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## Social Services and Other Legislation Amendment (2014 Budget Measures No. 1) Bill 2014

*Portfolio: Social Services*

*Introduced: House of Representatives, 18 June 2014*

### **Purpose**

1.329 The Social Services and Other Legislation Amendment (2014 Budget Measures No. 1) Bill 2014 (the bill) seeks to amend various Acts relating to social security, family assistance, veterans' entitlements, military rehabilitation and compensation and farm household support. The bill would:

- cease payment of the seniors supplement for holders of the Commonwealth Seniors Health Card or the Veterans' Affairs Gold Card from 20 June 2014;
- rename the clean energy supplement as the energy supplement, and permanently cease indexation of the payment from 1 July 2014;
- implement the following changes to Australian Government payments:
  - pause indexation for three years of the income-free areas and assets-value limits for all working age allowances (other than student payments), and the income test free area and assets value limit for parenting payment single from 1 July 2014;
  - index parenting payment single to the Consumer Price Index only, by removing benchmarking to Male Total Average Weekly Earnings from 20 September 2014;
  - pause indexation for three years of several family tax benefit free areas from 1 July 2014;
  - review disability support pension recipients under age 35 against revised impairment tables and apply the Program of Support requirements from 1 July 2014;
  - limit the six-week overseas portability period for student payments from 1 October 2014;
  - extend and simplify the ordinary waiting period for all working age payments from 1 October 2014; and
  - pause indexation for two years of the family tax benefit Part A and family tax benefit Part B standard payment rates from 1 July 2014.

1.330 The bill would also add the Western Australian Industrial Relations Commission decision of 29 August 2013 as a pay equity decision under the *Social and Community Services Pay Equity Special Account Act 2012*, to allow payment of Commonwealth supplementation to service providers affected by that decision.

## **Committee view on compatibility**

### ***Right to equality and non-discrimination***

1.331 The rights to equality and non-discrimination are guaranteed by articles 2, 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR).

1.332 These are fundamental human rights that essential to the protection and respect of all human rights. They provide that everyone is entitled to enjoy their rights without discrimination of any kind, and that all people are equal before the law and entitled without discrimination to the equal protection of the law.

1.333 For human rights purposes 'discrimination' is impermissible differential treatment among persons or groups that result in a person or a group being treated less favourably than others, based on one of the prohibited grounds for discrimination.

1.334 Discrimination may be either direct or indirect. Indirect discrimination may occur when a requirement or condition is neutral on its face but has a disproportionate or unintended negative impact on particular groups.

*Statement of compatibility does not address potential indirect discrimination against women.*

1.335 Women are more likely than men to be recipients of a broad range of social security benefits and more likely to be reliant on some form of social security than men. Accordingly, a number of measures in the bill, which seek to reduce the amount of a social security payment, or restrict eligibility for a benefit may have a disproportionate effect on women.

1.336 The committee notes that the statement of compatibility fails to consider the impact of the bill on women. Accordingly, no analysis is provided as to the relative impact of individual measures on women as opposed to men and fails to justify any discriminatory effect.

**1.337 The committee therefore requests the Minister for Social Services' advice on the compatibility of each schedule in the bill with the rights to equality and non-discrimination and, in particular, whether these measures are:**

- **aimed at achieving a legitimate objective;**
- **there is a rational connection between the measures and the objective; and**
- **the measures are proportionate to that objective.**

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

1.338 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.

1.339 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; and
- accessible (providing universal coverage without discrimination and qualifying and withdrawal conditions that are lawful, reasonable, proportionate and transparent); and
- affordable (where contributions are required).

1.340 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.

1.341 Specific purposes and circumstances 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.

1.342 Under article 4 of the ICESCR, economic, social and cultural rights may be subject only to such limitations as are determined by law and compatible with the nature of those rights, and solely for the purpose of promoting the general welfare in a democratic society. Such limitations must be proportionate to the achievement of a legitimate objective, and must be the least restrictive alternative where several types of limitations are available.

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

1.343 The right to an adequate standard is guaranteed by article 11(1) of the ICESCR, and requires States parties to take steps to ensure the availability, adequacy and accessibility of food, clothing, water and housing for all people in Australia.

