

Social Services and Other Legislation Amendment Bill 2013

Portfolio: Social Services

Introduced: House of Representatives, 20 November 2013

Status: Before Senate

PJCHR comments: First Report of the 44th Parliament, tabled 10 December 2013

Response dated: 21 January 2014

Information sought by the committee

3.15 The committee sought further information on:

- whether the effect of the amendments to the *National Gambling Reform Act 2012* is to remove measures that promote human rights and if so, whether they have been replaced by other measures which address the problems targeted by the National Gambling Reform Act (Schedule 1);
- how the amendments to limit the family tax benefit Part A to children aged under 16, or teenagers aged 16 to 19 who are in full-time secondary study (or equivalent), are consistent with the right to social security (Schedule 3);
- how the amendments to increase the period of Australian working life residence requirement from 25 to 35 years in order to receive the full age (and certain other pensions) outside of Australia, and the changes to the way pensions are paid to couples outside Australia, are compatible with the right to social security (Schedule 4);
- how the amendments ceasing student start-up scholarships from 1 January 2014 for new recipients of student payments participating in higher education and replacing them with income-contingent loans are compatible with the right to social security (Schedule 6);
- how the amendments to reduce the allowed period of temporary residence from Australia for accessing certain family and parental payments from three years to 56 weeks are compatible with the right to social security (Schedule 10);

3.16 The Minister's response is attached.

Committee's response

3.17 The committee thanks the Minister for his response.

Schedule 1 – Encouraging responsible gambling

3.18 The committee sought further information on whether the repeal of certain measures under the National Gambling Reform Act which appeared to be directed at promoting certain human rights would be replaced by measures that would ensure a similar level of fulfilment and, if not, how any limitation or retrogression can be justified.

3.19 According to the Minister's response, the government intends to adopt a different policy approach to problem gambling to that of the previous government. The bill is intended to constitute the first step through expressing the Government's commitment to developing and implementing appropriate measures in the near future. The government's approach includes restoring state and territory control over the regulation of ATM cash withdrawals and relying on restrictions imposed by existing state and territory laws. It also replaces existing provisions relating to the state linked pre-commitment measures with a commitment to work with state and territory governments and relevant stakeholders to develop and implement a voluntary pre-commitment system in venues nationally, including development of a realistic implementation timeframe.

3.20 The committee recognises that there is debate as to the best way to address problem gambling and acknowledges that there are a range of policy approaches that may be adopted. The committee emphasises that where one policy approach is chosen over another based on the view that it will better achieve the objectives sought, which includes, in this case, ensuring rights to health and to an adequate standard of living are promoted, appropriate mechanisms must be established to monitor the effectiveness of the measures.

3.21 The committee recommends that, as part of the government's commitment to work with state and territory governments and relevant stakeholders to develop appropriate measures, the government's actions be accompanied by appropriate mechanisms to monitor the effectiveness of the replacement measures in promoting human rights, in particular rights to health and to an adequate standard of living.

Schedule 3 – Family tax benefit and eligibility rules

3.22 The amendments restrict eligibility criteria for Family Tax Benefit (FTB) Part A, with the result that teenagers aged 16 and 17 who have completed Year 12 will no longer be eligible. According to the Minister's response, the purpose is:

to reprioritise family assistance and social security expenditure in line with the fiscal constraints faced by government and to introduce stronger requirements for those who have completed Year 12 to participate in work, job search, study or training.

3.23 Accordingly, it appears that the government is directing FTB Part A at families with children in primary or secondary school to assist families in putting their children through school. According to the Minister, youth allowance is a more appropriate payment for young people who have not attained Year 12 or equivalent and who are not studying full-time and for young people who have completed their secondary education. The committee agrees this appears to constitute a legitimate objective.

3.24 The Minister considers that the changes are reasonable and proportionate because: FTB Part A will continue to provide benefits to families with children attending school; the changes will not affect the current assistance provided to low and middle income families through income support payments; and teenagers who cease to be eligible for the FTB Part A as a result of the changes will be able to apply for Youth Allowance.

3.25 The committee sought further information about the financial factors that the government has taken into account in introducing this change. The response did not address the financial implications of the changes, in particular the impact of the changes on both young people and on their families. The committee remains unaware of what the impact of transitioning certain categories of young people to youth allowance may be and whether it will result in a detrimental impact.

3.26 Without this information, the committee is unable to conclude its assessment of the compatibility of this measure with human rights.

Schedule 4 – Period of Australian working life residence

3.27 The first measure in Schedule 4 relates to increasing the Australian Working Life Residence (AWLR) requirement for the payment of a full pension outside of Australia from 25 to 35 years.

