

Australian Greens' Minority report

The Australian Greens are very concerned at the very quick time frame of this inquiry. The issues contained within this Bill are significant and, in some cases, have significant implications for students, pensioners, low income families and the not-for-profit sector.

The Bill seeks to undermine two major pieces of reform from the previous Parliament, by repealing the reforms in the *National Gambling Reform Act 2012* and delaying the implementation of the *Charities Act 2013*.

It is also completely inappropriate to seek to pass so many different and complex issues through one Bill, and to give stakeholders less than a week to contribute to a Senate inquiry, particularly given that none of the measures considered by this committee were time sensitive.

This minority report does not cover those aspects of the Bill where the Australian Greens support the majority report. However, on a range of schedules we disagree with the majority report, and we do not believe that schedules 1, 1A, 3, 4, 5, 7 and 10 should be passed at this time.¹ Our concerns are set out below.

Schedule 1 – Gambling

This Schedule effectively repeals the reforms made in the *National Gambling Reform Act 2012* (NGRA). The gambling reforms in the Act were the result of a long and complex process. The issue was examined in great detail by the Productivity Commission whose 2010 Gambling report highlighted the enormous social costs of gambling, particularly with regards to poker machines. The report highlighted the need for reform and made many detailed and evidence-backed recommendations for reform.

The last Parliament examined the issue of poker machine reform in detail. Several inquiries by the Joint Standing Committee on Gambling Reform took submissions from industry, community groups and members of the public whose lives have been touched by poker machine addiction. Significant time was devoted to the discussion of the gambling reforms in the Parliament. Due to the finely balanced numbers in the House of Representatives and the agreement between the Government and Mr Andrew Wilkie MP, the matter got an extraordinary amount of media attention and debate amongst the community. Throughout this process, the need for reform was

1 Note: The Australian Greens also do not support Schedule 2, 5, or 9 but these schedules have been examined by the Finance and Public Affairs and Education and Employment Committees respectively and so are not discussed here.

made clear as was public sentiment against the proliferation of poker machines and in favour of reform.

The original proposal put before the Australian public after 2010 was for a scheme of mandatory pre-commitment on all poker machines in Australia. This policy was a recommendation of the Productivity Commission and was supported by further evidence gathered during the 43rd Parliament. Despite this evidence and the groundswell of support for reform, the lobbying efforts of the gambling industry succeeded in watering down the reform, becoming one of fitting machines for pre-commitment but not enforcing the use of a pre-commitment scheme. The NGRA nevertheless had merit as it brought the Commonwealth Government into the poker machine space and contained some measures, such as ATM withdrawal limits, that have genuine potential for harm reduction. The Australian Greens therefore supported the passage of the Act.

Since the passage of the NGRA in late 2012, no significant new evidence has emerged regarding gambling patterns in Australia, the effectiveness of pre-commitment, or even the profitability of the industry. The case for the reforms in the NGRA remain as strong as ever.

The Senate now finds itself considering the Social Services and Other Legislation Amendment Bill 2013, which almost entirely repeals the provisions of the NGRA. This omnibus bill was introduced without public consultation or fanfare of any kind, and it was left to both parliamentarians and the public to scrutinise the bill in order to divine that it even had anything to do with the subject of poker machines. This is a highly inappropriate way to address a reform of such magnitude and public interest. It is a betrayal of the public trust and of all sections of the community who engaged in a long debate on an important subject.

This was borne out in evidence received by this inquiry. Stakeholders who appeared before the committee were appalled that both the government and the Opposition would unite to repeal a reform that could reduce the harms of poker machines. Ms Kelilah Doust of the Gambling Impact Society (NSW) summed up the sentiment in the community sector:

I honestly feel betrayed by the government, as do my family and several people that I know who have also been affected by this issue. It is disgraceful that the first meaningful steps towards reform that our government has taken will now be removed to be replaced with nothing. You will be giving vulnerable people back over to the wolves, and there is nothing to prevent them being taken advantage of. I am absolutely disgusted.²

2 Ms Kelilah Doust, Gambling Impact Society New South Wales, *Proof Committee Hansard*, 9 December 2013, p.

In response to the ostensible reason for the repeal that poker machine reform is a matter for the states, Ms Kate Roberts, of the Gambling Impact Society said:

There is an absolute and clear mandate for the federal government to be involved in this issue. As I have already stated, it is a health issue. It needs to be treated as a health issue and we need to develop a very strong public health framework. This has been recommended through the 1999 and 2010 inquiries. That is a federal government responsibility. The conflicts of interest are rampant at state and territory level and this means that we are now being thrown back, as Kelilah said, to the wolves.³