1.344 Article 2(1) of ICESCR also imposes on Australia the obligations listed at paragraph 1.6 above in relation to this right.

### *Abolition of seniors supplement*

1.345 Schedule 1 of the bill would abolish the seniors supplement for holders of the Commonwealth Seniors Health Card. Veterans who hold a Commonwealth Seniors Health Card or Gold Card will also no longer receive the seniors supplement.

1.346 The seniors supplement is currently paid quarterly at the rate of \$876.20 per annum for singles and \$1320.80 for couples.<sup>1</sup> The payment is designed to assist with large annual bills such as motor vehicle registration.<sup>2</sup> The seniors supplement is payable to self-funded retirees not receiving the Age Pension or veteran's pension, and on incomes of less than \$50 000 (singles) or \$80 000 (couples).<sup>3</sup>

1.347 The statement of compatibility for the bill notes that the effect of the measure will be to reduce the income of self-funded retirees (on less than \$50 000 (singles) or \$80 000 (couples) per annum). It states:

This Schedule removes assistance from those with higher means, and is consistent with a well-targeted income support system which is targeted at those in most financial need.<sup>4</sup>

1.348 The committee notes that a reduction in these payments may be seen as limiting the rights to social security and to an adequate standard of living, to the extent that reducing retirement incomes may affect retirees' capacity to enjoy an adequate standard of living. However, while the statement of compatibility for the bill describes the measure as 'consistent' with the targeting of the scheme, it provides no assessment of this potential limitation of human rights.

1.349 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. 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.

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1 Department of Human Services website, 'Seniors supplement', <http://www.humanservices.gov.au/customer/services/centrelink/seniors-supplement> [accessed 26 June 2014].

2 Department of Human Services website, 'Seniors supplement', <http://www.humanservices.gov.au/customer/services/centrelink/seniors-supplement> [accessed 26 June 2014].

3 Department of Human Services website, 'Seniors supplement', <http://www.humanservices.gov.au/customer/services/centrelink/seniors-supplement> [accessed 26 June 2014].

4 Statement of compatibility, p. 1.

1.350 The committee notes that information regarding the number of seniors affected by the measure, and the expected financial impact on these individuals, is particularly relevant to the human rights assessment of this measure.

**1.351 The committee therefore seeks the Minister for Social Services' advice as to whether the removal of the seniors supplement 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.**

*Ceasing indexation of the (clean) energy supplement*

1.352 Schedule 2 of the bill seeks to rename the clean energy supplement as the 'energy supplement' and permanently cease its indexation. The current value of the supplement is 1.7 per cent of the standard Age Pension rate.<sup>5</sup>

1.353 The statement of compatibility notes that the energy supplement was introduced to the primary social security, family assistance and veterans' entitlements payments as compensation for the cost-of-living impacts of the carbon tax.<sup>6</sup> The statement of compatibility concludes that the measure will have 'no human rights impacts' because:

Recipients will be better off because there will no longer be price pressures from the carbon tax and people will continue to receive the energy supplement.

There are no human rights impacts, as recipients will be better off after the carbon tax is repealed.<sup>7</sup>

1.354 The committee notes that the effect of ceasing indexation of the energy supplement will be to reduce over time (by the impact of inflation) the value of the supplement in real terms. This may represent a limitation on the rights to social security and to an adequate standard of living, to the extent that reducing the value of the affected social security payments over time may impact on the ability of recipients to enjoy an adequate standard of living.

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5 Department of Human Services website, 'Seniors supplement', <http://www.humanservices.gov.au/customer/services/centrelink/seniors-supplement> [accessed 26 June 2014].

6 EM, p. 14.

7 EM, p. 45.

1.355 However, while the statement of compatibility asserts that the measure will provide a relative benefit at a certain point in time (being the assumed point at which the carbon tax is abolished), it provides no assessment of this potential limitation on human rights.

1.356 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.

1.357 The committee notes that information regarding the number of families who would be affected by ceasing the indexation of the energy supplement, and the financial impact on those families, is particularly relevant to the human rights assessment of this measure.