3.28 The committee accepts that the measure seeks to achieve a legitimate objective. That is, to strengthen the residence basis of Australia's pension system and to ensure the sustainability of the pension system. The purpose of the residence based scheme is to ensure that a person must have a substantial connection to Australia in order to receive the full pension outside Australia. The response notes that the maximum AWLR that a person can accrue is currently 49 years (to rise to 51 years when the Age Pension age increases to 67 in 2023). The current AWLR represents roughly half of the relevant maximum period. The response also notes that most countries with residence-based systems do not export those systems. Of those that do, Canada and New Zealand set periods of 40 years and 45 years respectively.

3.29 The committee recognises that Australia's approach of allowing the export of benefits overseas, as a residence-based and not a contributions-based social security

system, is both rare and generous relative to other countries. The committee also accepts that a requirement of 35 years AWLR may be reasonable. However, where a legislated benefit is removed so that a person's entitlements are reduced, the government bears the burden of demonstrating that the measure is a reasonable and proportionate way of achieving its objective. The committee is not satisfied that the response has adequately explained how the means adopted is proportionate to achieving the objective sought.

3.30 The committee notes that pensioners already overseas when the measures commence will be grandfathered so that no individuals currently receiving the pension overseas will have a reduction in their pension rate. However, the committee retains its concern that there will be a cohort of people who currently have a reasonable expectation that they will be eligible to receive the full pension overseas on the basis of 25 years AWLR. According to the Minister's response:

[s]taggering implementation was not proposed as it would increase complexity, create inequities, reduce savings and delay the achievement of the objective which is to establish a more appropriate basis for payment of full rate pensions outside Australia.

3.31 The committee understands that the purpose of the measure is to ensure the long-term sustainability of the system, and so, by implication, to make savings (though no details of the anticipated savings were provided in the explanatory materials). However, the fact that allowing for the phasing-in of the requirement would reduce savings is not on its own a sufficient reason to justify a measure where the measure itself may have a disproportionate effect on individuals.

3.32 The Minister has asserted that phasing-in arrangements would increase complexity and create inequities, but has not provided information as to what alternatives were considered and how they would have increased complexity and created inequities.

3.33 On the basis of the information provided, the committee is unable to conclude that the measure is proportionate and as such that it is compatible with the right to social security.

3.34 According to the Minister's response, the effect of the second measure in Schedule 4 will be that:

members of a couple paid under a social security agreement outside Australia will be paid on their own AWLR rather than the higher Australian working life residence duration of either partner. This policy is already being applied to those paid under domestic legislation. This measure will therefore address an anomaly and equity issue by ensuring that social security agreement pensioners paid outside Australia are no longer paid a more generous rate of Australian pension than other pensioners.

3.35 The committee is generally supportive of a pension system that is based on individual eligibility for payments, as opposed to dependency based eligibility, as this

reduces the risk of discrimination. However, the effect of this measure is not clear from the material provided. According to the explanatory memorandum accompanying the bill, recipients of partnered age and disability support pensioners (or former members of such couples) paid under the *Social Security (International Agreements) Act 1999* are currently paid based on the higher AWLR of either partner. Recipients of the carer payment and wife pension under the *Social Security (International Agreements) Act 1999* are currently deemed to have the same AWLR as their partner (even if this is less than their own).¹

3.36 The committee notes that this will have the effect of increasing payments for recipients of the carer payment and wife pension where a person's AWLR is higher than their partner's. However, it appears to the committee that this measure will also result in a reduction in payments for recipients of partnered age and disability support pensions and carer and wife pensions where a person's AWLR is lower than their partner's.

3.37 The committee intends to write to the Minister for Social Services to seek further clarification as to the purpose and impact of the measure enabling a person who is a member of a couple paid outside Australia to have their pension calculated on the basis of their own AWLR, rather than the higher AWLR of either partner.

Schedule 6 – Student start-up loans

3.38 The response explains that the shift from Student Start-up Scholarships to Student Start-up Loans 'is a fiscally responsible alternative to grant payments for increasing participation in higher education' and enables the government to ensure that higher education is accessible to all Australians. It explains how the shift is reasonable and proportionate to achieving this objective.

3.39 In light of the information provided the committee makes no further comment on this measure. The committee notes it would have been useful for the information provided in the response to have been included in the statement of compatibility.

