

Social Services and Other Legislation Amendment Bill 2013

Portfolio: Social Services

Introduced: House of Representatives, 20 November 2013

Summary of committee concerns

1.207 The committee seeks further information on various aspects of this bill to determine its compatibility with human rights.

Overview

1.208 This bill puts forward twelve sets of amendments in different areas, each set of amendments contained in a separate schedule to the bill:

- amendments to the *Gambling Reform Act 2012* and related legislation (Schedule 1);
- amendments to the *Social Security (Administration) Act 1999* to enable a two-year continuation of income management as part of the continuation of the Cape York Welfare Reform (Schedule 2);
- amendments to family tax benefit Part A to restrict its payment to families only up to the end of the calendar year in which their teenager is completing school (Schedule 3);
- amendments to rules increasing the period of Australian residence required for eligibility for a fully portable Australian pension from 25 to 35 years (Schedule 4);
- amendments allowing for an interest charge to be applied to certain debts relating to AUSTUDY payments, fares allowance, youth allowance payments to full-time students and apprentices, and ABSTUDY living allowance payments (Schedule 5);
- the abolition of student start-up scholarships and their replacement by student start-up loans, repayable under similar arrangements to Higher Education Loan Program debts (Schedule 6);
- amendments of paid parental leave legislation to remove the requirement for employers to provide government-funded parental leave pay to eligible employees, with these employees now to be paid directly by the Department of Human Services (Schedule 7);
- amendments ending late registrations for the closed pension bonus scheme (Schedule 8);
- extending indexation pauses on certain higher income limits for three further years until June 2013 (Schedule 9);

- amendments reducing from 3 years to 56 weeks the length of time that families can be temporarily overseas and continue to receive family and parental payments (Schedule 10);
- amendments in order to align the income test treatment of account-based superannuation income streams with the deemed rules applying to other financial assets (Schedule 11); and
- amendments relating to debt recovery under the Student Financial Supplement Scheme, clarifying the provisions relating to the time period for lodging tax returns for family assistance purposes, and ensuring that funding under the National Disability Insurance Scheme paid into a person's account, which is set up for the purpose of managing the funding for supports for a participant's plan, cannot be garnisheed for debt recovery purposes. (Schedule 12).

Compatibility with human rights

Statement of compatibility

1.209 The bill is accompanied by a statement of compatibility that addresses the human rights compatibility of each schedule separately. The conclusion reached by the statement of compatibility in each case is that the proposed amendments are compatible with human rights.

1.210 The committee's examination of the bill is set out below.

Committee view on compatibility

Schedule 1 – Encouraging responsible gambling

1.211 Schedule 1 amends the *National Gambling Reform Act 2012* to repeal the position and functions of the National Gambling Regulator, along with provisions relating to the supervisory and gaming machine regulation levies, the automatic teller machine withdrawal limit, dynamic warning messages on gaming machines, the trial of mandatory pre-commitment, and matters for Productivity Commission review. All related compliance and enforcement provisions are also repealed. Proposed new section 19 states that the Commonwealth 'recognises the importance of meaningful measures to encourage responsible gambling' and 'supports voluntary pre-commitment on gaming machines in venues nationally.' New section 20 sets out the Commonwealth's commitment to work with State and Territory government and relevant stakeholders to develop voluntary pre-commitment systems in venues nationally.

1.212 The statement of compatibility states that Schedule 1 of the bill is compatible with human rights 'as it does not raise any human rights issues'. The statement notes:

Given that the new provisions will not impose any substantive legal obligations, Schedule 1 to the Bill will not limit any human rights. In addition, as the amendments remove existing provisions relating to the exercise of coercive monitoring and enforcement powers and the collection of personal information, Schedule 1 reduces the risk of interference with a person's right to a fair and public hearing, right against self-incrimination and right to privacy and reputation in accordance with Articles 14(1), 14(3)(g) and 17 of the International Covenant on Civil and Political Rights.

1.213 The repeal of provisions that permit coercive monitoring and enforcement and the collection of personal information appears to promote these rights by removing the authorisation for their limitations. However, the fact that a statute does not impose substantive legal obligations is not conclusive as to whether it may have human rights implications, especially where it repeals provision which may have promoted human rights.