**1.358 The committee therefore seeks the Minister for Social Services' advice as to whether ceasing indexation of the energy supplement 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.**

*Pausing indexation of income and asset thresholds for a range of benefits*

1.359 Schedule 3 of the bill would pause indexation, for three years from 1 July 2014, of:

- the income-free areas and assets-value limits for all working-age allowances (other than student payments);
- the income test-free area and assets-value limit for parenting payment single; and
- several family tax benefit-free areas.

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

The changes to the value of income and assets test free areas and thresholds for certain Australian Government payments assist in targeting payments according to need. Payments will not be reduced unless

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customers' circumstances change, such as their income or assets increasing in value.<sup>8</sup>

1.361 However, the committee notes that this assessment appears not to take into account the impact of inflation, which may have the effect that families whose incomes merely keep up with inflation (and thus do not increase in value in real terms) may still have their benefits reduced. This is because it can be expected that a number of families will lose and/or have reduced their entitlement to family tax benefits and other working-age allowances if, due to inflation, their incomes rise above a relevant threshold over the period. To the extent that this reduction or loss of entitlements may impact on the ability of recipients to enjoy the rights to social security and an adequate standard of living, the measure may be seen as potentially limiting those rights.

1.362 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.

1.363 The committee notes that information regarding the number of families who would be affected by ceasing the indexation of these benefits, and the financial impact on those families, is particularly relevant to the human rights assessment of this measure.

**1.364 The committee therefore seeks the Minister for Social Services' advice as to whether these measures in Schedule 3 of the bill are 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.**

*Pausing indexation of the parenting payment single*

1.365 Schedule 3 of the bill would also change the indexation of the parenting payment single from benchmarking against Male Total Average Weekly Earnings (MTAWE) to the Consumer Price Index (CPI).

1.366 The statement of compatibility states that the measure is compatible with human rights as:

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8 EM, p. 6.

Parenting Payment Single will continue to be indexed to movement in the Consumer Price Index twice a year, and its purchasing power will be maintained.<sup>9</sup>

1.367 However, this assessment does not address potential differences in the rate of growth between CPI and MTAWWE indexation (and thus their relative efficiency in maintaining the purchasing power of the benefit). The committee notes that indexation by CPI rather than MTAWWE may result in slower growth of parenting payment single (given that MTAWWE generally increases at a higher rate), thus reducing the purchasing power of the payment over time. To the extent that this reduction may affect the ability of recipients to enjoy the rights to social security and an adequate standard of living, the measure may be seen as potentially limiting those rights.

1.368 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. 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.

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

**1.370 The committee therefore seeks the Minister for Social Services' advice as to whether changing the indexation of the parenting payment single from benchmarking against Male Total Average Weekly Earnings to the Consumer Price Index 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.**

*Restrictions on eligibility for immediate social welfare payments*

1.371 Schedule 6 to the bill would amend the *Social Security Act 1991* to extend the application of the one-week waiting period, which currently applies to new claimants of Newstart allowance and sickness allowance, to new claimants of youth allowance (other), parenting payment and widow allowance.

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9 EM, p. 48.



1.372 Schedule 6 would also introduce an additional criterion to be satisfied for claimants seeking to have the one-week waiting period waived. Currently, this period may be waived if the Secretary of the Department of Human Services is satisfied that claimants are in 'severe financial hardship'.<sup>10</sup> Schedule 6 would require that the person also be 'experiencing a personal financial crisis' (and provide supporting evidence). The definition of 'experiencing a personal financial crisis' will be set out in rules.

1.373 The statement of compatibility explains that the objective of the measure is:  
...to better promote self-support, and discourage a culture of automatic entitlement to income support, by ensuring that the waiting period is applied consistently and effectively across similar working age payments.<sup>11</sup>

1.374 The statement of compatibility concludes:

To the extent that the changes in this Schedule may limit the right to social security, those limitations are reasonable and proportionate to the policy objective of ensuring a sustainable and well-targeted payment system.<sup>12</sup>

1.375 The committee notes that the objective of the measure is not clearly identified, being variously described as to 'discourage a culture of automatic entitlement' and to ensure 'a sustainable and well-targeted payment system'. Further, the committee notes that these objectives are overly generalised and not sufficiently supported by evidence, as required to conduct a human rights assessment.