Schedule 10 – Reduction of period for temporary absence from Australia

3.40 According to the Minister's response, the amendments reducing the period of allowed temporary absence for FTB Part A and Paid Parental Leave from three years to 56 weeks aim to reprioritise these payments in line with the fiscal restraints faced by government. They are said to be reasonable and proportionate because payments will continue to be made to eligible families overseas for a period of 56

1 Explanatory memorandum, p 14.

weeks, which is more generous compared to the maximum six-week period allowed for other payments overseas, and will ensure that individuals overseas for one year employment contracts will have time to return to Australia before ceasing to be eligible. Further, exemptions will apply for some individuals to allow access for up to three years, including members of the Australian Defence Force or Australian Federal Police deployed overseas, persons receiving assistance under the Medical Treatment Overseas Program, and persons unable to return to Australia with the 56 week period because of a specified event.

3.41 The bill provides that the amendments only affect an individual's eligibility for FTB Part A on and from 1 July 2014 and for Paid Parental Leave for a child born on or after 1 July 2014.² However, the amendments will apply in relation to any absence from Australia, whether this begins before, on or after 1 July 2014.³ It is not clear how many people this may affect who are overseas and who will no longer be eligible for these payments from 1 July 2014.

3.42 The committee intends to write to the Minister for Social Services to seek further information as to how many people who are already overseas will be affected by the changes and may have their payments removed.

2 Items 8 and 14 of Schedule 10 to the bill.

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21 JAN 2014

Senator Dean Smith
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S1.111
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Dear Senator Smith

Thank you for your letter of 10 December 2013 on behalf of the Parliamentary Joint Committee on Human Rights in relation to the Social Services and Other Legislation Amendment Bill 2013.

The Committee requested further information on several Schedules to the Bill, including those related to encouraging responsible gambling (Schedule 1), family tax benefit and eligibility rules (Schedule 3), the period of Australian working life residence (Schedule 4), student start-up loans (Schedule 6) and the reduction of the period for temporary absence from Australia (Schedule 10).

Additional information on each of these schedules to assist the Committee to form a view is set out in the attached information.

Thank you again for writing.

Yours sincerely


KEVIN ANDREWS MP

Encl.

Schedule 1 – Encouraging responsible gambling

Schedule 1 to the Bill amends the *National Gambling Reform Act 2012* (Act), which includes a number of measures with the objective of reducing the risk and harm associated with problem gambling. The Committee has sought further information as to whether the effect of Schedule 1 is to remove measures that promote human rights, in particular the right to an adequate standard of living and the right to health, and, if so, whether they have been replaced by measures that address the problems targeted by the Act.

As the Committee has noted, the Government intends to adopt a different policy approach to help problem gamblers from that of the previous government. The Bill is considered the most appropriate first stage to addressing problem gambling and express the Government's commitment to develop and implement appropriate measures in the near future.

To the extent the Bill removes measures intended to reduce the harms that result from problem gambling, it is noted the Bill makes provision for alternative measures to address these issues and will cause less interference with certain human rights, as identified in the statement of compatibility. As such, the Bill will not give rise to breaches of human rights in practice, consistent with the principles of the Committee.

In relation to the national withdrawal limit on automatic teller machines (ATMs), the Bill proposes to repeal this measure to restore state and territory control over the regulation of ATM cash withdrawals. Existing state and territory laws provide adequate restrictions on ATMs, for example, in all Australian jurisdictions ATMs are banned from gaming areas. In many jurisdictions additional restrictions apply to ATMs and other cash dispensing facilities, such as electronic funds transfer at point of sale (EFTPOS), beyond the gaming area.

In relation to the proposed repeal of a state linked pre-commitment measure, the Bill replaces this with a commitment to work with stakeholders on venue based pre-commitment. It is the Government's policy that venue based pre-commitment is a more appropriate legislative response to problem gambling given its impact on industry and recreational gambling. This amendment provides the certainty required to work effectively with stakeholders on venue based pre-commitment, while recognising the role of state and territory governments.

Further, replacing a state linked system with a venue based system is likely to minimise the risk of arbitrary and unlawful interference with a person's privacy under Commonwealth law, given a venue based system is only required to monitor gaming activity within a venue rather than across a state.

Schedule 1 of the Bill represents one part of a different policy approach to helping problem gamblers. It is the Government's intention to determine the most effective package of measures for addressing problem gambling, balancing the benefits of recreational gambling against the harm it may cause. As noted by the Committee, government responses to problem gambling are a matter of continuing policy debate.

The measures form a part of a broader plan to assist problem gamblers, consisting of a combination of preventative, treatment and counselling services. The Government's approach places a greater emphasis on non-legislative measures given the existing role of state and territory governments in addressing problem gambling. The Government's intention is to complement and enhance existing arrangements to reduce duplication and complexity while encouraging responsible gambling.

