

## **Family Assistance Legislation Amendment (Child Care Measures) Bill 2014**

*Portfolio: Education*

*Introduced: House of Representatives, 5 June 2014*

### **Purpose**

1.70 The Family Assistance Legislation Amendment (Child Care Measures) Bill 2014 (the bill) seeks to amend the *A New Tax System (Family Assistance) Act 1999* to maintain the indexation pause on the child care rebate limit at \$7500 for three years from 1 July 2014.

1.71 The bill would also maintain the child care benefit income thresholds at the amounts applicable as at 30 June 2014 for a further three years from 1 July 2014. The bill also seeks to make consequential amendments to the *Family Assistance Legislation Amendment (Child Care Budget Measures) Act 2011*.

### **Background**

1.72 The committee considered the following, substantially similar, measure in the Social Services and Other Legislation Amendment Bill 2013 in its *First Report of the 44th Parliament*.

### **Committee view on compatibility**

#### ***Right to social security***

1.73 The right to social security is guaranteed by article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This right recognises the importance of adequate social benefits in reducing the effects of poverty and plays an important role in realising many other economic, social and cultural rights, particularly the right to an adequate standard of living and the right to health.

1.74 Access to social security is required when a person has no other income and has insufficient means to support themselves and their dependents. Enjoyment of the right requires that sustainable social support schemes are:

- available to people in need;
- adequate to support an adequate standard of living and health care;
- accessible (providing universal coverage without discrimination and qualifying and withdrawal conditions that are lawful, reasonable, proportionate and transparent); and
- affordable (where contributions are required).

1.75 Under article 2(1) of ICESCR, Australia has certain obligations in relation to the right to social security. These include:

- the immediate obligation to satisfy certain minimum aspects of the right;

- the obligation not to unjustifiably take any backwards steps that might affect the right;
- the obligation to ensure the right is made available in a non-discriminatory way; and
- the obligation to take reasonable measures within its available resources to progressively secure broader enjoyment of the right.

1.76 Specific situations which are recognised as engaging a person's right to social security, include health care and sickness; old age; unemployment and workplace injury; family and child support; paid maternity leave; and disability support.

### **Right to an adequate standard of living**

1.77 The right to an adequate standard of living requires that the state take steps to ensure the availability, adequacy and accessibility of food, clothing, water and housing for all people in Australia.

1.78 Australia has two types of obligations in relation to this right. It has immediate obligations to satisfy certain minimum aspects of the right; not to unjustifiably take any backwards steps that might affect living standards; and to ensure the right is made available in a non-discriminatory way. It also has an obligation to take reasonable measures within its available resources to progressively secure broader enjoyment of the right to an adequate standard of living.

#### *Pausing of indexation of child care benefit*

1.79 As noted above, the bill would maintain the indexation pause on the child care rebate limit at \$7500 for three years from 1 July 2014. The statement of compatibility notes that the bill engages the right to social security and states:

The Government considers that maintaining the current CCR [child care rebate] limit until 1 July 2017 is a reasonable, necessary and proportionate measure that is in the interest of Australia's current fiscal and economic position, given savings from the measure have already been taken by the previous government.

The current limit of \$7,500 per child per financial year is currently set out in the legislation and will be retained in this measure. This maximum amount of CCR is not being reduced through this Bill.<sup>1</sup>

1.80 The committee notes that the effect of pausing the indexation of the child care rebate will be to reduce over time (by the impact of inflation) the value of the rebate in real terms. This represents a limitation on the right to social security and potentially the right to an adequate standard of living. While the statement of compatibility for the bill asserts that any limitation is 'reasonable and proportionate

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1 Explanatory memorandum (EM), p. 6.

to achieving a legitimate aim',<sup>2</sup> no detailed justification is provided to support this conclusion.

1.81 The committee's usual expectation where a limitation on a right is proposed is that the statement of compatibility provide an assessment of whether the limitation is reasonable, necessary, and proportionate to achieving a legitimate objective. While the statement of compatibility for the bill generally asserts that the measure is in the interests of Australia's current fiscal and economic position (as the legitimate objective of the measure), the committee notes that to demonstrate that a limitation is permissible, legislation proponents must provide reasoned and evidence-based explanations of why the measures are necessary in pursuit of a legitimate objective.

1.82 The committee notes that information regarding the number of families that may be affected by the continued pausing of the child care rebate and the expected financial impact on those families, is particularly relevant to the human rights assessment of this measure.

**1.83 The committee therefore seeks the Minister for Education's advice as to whether continuing the pause of the indexation of the child care rebate is compatible with the right to social security, and particularly:**

- **whether the proposed changes are aimed at achieving a legitimate objective;**
- **whether there is a rational connection between the limitation and that objective; and**
- **whether the limitation is reasonable and proportionate measure for the achievement of that objective.**

*Pausing of indexation of income thresholds for the child care benefit*

1.84 The bill would also maintain the income thresholds for the separate child care benefit payment at the amounts applicable as at 30 June 2014 for a further three years.