1.376 The committee notes the Attorney-General's Department's guidance on the preparation of statements of compatibility that the 'existence of a legitimate objective must be identified clearly with supporting reasons and, generally, empirical data to demonstrate that [it is] important'.<sup>13</sup> To be capable of justifying a proposed limitation of human rights, a legitimate objective must address a pressing or substantial concern, and not simply seek an outcome regarded as desirable or convenient.

1.377 In relation to the effect of the measure, the committee notes that the extension of the one-week waiting period to a broad range of benefits, and the

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10 Under section 19C of the *Social Security Act 1991*, a claimant is in 'severe financial hardship' where the value of their liquid assets is less than their fortnightly rate of payment (if single) or less than double their fortnightly payment (if partnered).

11 Statement of compatibility, p.9.

12 Statement of compatibility, p. 11.

13 See Attorney-General's Department, Template 2: Statement of compatibility for a bill or legislative instrument that raises human rights issues at <http://www.ag.gov.au/RightsAndProtections/HumanRights/PublicSector/Pages/Statementofcompatibilitytemplates.aspx> [accessed 8 July 2014].

introduction of an additional criteria for a waiver of the waiting period, represent potential limitations on the rights to social security and to an adequate standard of living. This is because the measures may reduce a person's financial capacity to provide an adequate standard of living for themselves and their families. However, the statement of compatibility provides no assessment of this potential limitation on human rights.

1.378 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. 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.

1.379 The committee notes that information regarding the number of people affected by the measure and the expected financial impact on those individuals (including their ability to access crisis support) is particularly relevant to the human rights assessment of this measure.

**1.380 The committee therefore seeks the Minister for Social Services' advice as to whether changing the eligibility for immediate social welfare payments 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.**

*Restrictions on eligibility for immediate social welfare payments – quality of law test*

1.381 The committee notes that human rights standards require that limitations on rights must have a clear basis in law. This principle includes the requirement that laws must satisfy the 'quality of law' test, which means that laws which interfere with human rights must be sufficiently certain and accessible for people to understand when the interference with their rights will be justified.

1.382 In the committee's view, the requirement for welfare recipients to prove they are 'experiencing a personal financial crisis' is not well defined. The Secretary of the Department of Human Services is given broad power to shape the requirements through legislative rules.

1.383 The existing requirement to show 'severe financial hardship' is defined objectively on the basis of the person's liquid assets and is set out in the Act. The proposed additional requirement to also prove a 'personal financial crisis' may introduce discretionary and subjective requirements that are difficult for claimants

to meet. In these circumstances, the committee considers that the measure may not meet the quality of law test standards.

**1.384 The committee therefore requests the Minister for Social Security's advice on whether the measure, as currently drafted, meets the standards of the quality of law test for human rights purposes.**

*Pausing indexation of Family Tax Benefits*

1.385 Schedule 7 of the bill would pause for two years the indexation of a number of family tax benefit payments from 1 July 2014. The payments are the family tax benefit Part A, the standard rates for family tax benefit Part B, and an approved care organisation's standard rate. These payments are currently indexed against CPI.

1.386 The statement of compatibility states that the measure is compatible with human rights as:

To the extent that maintaining the family tax benefit standard payment rates limits the right to social security, this is reasonable and proportionate. The standard rates are not being reduced, and families will continue to receive assistance at current rates for another two years. Certain elements of family tax benefit, namely rent assistance, newborn supplement, large family supplement and multiple birth allowance, will continue to be indexed.<sup>14</sup>

1.387 The committee notes that the effect of ceasing the indexation of these payments for two years will be to reduce over time (by the impact of inflation) their value in real terms. This potentially represents a limitation on the right to social security and potentially the right to an adequate standard of living.

1.388 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. 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.

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

**1.390 The committee therefore seeks the Minister for Social Services' advice as to whether pausing the indexation of family tax benefit payments 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.**