry relates to whether a person dependent on income support can meet their basic, everyday living costs in a manner acceptable in the Australian context. Adequacy is, therefore, about more than the ability to simply pay for food and shelter. As put by the Business Council of Australia 'Adequacy refers to the minimum standards required to meet basic needs and sustain some level of social engagement'.²⁵

1.37 The PJCHR considers that the definition of 'adequacy' adopted by the EWR Committee is likely to be broadly analogous to the standard that Australia would be held to vis-à-vis its international human rights obligations and therefore its findings would be directly relevant to the deliberations of this committee.

Is Newstart adequate?

1.38 The majority report of the EEWRR Committee considered that '[Newstart] is effectively discharging its primary duty: to support people through a short term transitional period of unemployment'.²⁶ However, the Committee noted that the evidence had 'convincingly expos[ed] how difficult it is to eke out an existence and secure paid employment while living on [Newstart]',²⁷ and agreed that Newstart 'does not allow people to live at an acceptable standard in the long term'.²⁸

23 Summary of findings drawn from the Bills Digest on the Social Security and Other Legislation Amendment (Income Support Bonus) Bill 2012 (by Michael Klappdor; Bill Digest No 58, 2012-13).

24 Senate Education, Employment and Workplace Relations References Committee, *Report of the inquiry into the adequacy of the allowance payment system*, 29 November 2012.

25 Senate Education, Employment and Workplace Relations References Committee, *Report of the inquiry into the adequacy of the allowance payment system*, p 31, para 3.4.

26 Majority report, p 30, para 2.67

27 Majority report, p 54, para 3.83.

28 Majority report, p 54, para 3.84.

1.39 The EEWRR Committee expressed concern that 42 per cent of new recipients each year did not transition quickly back into the workforce and that '62 per cent of current recipients have been on [Newstart] or some form of income support for more than a year'.²⁹

1.40 Emphasising that the allowance was never intended to be a long term solution to unemployment, the Committee stated:

On the weight of evidence, the committee questions whether [Newstart] provides recipients with a standard of living that is acceptable in the Australian context for anything but the shortest period of time.³⁰

1.41 The majority report of the EEWRR Committee, however, did not recommend an increase to Newstart.³¹ Instead, the Committee recommended measures to get people back into the workforce more quickly, such as relaxing the income-free threshold; tailoring assistance to meet the needs of particular groups of jobseekers; and improving employment assistance.

1.42 In additional comments to the majority report, the Government Senators on the EEWRR Committee said that the Newstart rate for singles was too low and in principle favoured an increase:

It is plain that [Newstart] is too low, particularly for single recipients. For this reason [Newstart Single] should be increased ... [and] consideration given to whether, like pensions, the payment should not decrease in real terms each year.³²

1.43 The Government Senators also questioned whether the current Newstart rate was an impediment to people's ability to re-engage with the workforce:

If payments are so low that welfare agencies and social security experts tell us that being reliant on [Newstart] actually impedes people's ability to gain employment, then this is counterproductive to the very objective of the allowance payment, which is to support people temporarily as they transition into paid employment.³³

1.44 In additional comments, the Australian Greens similarly considered that Newstart was too low and recommended a specific increase by \$50 per week.³⁴

29 Majority report, p 30, para 2.67 and footnote 58.

30 Majority report, p. 50, para 3.66.

31 Majority report, p. 54, paras 3.84-3.86.

32 Government Senators' additional comments, p. 89, para 1.32..

33 Government Senators' additional comments, p. 86, para 1.17.

34 Australian Greens additional comments, p. 93, para 1.16.

Is Newstart combined with other benefits adequate?

1.45 As discussed above, recipients on Newstart may also be eligible for a range of additional benefits such as Rent Assistance and Family Tax Benefit. The EEWRR Committee commented on the complexity of the overall package of assistance:

The allowance payment system is too complex. The committee has received evidence of the difficulties that recipients and their advocates have encountered as they attempt to navigate the web of entitlements, exclusions and supplements. Indeed the committee itself has struggled at times to comprehend the material presented to it by the government.³⁵

1.46 The EEWRR Committee examined cost of living pressures for allowance recipients including the costs of caring for children, housing, food and the costs of searching for work and noted that:

The overwhelming majority of submissions expressed the view that the current rate of payment was inadequate, impeding recipients' ability to meet their basic costs of living in an acceptable manner.³⁶

1.47 The evidence presented to the EEWRR Committee indicated that many recipients of allowances struggled to make ends meet and households reliant on allowance payments were much more likely to experience deprivation and financial stress.³⁷

1.48 The government, however, argued that:

It is ... inappropriate to consider allowance payment rates in isolation as they are one component of a broader package of assistance that is targeted to the needs of recipients.³⁸