1.85 The committee notes that, as a result, it can be expected that a number of families will lose their entitlement to the child care benefit payment (or at least have it reduced) if their incomes rise with inflation above a relevant threshold over the period. By operating to limit the availability of the benefit in this way, the bill may be seen as limiting the right to social security, and potentially the right to an adequate standard of living.

1.86 In concluding that the bill is compatible with human rights, the statement of compatibility states:

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2 EM, p. 6.

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The Government...considers that the overall effect of maintaining the CCB [child care benefit] income thresholds until 1 July 2017 will, in relation to the families whose children attend approved child care, be limited by continued indexation of the CCB standard hourly rate, the minimum hourly amount and the multiple child loadings, which are not affected by this measure. For many of the families impacted by maintaining the CCB income thresholds, half of their additional out-of-pocket child care costs will be met by CCR [child care rebate].<sup>3</sup>

1.87 However, the committee notes that this justification for the measure mainly addresses its impact on the amount of the benefit rather than its impact on the entitlement to the benefit based on family income.

1.88 The statement of compatibility does not identify the number of families who will be affected by the pausing of indexation of the income thresholds for accessing child care benefits or the financial impact on those families.

1.89 The committee's usual expectation where a limitation on a right is proposed is that the statement of compatibility provide an assessment of whether the limitation is reasonable, necessary, and proportionate to achieving a legitimate objective. To demonstrate that a limitation is permissible, legislation proponents must provide reasoned and evidence-based explanations of why a measure is necessary in pursuit of a legitimate objective.

1.90 The committee notes that information regarding the number of families that may be affected by the pausing of indexation of the income thresholds, and the expected financial impact on those families, is particularly relevant to the human rights assessment of this measure.

**1.91 The committee therefore seeks the Minister for Education's advice as to whether the pausing the indexation of the income thresholds for entitlement to the child care benefit is compatible with the right to social security and the right to an adequate standard of living, and particularly:**

- **whether the proposed changes are aimed at achieving a legitimate objective;**
- **whether there is a rational connection between the limitation and that objective; and**
- **whether the limitation is reasonable and proportionate measure for the achievement of that objective.**

### **Right to work**

1.92 The right to work and rights in work are guaranteed in articles 6(1), 7 and 8(1)(a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>4</sup>

1.93 The UN Committee on Economic Social and Cultural Rights has stated that the obligations of States parties to the ICESCR in relation to the right to work include the obligation to ensure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly, allowing them to live in dignity. The right to work is understood as the right to decent work providing an income that allows the worker to support themselves and their family, and which provides safe and healthy conditions of work.

1.94 Under article 2(1) of ICESCR, Australia has certain obligations in relation to the right to work. These include:

- the immediate obligation to satisfy certain minimum aspects of the right;
- the obligation not to unjustifiably take any backwards steps (retrogressive measures) that might affect the right;
- the obligation to ensure the right is made available in a non-discriminatory way; and
- the obligation to take reasonable measures within its available resources to progressively secure broader enjoyment of the right.

1.95 The right to work may be subject only to such limitations as are determined by law and compatible with the nature of the right, and solely for the purpose of promoting the general welfare in a democratic society.

#### *Impact of measures on right to work for those with family responsibilities*

1.96 Of further relevance to the right to work in this context, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires States parties to implement measures to eliminate discrimination against women in the field of employment. Particular obligations include:

To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child care facilities.<sup>5</sup>

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4 Related provisions relating to such rights for specific groups are also contained in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), articles 11 and 14(2)(e) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), article 32 of the Convention on the Rights of the Child and article 27 of the Convention on the Rights of Persons with Disabilities (CRPD).

5 Article 11(2)(c) of the CEDAW.

1.97 Accordingly, CEDAW recognises that the availability of child care is a critical component of the right to work.

1.98 As noted above, the bill proposes to effectively reduce the value of the child care rebate and limit the availability of the child care benefit by pausing indexation of income thresholds for eligibility. In the committee's view, the effect of the measures on the affordability and availability of child care may thus be seen as a limitation on the right to work. The committee notes that the statement of compatibility provides no assessment of the impact of the measures on the right to work.

1.99 The committee's usual expectation where a limitation on a right is proposed is that the statement of compatibility provide an assessment of whether the limitation is reasonable, necessary, and proportionate to achieving a legitimate objective.

**1.100 The committee therefore seeks the Minister for Education's advice as to whether the bill is compatible with the right to work, and particularly:**

- **whether the proposed changes are aimed at achieving a legitimate objective;**
- **whether there is a rational connection between the limitation and that objective; and**
- **whether the limitation is reasonable and proportionate measure for the achievement of that objective.**