1.214 The purpose of the *National Gambling Reform Act 2012* was described as being 'to reduce the risks and harm associated with problem gambling for people who gamble, their families, and the community.'¹¹⁰ In its 2010 report into gambling, the Productivity Commission identified a number of harms that result from problem gambling.¹¹¹ A number of these relate directly to the promotion of human rights, including in particular the right to an adequate standard of living, and the right to health.¹¹² The *National Gambling Reform Act 2012* adopted a particular policy approach to the goal of alleviating some of the problems caused by problem gambling and thereby aimed at contributing to the promotion of those rights.

1.215 The repeal of these provisions therefore gives rise to the question of whether the impact of the bill is to remove measures that promote human rights and, if so, whether they have been replaced by measures that address the problems targeted by the *National Gambling Reform Act 2012*.

1.216 The committee recognises that there has been much debate about the measures that are best suited to addressing problem gambling and thereby promoting the right to an adequate standard of living and the right to health, and that the bill represents a different policy approach from that adopted by the previous government.

1.217 However, the committee considers that where a bill repeals a measure that has been justified as a measure to improve the enjoyment of specific human rights, it

110 National Gambling Reform Bill 2012 and two related bills, explanatory memorandum, p 1.

111 Productivity Commission, *Gambling, Inquiry Report*, No 50, 26 February 2010.

112 Productivity Commission, *Gambling, Inquiry Report*, No 50, 26 February 2010, chapter 4.

would be helpful if the statement of compatibility accompanying the bill indicated whether the repeal would have the effect of removing rights-promoting measures and, if so, whether they are being replaced by measures that would ensure a similar level of enjoyment of the relevant rights (or if not, how any limitation or retrogression can be justified).

1.128 The committee intends to write to the Minister for Social Services to seek further information as to whether the effect of Schedule 1 is to remove measures that promote human rights and, if so, whether they have been replaced by measures that address the problems targeted by the *National Gambling Reform Act 2012*.

Schedule 2 – Continuing income management as part of Cape York Welfare Reform

1.219 Schedule 2 amends the *Social Security (Administration) Act 1999* to permit the continuation of income management as part of the Cape York welfare reform arrangements for two years. The *Social Security (Administration) Act 1999* currently provides that a person can be subject to income management only after a decision by the Family Responsibilities Commission made before 1 January 2014.¹¹³ The amendment extends to 1 January 2016 the timeframe for which a person, after a decision by the Family Responsibilities Commission, can be subject to income management.

1.220 The explanatory memorandum describes the Cape York welfare reform as a partnership between four communities, the Australian Government, the Queensland Government and the Cape York Institute for Policy and Leadership. It 'aims to restore local Indigenous authority, rebuild social norms, encourage positive behaviours, and improve economic and living conditions.'¹¹⁴

1.221 The statement of compatibility for Schedule 2 notes that the amendment engages article 2(1) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Under article 2(1) States parties to the ICERD 'condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races' and undertake to take effective measures to eliminate discrimination and promote equality.¹¹⁵

1.222 The statement of compatibility also draws attention to the obligation of States parties to the International Covenant on Civil and Political Rights (ICCPR) to ensure that all persons enjoy equality before the law and equal protection of the law

113 Pursuant to sections 123UF(1)(g) and 123UF(2)(h).

114 Explanatory memorandum, p 5.

115 Statement of compatibility, p 3.

and that they are entitled to protection against discrimination on the grounds of race and colour (among other grounds). The statement maintains that there is 'no incompatibility with the rights engaged as the circumstances meet the test for legitimate differential treatment under international law.'

1.223 The explanatory memorandum and statement of compatibility draw attention to the role of the Families Responsibilities Commission as 'a key plank' of the reform, with the Commission engaging in consultation and conferences with communities, providing referrals to support services and arranging income management. Income management is described as 'both as a means to ensure financial stability for families and as an incentive for the individual to engage with support services and observe behavioural obligations.'¹¹⁶

1.224 The statement of compatibility also refers to a 2012 evaluation of the reforms which 'indicates that the trial has had a positive impact in participating communities, with increased personal responsibility and positive behavioural changes such as increased school attendance, increased commitment to education by parents, and greater support for local Indigenous authority and leadership.'¹¹⁷

1.225 This committee's predecessor (former committee) explored a number of issues relating to the human rights compatibility of income management arrangements, in particular in relation to their application to Indigenous citizens, in its report on the *Stronger Futures in the Northern Territory Act 2012* and related measures.¹¹⁸ In that report the former committee identified a number of serious concerns about the human rights compatibility of the manner in which income management and other measures had been designed and implemented as part of the Stronger Futures package. The former committee concluded:

1.278 The committee has indicated the importance of continuing close evaluation of measures such as these which are claimed to have a beneficial effect, and notes that the potentially disempowering effects of such measures also need to be taken into account in any assessment of human rights compatibility.