1.49 The government noted that different household types could receive a range of benefits depending on their circumstances and that while many low-income

35 Majority report, p. 77, para 4.103.

36 Majority report, p. 31, para 3.5.

37 See for example Australian Council of Social Service's submission to the Senate Education, Employment and Workplace Relations References Committee, *Inquiry into the adequacy of the allowance payment system*, August 2012, at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=eet_cte/completed_inquiries/2010-13/newstart_allowance/submissions.htm, and the document tabled by Anglicare Australia, Catholic Social Services Australia, The Salvation Army and UnitingCare Australia to the EEWRR inquiry: B Phillips and B Nepal, *Going without: financial hardship in Australia*, National Centre for Social and Economic Modelling (NATSEM), August 2012 at <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fcatalog%2F00459624%22>

38 Joint Agency submission (DEEWR, DHS, FaHCSIA, DIISRTE) to the Senate Education, Employment and Workplace Relations References Committee, *Inquiry into the adequacy of the allowance payment system*, August 2012, p. 96.

families reported persistent financial stress, many others did not report any such stress.³⁹

1.50 The government did not put forward an explicit position as to whether current payment rates were adequate or not. It did, however, put forward the view that the current system is fairly effective at encouraging people to transition from income support into the workforce quickly, with those experiencing the most financial difficulties being the long-term unemployed and those with significant barriers to participation.

1.51 The Australian Greens were critical of the government's submission:

Such arguments simply cannot disguise the stark reality that the single rate of Newstart is now less than 45 per cent of minimum wage, and \$130 per week below the poverty line or that it is declining in real terms, while cost of living pressures, particularly relating to energy, food, transport and housing, are increasing.⁴⁰

...

Evidence presented to this inquiry clearly demonstrates that capabilities such as the ability to secure appropriate housing; maintain adequate nutrition; and participate in the labour market are significantly diminished by long periods spent on Newstart.⁴¹

1.52 The Australian Greens also questioned the idea that the government provides a package of supports that offsets the inadequacy of the base payment and noted that current programs, such as Family Tax Benefit and Rent Assistance, are also extended to families living on the minimum wage.⁴² They were unconvinced by the government's arguments that other policies were sufficient to offset the inadequacy of the base-payment of Newstart and other allowances:

[W]hile there is clearly a package of supports available from the government that does modestly supplement the income of allowance recipients, particularly families, this still has not been demonstrated to sufficiently lift those families, particularly single parent families, out of poverty. In fact, other submitters such as Anglicare and ACOSS have presented evidence that clearly demonstrates the extent to which families living on Newstart experience poverty, even with the current suite of additional payments.⁴³

39 Joint Agency submission (DEEWR, DHS, FaHCSIA, DIISRTE) to the Senate Education, Employment and Workplace Relations References Committee, *Inquiry into the adequacy of the allowance payment system*, August 2012, p. 102.

40 Australian Greens additional comments, p 93, para 1.21.

41 Australian Greens additional comments, p 94, para 1.24

42 Australian Greens additional comments, p 95. para 1.27.

43 Australian Greens additional comments, p 95, para 1.28.

Human rights issues

The committee's role in the legislative process

1.53 The committee's formal remit is to consider bills and legislative instruments introduced into the Parliament for compatibility with human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Act defines human rights by reference to the rights and freedoms contained in seven core human rights treaties to which Australia is a party. These treaties are:

- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- International Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Discrimination against Women;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Convention on the Rights of the Child; and
- Convention on the Rights of Persons with Disabilities

1.54 The committee recognises that the nature and scope of the rights and freedoms expressed in these treaties requires some interpretation on the committee's part. The committee considers that, where relevant and appropriate, the views of human rights treaty bodies and international and comparative human rights jurisprudence can provide useful sources. At the same time, the committee considers that its interpretation of these rights and freedoms must have relevance within an Australian context.

Relevant rights

Right to social security

1.55 Article 9 of the ICESCR recognises the right to social security and provides that:

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

1.56 The right to social security is also recognised in the International Convention on the Elimination of All Forms of Racial Discrimination (article 5(e)(iv)); the Convention on the Elimination of All Forms of Discrimination against Women (articles

11(1)(e) and 14(2)(c)); the Convention on the Rights of the Child (article 26) and the Convention on the Rights of Persons with Disabilities (article 28).⁴⁴

Is parenting payment a form of social security?

1.57 The UN Committee on Economic, Social and Cultural Rights (CESCR)⁴⁵ has stated that the term 'social security' in article 9 covers the risks involved in the loss of means of subsistence for reasons beyond a person's control and that it encompasses the right to access and maintain benefits, whether in cash or in kind in order to secure protection from (a) lack of work-related income, (b) unaffordable healthcare, or (c) insufficient family support.⁴⁶

1.58 The committee considers that PP is likely to be a form of 'social security' for the purposes of article 9 of ICESCR.