The churches were also united in their opposition to Schedule 1 of this bill. Reverend Tim Costello defended the need for regulation and could explain the repeal – backed by the Labor Party – only 'in terms of the political power of the pokies lobby in the industry. That is the only way we can understand this'.⁴

No justification has been offered for winding back these reforms beyond the assertion that it is an issue for the states. The fact that states have jurisdiction over poker machines is not new information. It is the failure of the states to act, allowing the social costs to mount as they become more dependent on the revenue generated, that was the genesis of poker machine reform in the first place. There is no new prospect that the states will take action to limit the harms beyond the usual small investment in problem gambling treatment services, which is already a demonstrated failure. The stated intention by the Government to work with the states on voluntary pre-commitment is similarly doomed to failure. It is a fig-leaf that replaces hundreds of pages of regulation with a single aspirational statement regarding a policy no credible expert is advocating.

Given that the urgent case for poker machine reform has not changed since the passage of the National Gambling Reform Act; that there is no prospect of other meaningful reform by the Commonwealth or State Governments; and that the evidence received by this Committee succinctly expressed the dismay felt by the public at the prospect of a liberalisation of poker machine regulation, the Australian Greens can see no reason to support this Schedule of the Bill.

Schedule 1A – Charities

The Australian Greens strongly oppose the Government amendment which delays the implementation of the Charities Act by 9 months.

The definition contained within the Charities Act does not introduce any significantly new concepts but it rather codifies and consolidates the growing body of charity case

3 Ms Kate Roberts, Gambling Impact Society, *Proof Committee Hansard*, 9 December 2013, p. 10.

4 Reverend Tim Costello, *Proof Committee Hansard*, 9 December 2013, p. 13.

law into a single Act, which provides greater clarity and certainty to charities. As a result, it clarifies that working on activities such as housing and indigenous issues can form a charitable purpose.

None of the charities who spoke to the Committee were aware of the Government's intention to postpone the implementation of the Bill and nor were they aware of any concern across the community about the implementation of the Act.

Rather, the witnesses noted that refining the definition of charity has been on the political agenda for over 10 years, and that the passage of the legislation earlier this year was overwhelmingly welcomed and accepted by the charitable sector.

None of the submitters to the inquiry could point to a clear reason why the Government would defer the implementation of the Act.

The Minister has attempted to link the definition of charity to the operation of the ACNC through his second reading, but this is not a reasonable link to make. While it is clear that the Minister intends to revoke the Charities Regulator and replace it with a Centre for Excellence, this has no bearing on the substance of the Charities Act itself. It is misleading of the Government to suggest otherwise.

Furthermore, one of the stated aims of the government is to reduce red-tape on the charities sector, yet delaying the implementation of the charities Bill is contrary to that goal. Submitters pointed to the significant legal costs that charities face in trying to understand the charities case law - the Charities Act will actually reduce red-tape and uncertainty in the sector.

Uniting Care stated this clearly in their submission:

While the mission or purpose of the Not-for-profit sector is charitable, it nonetheless operates in the same economic environment as the business sector and is similarly affected by legislative uncertainty. Delaying implementation of the Act would cause unnecessary uncertainty.⁵

The other important component of the Charities Act is that it enshrines in legislation the freedom to advocate, and makes explicit that advocacy is a legitimate charitable purpose, provided that advocacy is not in aid of a specific candidate or political party. This directly reflects existing caselaw, particularly the AidWatch case and subsequent tax ruling (TR2011/4) but in a way that reduces ambiguity for charities in understanding how advocacy may fit within their charitable purpose.

Dismantling the legislative protection for advocacy will only put more pressure on charities who speak upon public policy. One of the biggest risks that charities face is the revocation of their DGR status for failing to operate within their state charitable purpose. There were several attempts during the Howard Government to undermine

5 UnitingCare Australia, *Submission 64*, p. 3.

organisations, such as the Wilderness Society, by challenging their DGR status. The Australian Greens would be extremely concerned if the purpose of further consultation is to try and wind back the advocacy component of the Bills.

For all of the reasons, the Australian Greens do not support the passage of Schedule 1A.

Schedule 3 – Family Tax Benefit

The Australian Greens agree with the arguments presented by the National Council of Single Mothers and their Children, who stated that:

Contending with financial hardship and poverty is itself a barrier to education and this policy approach does not address the issue but rather compounds it... hitting the poorest families entrenches poverty and is counter-productive in obtaining increased school attendance, vocational participation, further education and engagement in the labour market.⁶

NCSMC cites the new research completed by Suncorp Bank's Cost of Kids:

Teenagers take the mantle for being Australia's most expensive children, with seventeen being crowned the single most expensive year in a child's life, Teenagers cost their parents \$227.40 per week. This compares to \$220.15 per week for infants, \$184.73 per week for toddlers and \$170.70 for primary school aged children.⁷

Clearly, raising teenagers is an expensive exercise for low-to-middle income families and access to Government support payments are a significant factor in their budgets.