1.279 The committee considers that it can usefully perform an ongoing oversight role in this regard and recommends that in the 44th Parliament the committee should undertake a 12 month-review to evaluate the latest evidence in order to test the continuing necessity for the *Stronger Futures* measures.

116 Explanatory memorandum, p 5.

117 Statement of compatibility, p 3.

118 Parliamentary Joint Committee on Human Rights, *Eleventh Report of 2013: Stronger Futures in the Northern Territory Act 2012 and related legislation*.

1.226 In its analysis the former committee expressed a concern that it was not consistent with international human rights law for government to seek to justify every measure that involved differential treatment based on race as a 'special measure' within the meaning of article 1(4) of the ICERD.¹¹⁹ It noted that differential treatment based on race, though always deserving close scrutiny, might be justified if it could be shown that it pursued a legitimate objective in a rational and proportionate manner.¹²⁰

1.227 The committee accordingly welcomes the fact that the statement of compatibility appears to adopt this approach in seeking to justify the Cape York income management regime as a justified differential treatment rather than seeking to justify it as a 'special measure'. As the former committee stated:

The committee has underlined that the onus is on government to clearly demonstrate that these measures involve not just the pursuit of an important social objective, but that there is a rational connection between the measures and the achievement of the goal, and that the measures adopted are reasonable and proportionate to the achievement of that goal.¹²¹

1.228 Whether this justification has been made out involves an assessment of empirical evidence in the context of the applicable human rights standards. The committee notes that there are a number of significant differences between the income management schemes considered in the *Stronger Futures* report and that which is part of the Cape York welfare reform measures.

1.229 The committee considers that, in light of the former committee's underlining of the importance of continuing close evaluation of measures such as the Stronger Futures income management regimes and other measures which are claimed to have a beneficial effect, it is appropriate for the committee also to include the Cape York measures and experience in the scope of its ongoing oversight of these issues.

Schedule 3 – Family tax benefit and eligibility rules

1.230 Schedule 3 makes amendments to limit family tax benefit Part A to children aged under 16, or teenagers aged 16 to 19 (end of the calendar year they turn 19) who are in full-time secondary study (or equivalent). Exemptions to the study

119 Parliamentary Joint Committee on Human Rights, *Eleventh Report of 2013: Stronger Futures in the Northern Territory Act 2012 and related legislation*, pp 21-31.

120 Parliamentary Joint Committee on Human Rights, *Eleventh Report of 2013: Stronger Futures in the Northern Territory Act 2012 and related legislation*, p 27.

121 Parliamentary Joint Committee on Human Rights, *Eleventh Report of 2013: Stronger Futures in the Northern Territory Act 2012 and related legislation*, p 76.

requirement will continue to apply for teenagers who cannot study due to physical, psychiatric, intellectual or learning disability.

1.231 Teenagers with a secondary qualification who cease to be eligible for family tax benefit from 1 January 2014 will be able to apply for youth allowance. Youth allowance, with its 'learn or earn' provisions that require young people to participate in work, job search, study or training, will remain available as the more appropriate payment to help young people transition from school into work or post-secondary study.

1.232 The statement of compatibility notes that Schedule 3 engages the right to social security and states:

This change will focus payments in the family assistance system on families with children who are at school, while youth allowance will become the primary form of assistance to eligible young people who have completed secondary study. To the extent that the changes in Schedule 3 may limit human rights, those limitations are reasonable and proportionate.¹²²

1.233 The committee notes that neither the explanatory memorandum nor the statement of compatibility clearly articulates the objective being pursued by the change, nor do they explain how the measure is rationally connected to that purpose, or how it is a reasonable and proportionate measure adopted in pursuit of a legitimate goal.¹²³ To assess whether this change is compatible with human rights the committee requires further information about the objective of the measure and the financial factors that the government has taken into account in introducing this change.

1.234 The committee intends to write to the Minister for Social Services to seek further information about the objective being pursued by the measures contained in Schedule 3 and an explanation as to whether the limitations on the right to social security are a rational, reasonable and proportionate measure for the achievement of that objective.