Nature and scope of obligations

1.59 States' obligations in relation to the right to social security, as with all human rights, rest on the need to respect (ie not interfere with), to protect (ie take measures to prevent others from interfering with), and to fulfil (ie take positive measures to fully realise) rights. In other words, they entail both negative and positive obligations.

1.60 Economic, social and cultural rights also involve obligations of immediate effect and obligations of progressive realisation. The former broadly comprise obligations not to unjustifiably deprive individuals of their existing access to a right (ie the obligation to respect); to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights; and to ensure that individuals enjoy these rights without discrimination. The latter, based on the recognition that their full realisation may not be possible immediately, involves obligations to adopt measures that are capable of facilitating the full realisation of economic, social and cultural rights over time. States are therefore accorded a measure of discretion with regard to the progress of realisation.

1.61 In relation to the right to social security, the CESCR has identified various immediate obligations. For example, the duty to ensure minimum essential levels of social security requires that individuals are able to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic

44 The discussion on the right to social security in this report primarily focuses on the ICESCR but the same standards are applicable to these other international human rights treaties.

45 The CESCR monitors compliance by states parties with their ICESCR obligations. To assist parties in complying with their obligations under the ICESCR, the CESCR issues 'General Comments'. General Comments are not legally binding but they indicate the interpretation of the provisions of the ICESCR adopted by the CESCR, and have persuasive effect on the interpretation of the ICESCR by the parties.

46 CESCR, General Comment No 19 (2008), paragraph 2.

forms of education. Part of the minimum core is also respect for existing social security schemes. This relates to the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage as well as the right to equal enjoyment of adequate protection from social risks and contingencies (that is, the right of access to such schemes on a non-discriminatory basis – in other words, any distinction on prohibited grounds must be reasonable and justified in the circumstances).⁴⁷

Adequacy and related rights, in particular the right to an adequate standard of living

1.62 The CESCR has also stated that social security should be available, adequate and accessible.⁴⁸ Adequacy means that:

... the benefits must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care, as contained in articles 10, 11 and 12 of the [ICESCR]. States parties must also pay full respect to the principle of human dignity contained in the preamble of the Covenant, and the principle of non-discrimination, so as to avoid any adverse effect on the levels of benefits and the form in which they are provided'.⁴⁹ The CESCR has stressed that the adequacy of benefits should be 'monitored regularly to ensure that beneficiaries are able to afford the goods and services they require to realize their [ICESCR] rights'⁵⁰

Limitations and retrogressive measures

1.63 Limitations: Like all economic, social and cultural rights, the right to social security in article 9 of ICESCR is not absolute and may be subject to permissible limitations.⁵¹ Article 4 of ICESCR provides that economic social and cultural rights may be subject 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 CESCR has stated that limitations must be proportional, and must be the least restrictive alternative where several types of limitations are available, and that even where such limitations are permitted, they should be of limited duration and subject to review.⁵²

1.64 Retrogressive measures: The ICESCR does not contain a definition of retrogressive measures, but these are generally understood to mean measures that directly or indirectly lead to backward steps being taken with respect to the rights

47 CESCR, General Comment No 19 (2008), paragraphs 2 and 59.

48 CESCR, General Comment No 19 (2008).

49 CESCR, General Comment No. 19 (2008), paragraph 22.

50 CESCR, General Comment No. 19 (2008), paragraph 22.

51 See article 4 of ICESCR.

52 See eg, CESCR, General Comment No 14 (2000), paragraph 29.

recognised in the ICESCR. A deliberate retrogressive measure has been described to mean any measure which implies a backwards step in the level of protection of ICESCR rights as a consequence of an intentional decision by the state and includes any unjustified reduction in public expenditure in the absence of adequate compensatory measures aimed to protect the affected individuals.⁵³ Deliberate retrogressive measures are not prohibited per se under international human rights law but will require close justification, even during times of severe resource constraints, whether caused by a process of adjustment, economic recession, or by other factors.⁵⁴ For example, the CESCR has explained that:

There is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant. If any deliberately retrogressive measures are taken, the 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.⁵⁵

Are these measures retrogressive or a limitation on the right to social security?

1.65 If there is more than one way to provide adequate social security the government is obviously entitled to make a choice. The government, however, acknowledges that some parents may be less well-off overall as a result of these changes. In a letter to the committee on 18 September 2012, the Minister for Employment and Workplace Relations said that:

The financial status of each parent impacted by the changes will vary depending on each individual family's circumstances, including their levels of employment income, other government payments received and their level of taxation. When all these are taken into account, some parents may experience a reduction in their total fortnightly income.