Schedule 3 – Family tax benefit and eligibility rules

Schedule 3 makes amendments to restrict Family Tax Benefit (FTB) 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). Teenagers aged 16 and 17 who have completed Year 12 will no longer be eligible. The Committee has sought further information about the objective being pursued by the measures 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.

The amendment aims to reprioritise family assistance and social security expenditure in line with the fiscal constraints faced by government and to introduce stronger requirements for those who have completed Year 12 to participate in work, job search, study or training.

To the extent that Schedule 3 limits the right to social security, it is reasonable and proportionate, as FTB Part A will continue to provide benefits to eligible families with children under age 16 and for teenagers while they are completing secondary school. This measure will not affect current assistance to eligible low to middle income families, including the most disadvantaged, that is provided through fortnightly income support payments.

Existing participation requirements for FTB already exclude teenagers aged 16 to 17 who have not attained Year 12 or equivalent and who are not studying full-time. Teenagers with a secondary qualification who cease to be eligible for FTB Part A due to the amendments in Schedule 3 will be able to apply for Youth Allowance. Youth Allowance is an activity tested payment, and requires young people to participate in work, job search, study or training. It will remain available as the more appropriate payment to help young people transition from school into work or post-secondary study.

Schedule 4 – Period of Australian working life residence

Schedule 4 to the Bill contains provisions to increase the period of Australian Working Life Residence (AWLR) required for payment of a full pension outside Australia from 25 to 35 years, and to assess people paid under social security agreements on their own AWLR and not that of their partners. The Committee has sought further information about the objective being pursued by the measures 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.

The purpose of these amendments is to provide a more appropriate basis for calculating pensions paid outside Australia and to support the sustainability and targeting of Australia's pension system now and into the future.

The Age Pension is a payment made from general tax revenue to support aged Australian residents who have no other means of support. In recognition of Australia's multicultural background, governments have allowed residents who have been granted pension to take their pension overseas, but have made a deliberate decision in such circumstances to vary the pension rate to reflect actual years of residence in Australia during working life.

While in Australia, a person's rate of pension is not linked to their length of residence. However, once they are outside Australia for more than 26 weeks their rate of pension reflects their past links to Australia during their working life (AWLR is defined as residence between the ages of 16 and Age Pension Age).

Australia's social security system differs markedly from the contributory systems that operate overseas. A person need not have worked or paid contributions or taxes to be eligible to receive a pension; they need only satisfy residency requirements.

As a residence based, non-contributory system, there is no acquired right to social security payments in the same sense as may apply to "earned" benefits or property. Aged pensions are granted according to the current laws of the Australian Government and are provisional on a person claiming and being entitled according to legislation at that time. For example, a person who was born in Australia and lived here for 60 years, but then leaves to live outside Australia, cannot claim and receive a pension at 65, unless they are living in a country that has a bilateral social security agreement with Australia.

It is rare for countries with residence based systems to export their benefits at all. Countries with contributory systems commonly impose restrictions on payment of their "earned" benefits outside their territory.

Currently pensioners with 25 years AWLR are paid the full rate of Age Pension outside Australia. Pensioners with less than 25 years are paid a proportional rate. For example, a person with 17 years AWLR will receive 17/25th of the rate paid in Australia after they have been absent from Australia for longer than 26 weeks.

The maximum AWLR period a person can currently accrue is 49 years (this will be 51 years after the Age Pension age increases to 67 in 2023). The 25 year AWLR requirement represents only about half of the relevant maximum period.

Given that Australia's social security system does not require a person to have worked or paid taxes to accrue periods of AWLR, the current formula to pay full pension to a person with only 25 years AWLR is considered overly generous and inappropriate.

Increasing the requirement to 35 years AWLR strengthens the residence basis of our system and means that a person must have a substantial connection to Australia to get a full pension outside Australia. It also reflects the principle of shared responsibility and the idea that each country should pay a benefit which reflects a person's association with that country.

As noted previously, most countries that have residence-based systems do not export those benefits. Aside from Australia, notable exceptions are Canada and New Zealand, which pay based on 40 years and 45 years respectively.

Staggering implementation was not proposed as it would increase complexity, create inequities, reduce savings and delay the achievement of the objective which is to establish a more appropriate basis for payment of full rate pensions outside Australia.

Pensioners already overseas when the measure commences will be grandfathered. The measure will only apply to people who leave Australia on or after the start date and to pensioners granted under social security agreements on or after the start date. In this sense no individuals will have a reduction in their pension rate.

Phasing in the measure would complicate implementation, make it more difficult to explain to pensioners and considerably increase administrative costs for Government.