Schedule 4 – Period of Australian working life residence

1.235 Schedule 4 amends the rules for calculating pensions paid outside Australia. It primarily affects age pension and some other pensions which also have unlimited portability, and pensions paid under most social security agreements. Under the change, pensioners who leave Australia on or after the start date (1 January 2014) will be required to have been Australian residents for 35 years during their working life (from age 16 to age pension age) to receive their full means-tested pension if

122 Statement of compatibility, p 4.

123 Parliamentary Joint Committee on Human Rights, *Practice Note 1*.

they choose to retire overseas or travel overseas for extended periods of longer than 26 weeks. The current requirement is 25 years.

1.236 Members of a couple paid outside Australia under a social security agreement will now have their pensions calculated on the basis of their own Australian working life residence, rather than their partners' Australian working life residence, as already applies to pensioners paid outside Australia in non-agreement countries.

1.237 Pensioners paid under the existing rules at the date these changes commence, and who would be adversely affected, will be 'grandfathered' [sic] unless they return to Australia for more than 26 weeks and subsequently leave Australia again.

1.238 The statement of compatibility notes that the Schedule engages the right to social security¹²⁴ and states that

It is concluded the proposed change to the calculation of pensions for people who, after the start date, leave Australia or claim under a social security agreement is reasonable, subject to due process provided for in national law, and is permissible (under ILO Convention No. 168 (1988)) in the case of 'absence from the territory of the State'.¹²⁵

1.239 The statement of compatibility concludes that the Schedule 'is compatible with human rights because it does not limit or preclude people from gaining or maintaining access to social security.'¹²⁶ The statement of compatibility argues that '[t]hirty-five years is considered a more appropriate period given Australia's pension system is residence-based and taxpayer-funded.'¹²⁷

1.240 The statement of compatibility falls short of the committee's expectations as to the contents of such statements. General assertions that any limitations are reasonable and proportionate do not permit the committee to carry out its function of assessing human rights compatibility. The statement that the measure is compatible with human rights 'because it does not limit or preclude people from gaining or maintaining access to social security' fails to recognise that a reduction in currently legislated entitlements involves a restriction on the enjoyment of the right and must be justified.

124 Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

125 Statement of compatibility, p. 6. It is not clear how the provisions of the Employment Promotion and Protection against Unemployment Convention, 1988 (ILO No. 168) apply to the payment of the age pensions.

126 Statement of compatibility, p. 6.

127 Statement of compatibility, p. 6.

1.241 The statement does not identify the purpose for which the reduction in the period of eligibility is adopted, nor does it explain how the measure is rationally connected to that purpose, or how it is a reasonable and proportionate measure adopted in pursuit of a legitimate goal.¹²⁸

1.242 The committee notes that there appears to be no phasing-in period so that those persons who had been planning on qualifying for a fully portable pension after 25 years' residence will not be prejudiced by having their reasonable expectations frustrated. To assess whether this is a permissible restriction on the enjoyment of the right to social security the committee requires further information about the objective of the measure and the financial implications that the government has taken into account, and whether any less restrictive alternative was considered to the immediate imposition of the new test.

1.243 The committee also notes the changes to the manner in which the pensions paid to a married couple will be calculated. It is not clear from the statement of compatibility whether this might have a disparate impact on women or some other group and possibly give rise to issues of sex discrimination. Once again, the committee expects that this type of analysis would have been undertaken and the results included in the statement of compatibility.

1.244 The committee intends to write to the Minister for Social Services to seek further information about the objective being pursued by the measures contained in Schedule 4 and an explanation as to whether the restrictions on the enjoyment of the right to social security are a rational, reasonable and proportionate measure for the achievement of that objective.

Schedule 5 - Interest charge

1.245 Schedule 5 amends the *Social Security Act 1991* and the *Student Assistance Act 1973* in order to introduce an interest charge on debts relating to austudy, fares allowance, youth allowance payments to full-time students and apprentices, and ABSTUDY living allowance.