53 M Sepulveda, *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (ed.) in *School of Human Rights Research Series*, Volume 18 Intersentia Antwerpen (2003) page 323-324.

54 See eg, CESCR, General Comment No 3 (1990), paragraphs 9 and 12.

55 CESCR, General Comment No 19 (2008), paragraph 42.

1.66 If particular PP recipients who are transitioned to Newstart are likely to be worse off overall – for example, because the reduction in income support will be not be adequately met by some other benefit or through earning income – these measures are likely to be considered as either retrogressive or a limitation on the right to social security because they reduce existing social security entitlements.

1.67 The committee therefore considers that the government must justify these measures accordingly.

Right to non-discrimination

1.68 The committee notes that concerns have been raised that removing the 'grandfathered' arrangements may indirectly discriminate against women because the vast majority of PP Single recipients (95%) are women.⁵⁶

1.69 Article 2(2) of the ICESCR guarantees the right to non-discrimination in the exercise of economic, social and cultural rights. Article 2(2) therefore prohibits any direct⁵⁷ or indirect⁵⁸ discrimination, whether in law or in fact, on prohibited grounds, including sex, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to social security.⁵⁹

1.70 The right to non-discrimination is also recognised in the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; and the Convention on the Rights of Persons with Disabilities.

1.71 A difference in treatment on prohibited grounds, however, will not be directly or indirectly discriminatory provided that it is (i) aimed at achieving a purpose which is legitimate; (ii) based on reasonable and objective criteria, and (iii) proportionate to the aim to be achieved.

1.72 The committee considers that if the measures are found to be compatible with the right to social security, then they are also likely to be consistent with the right to non-discrimination.

56 Principal carer parents on Newstart are predominantly female with 38,066 recipients or 86 per cent of the total number of 44,194 recipients. This is mirrored in the Parenting Payment (Partnered) population with 91 per cent being female, and Parenting Payment (Single) of which 95 per cent are female: see Joint submission, page 86.

57 Direct discrimination occurs where a person is subject to less favourable treatment than others in a similar situation because of a particular characteristic.

58 Indirect discrimination occurs where apparently neutral criteria are applied to make decisions but which have a disproportionate impact on persons who share a particular characteristic.

59 See CESCR, General Comment No 19 (2008), paragraph 29, and General Comment No 20 (2009).

Children's rights

1.73 The committee notes that these measures also engage children's rights under the Convention on the Rights of the Child (CRC). Article 3(1) of the CRC requires that, 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.' Article 27 of the CRC guarantees the right to an adequate standard of living for all children without discrimination of any kind.

1.74 The UN Committee on the Rights of the Child has stated that the best interests of the child principle requires:

... active measures throughout Government, parliament and the judiciary. Every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children's rights and interests are or will be affected by their decisions and actions - by, for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but indirectly affect children.⁶⁰

60 UN Committee on the Rights of the Child, General Comment 5 (2003), paragraph 12.

The committee's assessment

Statement of compatibility

1.75 A key element in the committee's consideration of human rights in the legislative process is the statement of compatibility. The *Human Rights (Parliamentary Scrutiny) Act 2011* requires that all bills and disallowable legislative instruments introduced into the Parliament must be accompanied by a statement of compatibility.⁶¹

1.76 The Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012 was introduced with a statement of compatibility, which was prepared by the Department of Education, Employment and Workplace Relations.

1.77 The statement of compatibility noted that the changes to the grandfathering arrangements engaged the right to social security in article 9 of the ICESCR and provided the following explanation:

The changes to the eligibility rules for 'grandfathered' parenting payment recipients will make access to parenting payment consistent for all claimants regardless of when they first claimed payment. The justification for this is to accelerate the closing of the grandfathered conditions for parenting payments which will help to restore equity across the parenting payment population. This limitation is further justified because it will encourage parents with older children to re-enter the workforce earlier, thereby reducing long term welfare reliance and, over time, the prevalence of intergeneration welfare dependency. A person's access to social security is not impacted, as recipients who are affected by this measure are entitled to apply for other income support payments, such as Newstart Allowance.

1.78 The statement concluded that the bill was compatible with human rights because it generally advanced human rights and that to the extent that it may have an adverse impact on human rights, that impact was reasonable and for legitimate reasons.

1.79 In its interim report, the committee noted that, while the statement of compatibility correctly identified the removal of the 'grandfathering' provisions as engaging the right to social security, the analysis contained in the statement fell short of the committee's expectations.