As already mentioned the objective is to strengthen the residence-based nature of our system and increase the sustainability of the pension system. The measure proposed is reasonable having regard to the nature of Australia's system and by any comparison to international practices.

The second measure will mean that members of a couple paid under a social security agreement outside Australia will be paid on their own AWLR rather than the higher Australian working life residence duration of either partner. This policy is already being applied to those paid under domestic legislation.

This measure will therefore address an anomaly and equity issue by ensuring that social security agreement pensioners paid outside Australia are no longer paid a more generous rate of Australian pension than other pensioners.

This measure is appropriate because the Australian Social Security system is residence based and individuals generally qualify based on their own connection to Australia. As a result, dependency based payments, like Wife and Widows Pension, were closed to new claimants many years ago. As all residents can qualify for payments in their own right the pension system is gender neutral (positive discrimination for women ended when Age Pension age for men and women became equal from July 2013).

This measure will also mean that some recipients may receive an increase in their payment. This is because Carer Payment and Wife Pension recipients are currently paid on the basis of their partner's AWLR, regardless of whether it is more, or less, than their own AWLR. Therefore, this measure will benefit those recipients whose AWLR is higher than that of their partner's AWLR.

Grandfathering provisions will protect existing entitlements.

Schedule 6 – Student start-up loans

Schedule 6 to the Bill establishes, from 1 January 2014, Student Start-up Loans to replace the Student Start-up Scholarships for higher education students in receipt of student income support payments. The Committee has sought further information about the objective being pursued by the measures 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.

The Government is committed to giving all Australians an opportunity to gain a first class education. It acknowledges the financial difficulties which some students and their families may experience in undertaking education and training and has a number of measures in place to assist people financially. Student payments are directed to students and families on the basis of a shared responsibility for financial support between families, the Australian Government and students themselves.

It is well established that higher education graduates gain substantial private benefits from their studies including higher lifetime earnings than non-graduates, more job satisfaction, higher social status and better health. Because the community substantially pays the costs of these benefits through a range of services and supports for students, it is reasonable and proportionate that the students be expected to repay a proportion of those costs when they are financially able. This is the basis for the existing Higher Education Loan Program (HELP) for tuition fees.

Converting the Student Start-up Scholarship into an income contingent loan recognises the benefits students receive from higher education, while still ensuring that higher education is accessible to all socio-economic groups. Students from low SES backgrounds will continue to receive fortnightly income support payments of Youth Allowance or Austudy.

The Student Start-up Loan debts will be free of any real interest charge although they will be subject to CPI indexation to maintain their real value. As with the HELP scheme, students will only be required to begin repaying the Loan once their income has reached the relevant income threshold (\$51,308 in 2013-14 consistent with HELP).

Income contingent loans do not place an onerous burden on debtors, as repayments are proportional to a person's income, meaning that those on lower incomes do not have to repay large amounts, unlike other types of loans (such as bank loans). Furthermore, students who never reach the minimum threshold, because they do not obtain the financial benefits of their studies in higher education, will not be required to repay the loan.

Various studies, including analysis conducted by Professor Bruce Chapman and Jane Nicholls (*Bruce Chapman and Jane Nicholls (2013), 'Higher Education Contribution Scheme (HECS)', Asia and the Pacific Policy Studies, Working Paper Series 02/2013, Canberra*) have concluded that income contingent loans are not a deterrent to study. These studies have identified no significant effects on university enrolments, including from low socioeconomic students, from either the introduction of, or changes to, HELP.

The Student Start-up Loan is a fiscally responsible alternative to grant payments for increasing participation in higher education, including by low SES, regional, remote and Indigenous students, by assisting them with the costs of commencing study including the purchase of text books, computers and internet access.

Schedule 10 – Reduction of the period for temporary absence from Australia

Amendments contained in Schedule 10 of the Bill will reduce the period of allowed temporary absence for FTB Part A and Paid Parental Leave from three years to 56 weeks. The Committee has sought further information about the objective being pursued by the measures 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.

The amendment aims to reprioritise FTB Part A and Paid Parental Leave in line with the fiscal constraints faced by government. To the extent that Schedule 10 limits the right to social security, it is reasonable and proportionate, as payments will continue to be made to eligible families for a period of 56 weeks while overseas. The 56 week time period is more generous than the maximum six week period allowed for other payments of government assistance when a person is overseas.

The measure ensures that individuals who may be overseas for one year employment contracts will have time to return to Australia before ceasing to be eligible for family assistance or parental payments. Exemptions will apply to allow some individuals to access payments while overseas for up to three years, such as individuals who are a member 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).