1.246 A debt arises under the Social Security Act or the Student Assistance Act only where a person receives a payment to which they were not entitled. Furthermore, an interest charge can only be applied to the person and the debt where the person has not entered into a repayment arrangement, has failed to comply with a repayment arrangement, or has terminated a repayment arrangement without entering into a new repayment arrangement. In negotiating a repayment arrangement, the Department of Human Services will take into account the circumstances of the debtor, and will suggest repayment amounts based on the debtor's financial

128 See Parliamentary Joint Committee on Human Rights, *Practice Note 1*.

capacity. Students will also be able to continue to receive income support payments while repaying any debt and interest charge incurred.

1.247 The statement of compatibility notes that Schedule 5 engages the right to education contained in article 13 of the ICESCR. It states:

Schedule 5 does not limit the right to education. The interest charge is intended as an incentive for debtors to repay debts in a timely fashion, where they have the financial capacity to do so. Given that a debtor's financial capacity will be taken into account before a repayment arrangement is agreed to, the interest charge will not limit the debtor's ability to access education.¹²⁹

1.248 The statement of compatibility also notes that Schedule 5 engages the right to social security, and provides a detailed explanation of how the charging of interest on a debt will have only a limited effect on the ability of a person to cover essential living expenses. The statement also provides a description of the objective being pursued.¹³⁰

1.249 The committee considers that the measures proposed by Schedule 5 do not give rise to human rights compatibility issues.

Schedule 6 – Student start-up loans

1.250 Schedule 6 amends the Social Security Act and the Student Assistance Act to cease the student start-up scholarship (SSS), from 1 January 2014, for new recipients of student payments who are participating in higher education. Students will instead be able to receive either an ABSTUDY student start-up loan or a student start-up loan (the loans), which are income-contingent loans, equivalent in value to the SSS, and claimed on a voluntary basis. These loans will be available to new full-time students who are in receipt of youth allowance, austudy payment or ABSTUDY living allowance.

1.251 The students will be limited to two loans per year of \$1,025 (indexed from 2017), and the loans will be repayable under similar arrangements to Higher Education Loan Program (HELP) debts. Students will only be required to begin repaying the loans once their earnings are above the repayment threshold (which will be consistent with the current HELP repayment thresholds) and after any accumulated HELP debt has been paid.

1.252 The statement of compatibility notes that Schedule 6 engages the right to education contained in article 13 of the ICESCR. It states:

129 Statement of compatibility, p 9.

130 Statement of compatibility, p 10.

Schedule 6 to the Bill does not limit the right to education. While the SSS will not be available for new recipients after 1 January 2014, people who would otherwise be entitled to the SSS will be eligible for the loans. The purpose of the SSS and the loans are identical as both payments are designed to help students with the up-front costs of textbooks and equipment. Under the loans, students will be eligible for the same payment amounts and will be able to claim payments when these expenses arise. In this way, students will still have access to funds to assist them with the up-front costs of study. The fact that the loans are repayable once the person reaches a particular income threshold will not limit a person's right to education.¹³¹

1.253 The statement of compatibility notes that Schedule 6 may also engage the right to social security, but argues that any impact is limited and that the obligation to repay the loan arises only at a threshold level of income 'at which a person would no longer require financial assistance to acquire essential health care, housing, water and sanitation, foodstuffs, and education', and is accordingly consistent with that right.¹³²

1.254 The committee notes that neither the explanatory memorandum nor the statement of compatibility clearly articulate the objective being pursued by the shift from a start-up scholarship to a start-up loan, nor do they explain how the measure is rationally connected to that purpose, or how it is a reasonable and proportionate measure adopted in pursuit of a legitimate goal.¹³³ To assess whether this change is compatible with human rights the committee requires further information about the objective of the measure and the financial implications that the government has taken into account in introducing this change.

1.255 The committee intends to write to the Minister for Social Services to seek further information about the objective being pursued by the measures contained in Schedule 6 and an explanation as to whether the restrictions on the enjoyment of the right to social security are a rational, reasonable and proportionate measure for the achievement of that objective.

Schedule 7 – Paid parental leave

1.256 Schedule 7 amends the Paid Parental Leave legislation to remove the requirement for employers to provide government-funded parental leave pay to their eligible long-term employees. From 1 March 2014, employees will be paid directly by the Department of Human Services, unless an employer opts in to provide

131 Statement of compatibility, p 9.

132 Statement of compatibility, p 11.

133 See Parliamentary Joint Committee on Human Rights, *Practice Note 1*.

parental leave pay to its employees and an employee agrees to their employer paying them.