1.80 The committee stated that it regretted the fact that the government did not provide Parliament with a statement of compatibility which included a detailed analysis of the bill's compatibility with human rights. Providing such information to Parliament would have assisted the committee in its scrutiny tasks and also

61 See section 8.

improved Parliament's understanding of the precise impacts of these changes in a more timely way.

1.81 The committee, however, acknowledged that the government had since provided further information to the committee which has gone some way in providing the level of detail that was absent in the statement of compatibility.

Framework for analysis

1.82 In its interim report, the committee took the view that there is considerable overlap between limitations on rights and retrogressive measures, particularly when they interfere with an existing enjoyment of a right. Both can generally be considered through the same lens in the sense that they broadly require the government to demonstrate that the measures in question pursue a legitimate objective and have a reasonable relationship of proportionality between the means employed and the objective sought to be realised.⁶²

1.83 The committee therefore adopted a three-fold inquiry to assess whether these measures are compatible with human rights:

- (i) Whether the measure is aimed at achieving a legitimate objective;
- (ii) Whether there is a rational connection between the measure and the objective; and
- (iii) Whether the measure is proportionate to that objective.

Legitimate objective

1.84 A legitimate objective is one that addresses an area of public or social concern that is pressing and substantial enough to warrant limiting the right.

1.85 The government has stated that the purpose of these measures is to:

- provide greater incentives and opportunities, particularly for single parents, to re-engage in the workforce, and
- provide greater equity and consistency in the PP eligibility rules by ensuring that all parents are assessed on the same basis, regardless of when they first claimed income support.

1.86 In its submissions to this committee and the Senate Education, Employment and Workplace Relations Legislation Committee, the government submitted that:

Findings by the OECD and in other literature show that long periods in receipt of income support are associated with high levels of social and economic disadvantage, often extending to children in these families and

62 See, eg, Amrei Müller, 'Limitations to and Derogations from Economic, Social and Cultural Rights' (2009) 9 Human Rights Law Review 557.

future generations. There is also evidence that helping parents find work can be more effective than providing cash payments. Joblessness among families is a significant social and economic problem facing this country. Australia has one of the highest proportions of children living in jobless families in the OECD.⁶³

1.87 Both the majority and minority reports on the bill by the Senate Education, Employment and Workplace Relations Legislation Committee affirmed the importance of supporting parents to participate meaningfully in the workforce, particularly as their children get older and their capacity to work increases.⁶⁴

1.88 The Senate Education, Employment and Workplace Relations References Committee similarly acknowledged the value of measures to encourage higher workplace participation, and noted that ‘parents who work are more likely to have children who will successfully participate in the labour market as adults, and in so doing break the cycle of intergenerational unemployment’.⁶⁵

Committee view

1.89 In its interim report, the committee noted that it considers that supporting parents to re-enter the workforce and achieving equity for all parents on income support are legitimate objectives. The committee remains of this view.

1.90 However, as indicated in the interim report, the committee considers that it does not follow that the particular means by which the government has sought to achieve this equity are justified. For example, an alternative approach would be to give later recipients the same benefits as earlier recipients, rather than reducing the benefits of earlier recipients. It is not apparent to the committee that the government considered any alternative options in this regard.

Rational connection

1.91 The key issue here is whether the measures in question are likely to be effective in achieving the objective being sought. It is not sufficient to put forward a legitimate objective if in fact the measure limiting the right will not make a real difference in achieving that aim. In other words, the objective might be legitimate

63 Department of Education, Employment and Workplace Relations, Submission to the Parliamentary Joint Committee on Human Rights on the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012, 25 June 2012, pp 5-6; Department of Education, Employment and Workplace Relations, Submission to the Senate Education, Employment and Workplace Relations Legislation Committee Inquiry into the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012, August 2012, p. 4.

64 Report of the Senate Education, Employment and Workplace Relations Legislation Committee Inquiry into the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012, August 2012, paragraph 2.53 (Majority report) and paragraph 1.2 (Dissenting report).

65 Senate Education, Employment and Workplace Relations References Committee, *Report of the inquiry into the adequacy of the allowance payment system*, p 78.

but unless the proposed measure will actually go some way towards achieving that objective, the limitation of the right is likely to be impermissible.

1.92 In its submissions to this committee and the Senate Education, Employment and Workplace Relations Legislation Committee, the government cited evidence indicating that previous changes to PP, including the introduction of participation requirements for parents with school age children, did increase workforce participation and reduce income support reliance for some parents during 2006-07. According to the government, single parents receiving Newstart have a slightly higher placement rate (65 per cent) than parents receiving grandfathered parenting payment (57 per cent).⁶⁶

1.93 In particular, the government pointed to a 2010 Welfare to Work Evaluation Report which showed that:⁶⁷

- Recipients left income support faster, primarily for jobs. During 2006–07, 38 per cent of single principal carer parents with a youngest child aged eight to 15 years on Newstart Allowance had left income support after six months compared to only 15 per cent in the years immediately preceding;
- The proportion of those parents with children aged six to 15 who were in paid employment after six months increased to 29 percent from 20 per cent;
- Over 70 per cent principal carer parents left income support for employment; and
- 70 per cent of principal carer parents directly affected by Welfare to Work participated in employment services throughout the year.

