

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS



**STATEMENT TO THE SENATE
Thursday 20 September 2012**

On behalf of the Parliamentary Joint Committee on Human Rights I draw the attention of the Senate to the committee's Fourth Report of 2012 which is the interim report of the committee's consideration of the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012.

This bill was introduced into the House on 31 May 2012. The committee's consideration focuses on Schedule 1 to the bill which removes 'grandfathering' transitional arrangements with the result that from 1 January 2013, eligibility for parenting payment for all recipients will cease when the child of a partnered parent turns 6 or when the child of a single parent turns 8 years old. The committee understands that some 63,000 parenting payment recipients will be affected by the changes on the commencement date of 1 January 2013 and that the changes will eventually affect all 147,000 grandfathered parenting payment recipients, the majority of whom are single parents.

On 15 June 2012 the committee received a request from the Australian Council of Social Security and 14 other signatories asking the committee to consider the human rights compatibility of the bill.

Honourable Senators will appreciate that this matter came before the committee very early in its existence and certainly before it had established working practices around the routine scrutiny of legislation.

The consideration of this bill has therefore been formative for the committee and for this reason I would like to draw the attention of the House to the approach the committee has taken in its consideration of this bill.

From the outset, the committee recognised the desirability of placing information regarding the bill's engagement of human rights before the Parliament at an early opportunity.

As a preliminary step the committee held a public hearing to allow ACOSS to elaborate on the concerns raised in its correspondence to the committee and to afford the government an opportunity to expand upon the claims made in the statement of compatibility.

The committee considered that a hearing provided the most efficient means for committee members to gain an understanding of the human rights issues raised by the bill while at the same time placing relevant information on the public record while the bill was still before the House.

The committee would like to place on record its gratitude to the witnesses who made themselves available for that hearing at short notice.

Coincidental with the committee's consideration of the ACROSS request, the Senate initiated inquiries into this bill and into the related matter of the adequacy of the allowance payment system under Newstart.

Recognising the likelihood that these inquiries would cover common ground and elicit evidence relevant to the committee's deliberations, the committee decided not to initiate a further public inquiry of its own at that time and instead focussed its attention on establishing an appropriate analytical framework to assist in its analysis of the rights engaged by this bill and to ensure that it would be able to adopt a consistent approach in the subsequent consideration of other legislation.

That analytical framework and the committee's interpretation of the underlying human rights obligations and principles engaged by this bill are set out in this report.

In essence, the committee's consideration of the measures in this bill has focussed on three key questions:

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

The starting point for the committee's consideration of these questions was the statement of compatibility. Regrettably the statement of compatibility that accompanied the bill did not include a detailed analysis of the bill's compatibility with human rights.

While the committee acknowledges that the government has since provided further information to the committee which has gone some way to address the lack of detail in the statement of compatibility, the committee notes that the provision of a more comprehensive statement at the introduction of the bill

would have greatly assisted the committee in its scrutiny of this bill and would have improved the parliament's understanding of the precise impacts of these changes in a more timely way.

Through this bill the government seeks to provide greater incentives and opportunities for Parenting Payment recipients, particularly for single parents, to re-engage in the workforce and to provide greater equity and consistency in the eligibility rules for Parenting Payments. The committee considers that these are legitimate objectives.

However, the committee notes that it does not necessarily follow that the measures seeking equity are justified as it is not apparent to the committee that the government has considered any alternative options in this regard.

With regard to the question of whether there is a rational connection between the measures and the objective, the committee's examination of the available evidence indicates that this is not a matter that can be conclusively proven up front. The committee considers that on balance, the government has provided sufficient supporting evidence to suggest that the proposed measures may go some way in achieving the stated objectives.

However, the committee considers that the lack of decisive evidence highlights the need for appropriate monitoring mechanisms to accompany the proposed changes. The committee notes that it is not apparent that the government has taken steps to establish post-legislative mechanisms to evaluate whether the measures are indeed achieving their objectives or to monitor their impact on individuals and groups, particularly with regard to the risks of hardship and discrimination.

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

The committee notes that while individuals who are transitioned from Parenting Payment to Newstart will still have access to social security benefits, significant questions have been raised regarding the extent to which Newstart is adequate to provide a reasonable standard of living for jobseekers.

The committee considers that if Newstart combined with other benefits is not sufficient to provide an adequate standard of living for affected individuals, the

measure to remove the grandfathered Parenting Payment provisions risk being incompatible with the obligation in article 9 of the International Covenant on Economic, Social and Cultural Rights to ensure minimum essential levels of social security.

The committee accepts that governments must be accorded a degree of discretion in public expenditure matters. However, the committee notes that there must be a reasonable basis and a relationship of proportionality between the legitimate aim pursued and the means used to achieve it.

However, the committee is not yet convinced by the government's assertion that all affected individuals will maintain access to appropriate levels of social security support.

The committee notes that these are questions of fact, which are currently the subject of an inquiry by the Senate Education, Employment and Workplace Relations References Committee into the adequacy of the allowance payment system for jobseekers.

The committee therefore considers that it would be premature for the government to introduce these measures prior to the completion of that inquiry. The committee therefore recommends that the government should defer these measures until the outcome of that inquiry is known.

Once again, I would like to place on record the committee's appreciation for all those who have assisted in its deliberations to date and I would particularly like to thank my committee colleagues for their constructive and collegiate approach to the consideration of these complex and contentious issues.

I commend the report to the Senate.