1.257 The statement of compatibility notes that the amendments engage the right to social security and the right to maternity leave.¹³⁴ However, it notes that the amendments 'are limited to changes to the administrative arrangements for delivering parental leave pay to customers. They do not affect a customer's eligibility to the payment, a customer's rate of pay, or a customer's entitlement to paid or unpaid leave from employment before and after the birth of a child.'¹³⁵

1.258 The committee considers that the amendments proposed by Schedule 7 do not give rise to human rights compatibility issues.

Schedule 8 – Pension bonus scheme

1.259 Schedule 8 amends the *Social Security Act 1991* to end late registrations in the pension bonus scheme. The scheme provides a lump sum payment to people who are qualified for age pension, age service pension, partner service pension after reaching pension age, or income support supplement after reaching qualifying age – but who choose to defer their pension and remain in the workforce. The scheme was closed from 2009, although people remained able to register for the scheme if they were qualified for it, but had not registered, at the time of its closure. The scheme was intended to encourage workforce participation but, following the *Pension Review* findings, was closed and limited to people who were qualified before 20 September 2009. The legislation will further limit access to the pension bonus scheme. However, eligible people will still have until 1 March 2014 to backdate their registration in the scheme.

1.260 A work bonus was introduced when the pension bonus scheme was closed to new entrants. This provides a benefit to age pensioners who continue to work by providing a pension income test concession on employment income.

1.261 The statement of compatibility states that the scheme does not affect the enjoyment of human rights 'because it does not affect social security income support payments for senior Australians'.¹³⁶

1.262 The committee considers that the amendments proposed by Schedule 8 do not give rise to human rights compatibility issues.

134 Article 10(2) of the ICESCR.

135 Statement of compatibility, p 15.

136 Statement of compatibility, p 17.

Schedule 9 – Indexation: child care rebate limit

1.263 Schedule 9 introduces amendments to extend the current child care rebate payment cap of a maximum of \$7,500 per financial year per child, and continue to pause (that is, suspend) the indexation of the child care rebate payment amounts for a further three financial years to 30 June 2017. The child care rebate is a payment that provides assistance for families who use approved child care by covering half of all their out-of-pocket fees (after child care benefit), up to a maximum limit per child per year. The child care rebate is currently not an indexed amount, and is capped at \$7,500 until the financial year ending 30 June 2014.

1.264 The statement of compatibility notes that the amendments engage the rights of the child generally and the right to social security.¹³⁷ It notes that the right to social security may be limited and also that the right includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage, with such removals requiring justification in the light of article 4 of the ICECSR.

1.265 The statement further notes that the effect of the suspension of indexation will have only a minor impact on the benefit enjoyed and that the maximum amount of the child care rebate is not being reduced.¹³⁸ It states that:

The Government considers that maintaining the current cap on child care rebate payments and the pausing of indexation of child care rebate payments until 1 July 2017 is a reasonable, necessary and proportionate measure to ensure that the payments can continue to be realised for present and future generations, and the measure is in the interest of the general public and Australia's economic position.¹³⁹

1.266 The committee considers that the amendments proposed by Schedule 9 in relation to the child care rebate do not give rise to human rights compatibility issues.

Schedule 9 – Indexation: family tax benefit, parental leave pay and dad and partner pay amounts

1.267 Schedule 9 also pauses (that is, suspends) the indexation of certain higher income limits until 30 June 2017. The indexation pauses will apply to the family tax benefit Part A higher income free area, the family tax benefit Part B primary earner income limit, and the parental leave pay and dad and partner pay individual income limits. The Schedule also includes amendments to pause indexation of the family tax benefit end of year supplements until 30 June 2017.

137 Article 9 of the ICESCR and article 26 of the Convention on the Rights of the Child (CRC).

138 Statement of compatibility, p 20.

139 Statement of compatibility, p 20.

1.268 The amendments will not affect the assistance currently available to low- and middle-income families. However, there may be families on higher incomes who will experience a reduction in family tax benefit Part A or who may cease to be eligible for assistance if their income exceeds

- \$94,316 plus \$3,796 for each child after the first – the family tax benefit Part A higher income free area; or
- \$150,000 – the family tax benefit Part B primary earner income limit, paid parental leave and dad and partner pay income limit.