1.94 In addition, an increased demand for Jobs, Education and Training Child Care Fee Assistance (JETCCFA) indicates that more parents on income support want to undertake training, studying and working activities. In 2006-07 around 18,000 parents were assisted by JETCCFA. In 2010-11, this had increased to over 31,000 parents.

1.95 In further information provided to the committee on 18 September 2012, the government said that its research shows that:

66 Department of Education, Employment and Workplace Relations, Submission to the Senate Education, Employment and Workplace Relations Legislation Committee Inquiry into the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012, August 2012, p. 4

67 Department of Education, Employment and Workplace Relations, Submission to the Parliamentary Joint Committee on Human Rights on the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012, 25 June 2012, p 6; Department of Education, Employment and Workplace Relations, Submission to the Senate Education, Employment and Workplace Relations Legislation Committee Inquiry into the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012, August 2012, p. 4.

65% of principal carer parents on Newstart are able to find paid employment, compared to 55% of all job seekers. Further, thirteen weeks after placement in a job, these parents on Newstart are nearly 10% more likely to still be in work, and after 26 weeks they are 5% more likely to still be in paid work than all job seekers.⁶⁸

1.96 The government, however, acknowledged in evidence provided to the Senate Education, Employment and Workplace Relations References Committee inquiry that principal carer parents receiving Newstart have an average duration of income support of more than four years, which is considerably longer than the average duration for all recipients on Newstart of approximately 3.5 years.⁶⁹ The government also noted that in meeting their participation requirements, parents on Newstart, in particular single parents, and PP (Single) recipients, exhibit the highest frequency of earnings of all groups on income support by a considerable margin.⁷⁰

1.97 Various submissions to the Senate Education, Employment and Workplace Relations Legislation Committee suggested that moving grandfathered recipients from PP Single to Newstart would result in a reduction in support for vulnerable families, while also failing to provide recipients with an incentive to obtain work, or increase the amount of work they undertake. The Senate Education, Employment and Workplace Relations Legislation Committee's report on the bill cites several examples:⁷¹

- ACOSS submitted that the proposed change would be negative rather than incentivising, as the vast majority of parents affected by the proposals are already required to seek part time employment and would face no additional job seeking requirements.
- Mission Australia suggested that while single parents may have casual work, it could cite no evidence to support the proposition that parents who moved from Parenting Payment to Newstart were more likely to obtain 'sustainable work'.

68 Letter from the Minister for Employment and Workplace Relations to the Chair of the Parliamentary Joint Committee on Human Rights, 18 September 2012.

69 Joint Agency submission (DEEWR, DHS, FaHCSIA, DIISRTE) to the Senate Education, Employment and Workplace Relations References Committee, *Inquiry into the adequacy of the allowance payment system*, August 2012, p 89 and p. 118.

70 Joint Agency submission (DEEWR, DHS, FaHCSIA, DIISRTE) to the Senate Education, Employment and Workplace Relations References Committee, *Inquiry into the adequacy of the allowance payment system*, August 2012, p 81

71 Report of the Senate Education, Employment and Workplace Relations Legislation Committee Inquiry into the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012, August 2012, paragraph 2.34-2.42.

- The National Welfare Rights Network pointed out that any increase in participation rates could not necessarily be attributed to reduced payment rates, but rather to the activity requirements and increased support to obtain employment.

1.98 The Senate Education, Employment and Workplace Relations Legislation Committee majority was not convinced by the government's evidence that the measures are fair and would promote workforce participation.⁷²

1.99 While the Senate Education, Employment and Workplace Relations References Committee majority agreed that Newstart was effectively discharging its primary duty to support people through a short term transitional period of unemployment, it expressed concern that 42 per cent of new recipients each year do not transition quickly back into the workforce and believed that the allowance payment system could better encourage workforce participation.⁷³

Committee view

1.100 In its interim report, the committee recognised that these are not matters that can be conclusively proven upfront and it considered that, on balance, the government has provided sufficient supporting evidence to suggest that these measures may go some way towards achieving its stated objectives. The committee remains of this view.

1.101 The committee, however, considered that the lack of decisive evidence highlighted the need for appropriate monitoring mechanisms to accompany changes like these. It was not apparent that the government had taken steps to establish post-legislative mechanisms to evaluate whether the measures were indeed achieving their objectives or to monitor their impact on individuals and groups, particularly with regard to the risks of hardship and discrimination. The committee remains concerned that these measures do not include any such safeguards in this respect.