1.269 The statement of compatibility notes that the amendments engage the rights of the child generally and the right to social security. The statement argues that:

Maintaining supplements at their current rates until 30 June 2017 (\$726.35 for each family tax benefit Part A child, and \$354.05 for each family tax benefit Part B family) supports the sustainability of the family assistance program, without reducing assistance provided to low and middle-income families. Indexation will continue to apply to all other components of family tax benefit, ensuring that fortnightly rates continue to increase each year, and assist families with the direct cost of raising children.¹⁴⁰

1.270 As regards the families on higher incomes who may have their benefits reduced, the statement of compatibility also states: 'Families at these income levels are considered to have reasonable levels of private income which would enable them to maintain their current living standards.'¹⁴¹

1.271 The statement of compatibility maintains that the measure 'will ensure that Government assistance is targeted to low and middle-income families' and 'will result in savings and ensure that family and parental payments are sustainable into the future.'¹⁴² No details are provided of the amount of savings that are estimated as likely to result from this measure.

1.272 The committee recognises the importance of ensuring that systems of social support are sustainable and that the state must give priority to ensuring the rights to social security and to an adequate standard of living of the least well-off members of society. It thus considers that the measures pursue a legitimate objective. It would have assisted the committee in reaching a final assessment of the compatibility of the measure to have been provided with figures about the amount of the savings and overall expenditure.

140 Statement of compatibility, p 22.

141 Statement of compatibility, p 22.

142 Statement of compatibility, p 21.

Schedule 10 – Reduction of period for temporary absence from Australia

1.273 Schedule 10 proposes amendments to various legislation¹⁴³ to reduce the allowed period of temporary absence from Australia for accessing certain family and parental payments from 3 years to 56 weeks. The amendments will apply to individuals eligible for family tax benefit Part A and Paid Parental Leave.

1.274 Exemptions will apply to allow some individuals to continue to access payments while overseas for up to three years. Exemptions will apply to individuals who are members of the Australian Defence Force or Australian Federal Police and who are deployed overseas, assisted by the Medical Treatment Overseas Program, or unable to return to Australia for a specified reason (such as a serious accident, or natural disaster).

1.275 The statement of compatibility notes that the changes engage the right to social security. It maintains that the reduction of the period to 56 weeks 'continues to allow families to access family and parental payments for a reasonable period of time while overseas.'¹⁴⁴ It notes that the 56-week time period remains more than the maximum 6-week period allowed for other payments of government assistance while a person is overseas. The statement of compatibility concludes that:

These amendments are compatible with human rights because they advance the protection of human rights and, to the extent that these changes limit access to family and parental payments, these limitations are reasonable and proportionate.¹⁴⁵

1.276 The committee agrees that the amendments involve a restriction in the present levels of enjoyment of the right to social security. It notes, as does the statement of compatibility in relation to the measures in Schedule 9 pausing the indexation of child care rebate, that 'the right to social security includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage. Any removals in entitlements must be justified in line with Article 4 in the context of the full use of the maximum available resources of the State party.'¹⁴⁶

1.277 The statement of compatibility falls short of the committee's expectations as to the contents of such statements. General assertions that any limitations are reasonable and proportionate do not permit the committee to carry out its function of assessing human rights compatibility. The statement does not identify the purpose

143 *A New Tax System (Family Assistance) Act 1999; A New Tax System (Family Assistance) (Administration) Act 1999; and the Paid Parental Leave Act 2010.*

144 Statement of compatibility, p 23.

145 Statement of compatibility, p 24.

146 Statement of compatibility, p 19.

for which the reduction in the period of eligibility is adopted, nor does it explain how the measure is rationally connected to that purpose, or how it is a reasonable and proportionate measure adopted in pursuit of a legitimate goal.¹⁴⁷

1.278 The committee intends to write to the Minister for Social Services to seek further information about the objective being pursued by the measures contained in Schedule 10 and an explanation as to whether the limitations on the right to social security are a rational, reasonable and proportionate measure for the achievement of that objective.

Schedule 11 – Extending the deeming rules to account-based income streams

1.279 Schedule 11 will align the income test treatment of account-based superannuation income streams, for products assessed from 1 January 2015, with the deemed income rules applying to other financial assets.