1.102 The committee also notes that the marginal increase in workplace participation by Newstart recipients over PP (Single) recipients,⁷⁴ combined with the evidence suggesting that both categories of recipients demonstrate equal diligence in meeting their participation requirements⁷⁵ and the longer than average

72 Report of the Senate Education, Employment and Workplace Relations Legislation Committee Inquiry into the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012, August 2012, paragraph 2.54.

73 Senate Education, Employment and Workplace Relations References Committee, *Report of the inquiry into the adequacy of the allowance payment system*, 29 November 2012, page 30, paragraph 2.67.

74 See paragraph 1.92 above.

75 See paragraph 1.96 above.

durations which principal carer parents remain on income support⁷⁶, raises the question whether these measures place additional stress on vulnerable families, without providing a correspondingly better outcome in terms of work prospects.

Proportionality

1.103 Proportionality requires that even if the objective of the limitation is of sufficient importance and the measures in question are rationally connected to the objective, it may still not be justified, because of the severity of the effects of the measure on individuals or groups.

1.104 While individuals who are transitioned from PP to Newstart will still have access to social security benefits, the adequacy of those benefits has been questioned by a wide range of experts and community groups.⁷⁷

1.105 As discussed above, the evidence presented to the Senate Education, Employment and Workplace Relations References Committee inquiry into Newstart 'overwhelmingly expressed the view that the current rate of payment was inadequate, impeding recipients' ability to meet their basic costs of living in an acceptable manner'⁷⁸ and the EEWRR Committee agreed that Newstart 'does not allow people to live at an acceptable standard in the long term'.⁷⁹

1.106 The Australian Human Rights Commission agrees that Newstart is 'not adequate to provide a reasonable standard of living for jobseekers'. The Commission has recommended that Newstart and supplements should be increased 'so that they accurately reflect the costs of living, job-seeking and skill development activity'.⁸⁰

1.107 The government did not expressly comment on the adequacy or otherwise of Newstart during the Senate Education, Employment and Workplace Relations Committee inquiries. However, the government noted in its submission to this committee that:

The level of social security welfare support is a matter for the Government however, the Government has been clear that it considers the breadth of

76 See paragraph 1.96 above.

77 See, for example, submissions to the Senate Education, Employment and Workplace Relations Legislation Committee Inquiry into the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012 and the Senate Education, Employment and Workplace Relations References Committee inquiry into the adequacy of the allowance payment system by ACOSS, the Salvation Army, National Council of Single Mothers and their Children and the National Welfare Rights Network.

78 Majority report, p 54, para 3.84.

79 Majority report, p. 31, para 3.5.

80 Australian Human Rights Commission, Submission to the Senate Education, Employment and Workplace Relations References Committee Inquiry, 'Adequacy of the allowance payment system for jobseekers', August 2012, paragraphs 23-34.

financial assistance with employment and other services provides adequate support for recipients while also providing appropriate incentives to work. ... People are supported through the income support safety net as well as family payments and a range of programs and other services provided by Commonwealth and State governments such as education and housing.⁸¹

1.108 The committee understands that individuals transitioning to Newstart will have access to two additional services to support their participation in education and employment.⁸² The committee, however, notes that all the financial benefits available to Newstart recipients are already received by parents on PP.

Committee view

1.109 In its interim report, the committee stated that it considers that if Newstart combined with other benefits was not sufficient to provide an adequate standard of living for affected individuals, the measures to remove the grandfathered PP provisions risk being incompatible with the obligation in article 9 of ICESCR to ensure minimum essential levels of social security.

1.110 The committee therefore recommended that the government should defer these measures until the outcome of the Senate Education, Employment and Workplace Relations References Committee inquiry into the adequacy of Newstart was finalised.

1.111 Having now had the benefit of considering the evidence elicited during the Newstart inquiry, the committee sets out its final views on these measures below.

81 Department of Education, Employment and Workplace Relations, Submission to the Parliamentary Joint Committee on Human Rights on the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012, 25 June 2012, pp. 1, 3.

82 Access to Training Places for Single Parents and Career Advice for Parents.

The committee's conclusions

1.112 The question of whether individuals transitioning to Newstart from PP could be deprived of minimum essential levels of social security and an adequate standard of living goes directly to the issue of the compatibility of these measures with human rights. The adequacy of Newstart and supplementary supports is therefore central to an assessment of whether these measures are compatible with human rights, in particular the right to social security in article 9 of the ICESCR, the right to an adequate standard of living in article 11 of the ICESCR, the right to non-discrimination in article 2(2) of the ICESCR and related children's rights in the Convention on the Rights of the Child.