1.280 The statement of compatibility notes that the effect of the changes is that a proportion of persons affected will receive a higher level of income support under the change, or receive the same amount of income support. Another proportion will receive lower income support than they otherwise would have under the current rules. However, they will receive the same amount of income support that an identical person would receive if the assets backing the account-based income stream were held directly in financial investments. The statement notes that the change 'will improve the equity of the income testing of social security payments for account-based income streams.'¹⁴⁸ It concludes that the change 'is compatible with human rights because it does not limit or preclude people from gaining or maintaining access to social security.'¹⁴⁹

1.281 The committee agrees that the change engages the right to social security guaranteed by article 9 of the ICESCR and will limit the enjoyment of that right by certain persons. The committee accepts that pursuing equity in means-testing for income support purposes is a legitimate goal. The committee considers that the statement of compatibility should have provided a clear justification for the limitation. Such a justification should identify a legitimate objective for the measure, its rational connection to the achievement of that objective, and the reasonableness and proportionality of that measure.

147 Parliamentary Joint Committee on Human Rights, *Practice Note 1*.

148 Statement of compatibility, p 26.

149 Statement of compatibility, p 26.

Part 1 of Schedule 12 – Repayment of financial supplement through taxation system

1.282 Part 1 of Schedule 12 contains technical amendments to the Social Security Act and Student Assistance Act to give the Commissioner of Taxation increased flexibility in determining how applications for waiver of Student Financial Supplement Scheme (SFSS) debts are to be submitted.

1.283 The statement of compatibility states that the amendments do not engage any rights.

1.284 The committee considers that Part 1 of Schedule 12 of the bill does not give rise to human rights compatibility issues.

Parts 2, 4, 5 and 6 of Schedule 12 – Miscellaneous amendments

1.285 Parts 2 and 4-6 of Schedule 12 makes a number of clarifying and technical amendments to a range of legislation. The measures include amendments to the law relating to:

- time periods and FTB reconciliation conditions;¹⁵⁰
- use of tax file numbers;¹⁵¹
- child support amendments;¹⁵² and
- amendments relating to various payments relating to the birth of a baby.¹⁵³

1.286 The statement of compatibility notes that the amendments engage the right to social security. It states that:

As the amendments are of a minor or technical nature and are designed to ensure the legislation is consistent with the intended policy, this right is advanced by the amendments, and to the extent that the right is limited, the limitations are reasonable and proportionate.¹⁵⁴

1.287 The committee agrees that the amendments proposed by Parts 2, 4, 5 and 6 of Schedule 12 do not give rise to significant human rights compatibility issues.

150 Amending A New Tax System (Family Assistance) (Administration) Act 1999.

151 Amending A New Tax System (Family Assistance) (Administration) Act 1999.

152 Amending the Child Support (Assessment) Act 1989 and Child Support (Registration and Collection) Act 1988.

153 A New Tax System (Family Assistance) Act 1999 and A New Tax System (Family Assistance) (Administration) Act 1999.

154 Statement of compatibility, p 28.

However, the committee notes that general assurances that ‘to the extent that the right is limited, the limitations are reasonable and proportionate’, do not assist it in the assessment of whether specific measures are human rights-compatible. Details of any limitations should be provided and a justification for them provided in accordance with the framework that has been adopted by the committee.¹⁵⁵

Part 3 of Schedule 12 – Protection of amounts under the National Disability Insurance Scheme

1.288 Part 3 of Schedule 12 amends the *National Disability Insurance Scheme Act 2013* to ensure that amounts paid under the National Disability Insurance Scheme in relation to funding for supports are inalienable. It also seeks to prevent third parties from seeking to recover debts by obtaining a garnishee order over bank accounts kept for the purpose of managing funding for supports under the National Disability Insurance Scheme. The amendments therefore are intended to ensure that the funding for the reasonable and necessary supports under individuals’ support plans can only be used that purpose.

1.289 The statement of compatibility states that the purpose of the measure is to promote the right of persons with disabilities to live in the community with choices equal to those of others. The statement notes that this measure represents an implementation of Australia’s obligations under article 19 of the Convention on the Rights of Persons with Disabilities (CRPD) to take effective and appropriate measures to ensure the enjoyment by persons with disabilities of this right and their full inclusion and participation in the community.

1.290 The statement of compatibility notes the obligation of Australia under article 26 of the CRPD to take effective and appropriate measures to enable people with disability to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. It explains that the NDIS (and this measure) will also provide opportunities for people with disability to take part in cultural life, consistent with article 15 of the ICESCR.

1.291 The committee considers that this measure does not give rise to human rights compatibility issues.

155 Parliamentary Joint Committee on Human Rights, *Practice Note 1*.