1.113 Evidence provided by the government suggests that Newstart is structured to create incentives to assist individuals to move to employment, while still providing a level of income support. However, it is also clear that the income support provided under Newstart is less than that available under PP, thus raising concerns that single parents will face additional financial stress in meeting the basic costs of living for them and their dependants.

1.114 The evidence suggests that the proportion of parents generating additional income from part time work under Newstart is not appreciably higher than the proportion working under PP. In that respect, it is arguable whether moving single parents to Newstart is likely to be more effective or provide a greater incentive to work than under the more generous PP scheme. The committee is concerned that these measures place additional stress on vulnerable families, without providing a correspondingly better outcome in terms of work prospects.

1.115 Central to the committee's consideration is the question of whether Newstart and additional supports are adequate to meet the needs of single parent families. The evidence appears mixed at best, and the committee acknowledges that the matter of adequacy is not easily determined. It is not within the scope of the committee's competence to make a definitive judgment on what constitutes adequacy in dollar terms. The burden of demonstrating adequacy, however, does lie with the government.

1.116 In this regard, the committee notes that much of the government analysis it has considered has pointed to the range of other payments available to support families on Newstart and has sought to benchmark the total available income against the national minimum wage. The purpose of referencing the minimum wage is unclear to the committee. It may be that it is intended to imply a measure of adequacy, but the committee considers this is a simplistic and unconvincing measure. Indeed, many government allowances for families with school age children such as the Family Tax Benefit B apply to families with income levels far in excess of the minimum wage.

1.117 The committee has previously noted⁸³ that the UN Committee on Economic, Social and Cultural Rights has on a number of occasions recommended that the government adopt an official poverty line ‘so that a credible assessment can be made of the extent of poverty in Australia’.⁸⁴ The government has not taken up this recommendation, explaining to the CESCR in 2009 that ‘one reason Australia did not set a poverty threshold was that assessing poverty on the basis of income only gave a partial view of a population’s level of poverty or economic well-being.’⁸⁵

1.118 The committee accepts that governments must be accorded a degree of discretion in public expenditure matters. However, there must be a reasonable basis and a relationship of proportionality between the legitimate aim pursued and the means used. The committee notes that the evidence suggests that the government has neglected to fully integrate human rights considerations into the development and implementation of these measures as required under the ICESCR.⁸⁶ Of particular concern to the committee in this regard is:

- the apparent lack of consultation with affected individuals during the course of developing these measures and the lack of information whether alternatives were considered and why they were considered to be inappropriate;⁸⁷
- the absence of a detailed impact assessment with regard to the impact of these measures on human rights;⁸⁸ and
- the lack of any express monitoring mechanism to assess the impact of these measures on the rights of those affected.⁸⁹

83 See PJCHR Report 1/13 at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=humanrights_ctte/reports/2013/1_2013/c12.htm

84 CESCR, Concluding Observations of the Committee on Economic, Social and Cultural Rights – Australia, UN Doc E/2001/22 (2001) [379], [398]; Concluding Observations of the Committee on Economic, Social and Cultural Rights - Australia, UN Doc E/C.12/AUS/CO/4, 42nd session, Geneva (22 May 2009), paragraph 24.

85 CESCR, Summary record of the first part (public) of the 5th meeting, 42nd session, 6 March 2009, E/C.12/2009/SR.5, paragraph 9.

86 See CESCR, General Comment No 19 (2008), paragraph 42 and General Comment No 3 (1990), paragraph 9, as discussed in paragraph 1.64 of this report.

87 See CESCR, General Comment No 19 (2008), paragraph 42, as discussed in paragraph 1.64 of this report.

88 See CESCR, General Comment No 19 (2008), paragraph 22, as discussed in paragraph 1.62 of this report.

89 See CESCR, General Comment No 19 (2008), paragraph 22, as discussed in paragraph 1.62 of this report.

1.119 The committee considers that the government must make a more concerted effort to address the question of adequacy and be prepared to review the new arrangements after a period of 12 months to determine the actual impact of the changes. If it is found that the impacts have been disproportionately detrimental to single parent families, reasonable adjustments must be made.

1.120 The committee considers that the government has not provided the necessary evidence to demonstrate that the total support package available to individuals who are subject to these measures is sufficient to satisfy minimum essential levels of social security as guaranteed in article 9 of the ICESCR and the minimum requirements of the right to an adequate standard of living in Australia as guaranteed in article 11 of the ICESCR. Nor has it indicated the basis on which it makes that assessment. In the absence of this information, the committee is unable to conclude that these measures are compatible with human rights.

Mr Harry Jenkins MP
Chair