In addition, because the payment is not available for dependent children who are no longer at school, it acts as a 'penalty' for 16 to 17 year old children not enrolled at school or university, or in the workforce.

There is clearly a cohort of families who will be affected by this measure, as demonstrated by the predicted saving outline in the Explanatory Memorandum.⁸

The Australia Greens believe that using the threat of reduced family payments to motivate families to keep their children in education counterproductive. It detracts from the purpose of family payments to ease poverty among children. Furthermore there has been no evidence presented to the committee to demonstrate that making Family Tax Benefits contingent on school enrolment has a positive impact on school attendance or transition to other forms of activity.

6 National Council of Single Mothers and their Children, *Submission 7*, pp 2–3.

7 National Council of Single Mothers and their Children, *Submission 7*, pp 2–3.

8 Social Services and Other Legislation Bill 2013, *Explanatory Memorandum*, p. 5.

Rather, it has been demonstrated through the application of other programs, such as SEAM and welfare quarantining, that the pressure on families that results from reduced payments can in fact act as a source of further dysfunction and negatively impact the family relationships.

A more progressive and reasonable method would allow Family Tax Benefits to continue until the child turns 18 years and/or completes their final secondary year and becomes eligible for Youth Allowance.

On the weight of this evidence, it is the view of the Australian Greens that the family tax benefit eligibility criteria should not be modified at this time.

Schedule 4 – Period of Australian working life residence

This schedule will affect approximately 23 per cent of those pensioners who leave Australia permanently each year and who are not paid under social security agreements with New Zealand and Greece.⁹

While the Australian Greens note the evidence from COTA which demonstrates that this measure will bring Australia closer into line with other OECD countries,¹⁰ we share the concerns of Australian Seniors, that this measure will affect those who are currently overseas – having made their retirement plans on the 25 year rule.¹¹

The experience of the Australian Greens with respect to changing portability arrangements, such as the recent changes to Disability Support Pension portability, is that it has a significantly disruptive effect on those who have already begun to reside overseas, if applied without grandfathering provisions.

As these measures will be applied to anyone who returns to Australia for a period greater than 26 weeks, after Jan 1, 2014, there will be a number of people who will be caught out by these provisions.

On the weight of the evidence, the Australian Greens oppose this measure.

9 Amanda Biggs, Luke Buckmaster, Carol Ey and Michael Klapdor, Social Services and Other Legislation Amendment Bill 2013, *Bills Digest*, Parliamentary Library, 2013–14, 10 December 2013, p. 19.

10 Ms Jo Root, National Policy Manager, Council on the Ageing, *Proof Committee Hansard*, 10 December 2013, p. 20.

11 National Seniors Australia, *Submission 57*, p. 1.

Schedule 5 – Interest charge (on unresolved overpayments to youth allowance etc)

Schedule 5 introduces interest charges on unresolved overpayments of student support payments such as Youth Allowance, Austudy and Abstudy.

The Australian Greens note that the explanatory memorandum justifies charging interest on debts by threatening a penalty to encourage repayment. Most former recipients of the applicable payments are either young people from disadvantaged backgrounds or members of the Indigenous community. Given that the people in these groups come from disadvantaged backgrounds and are beginning to establish themselves in the job market and broader community, threatening these groups with financial penalties is socially irresponsible.

We note that the disincentives of penalties, such as interest charges, rely on a certain ideal conception of rational action. Yet it is well documented that financial stress impedes rational cognitive function. This is not an inherent trait in people, but a consequence of their environment. A recent study in this field argues that poverty-related concerns consume mental resources, which explains “diminished cognitive performance.”¹²

Young and Indigenous people who have just exited social security payments are likely to be under significant financial pressure. Thus the signal of a disincentive, such as an interest charge, is less likely to be received in a rational way by these groups. Indeed, the Department of Social Services estimates that only half of the affected debtors will begin to pay their debt when threatened with the penalty.

Improving the accessibility and affordability of repayment mechanisms should be explored as an alternative to interest charges and other penalties.

On the weight of the evidence, the Australian Greens do not support passing this schedule at this time.

Schedule 7 – Paid Parental Leave

After 30 years of campaigning, women won the right to keep their jobs and economic security when they have a baby. The 18 week federal scheme, which began in 2011, is an important social reform giving assistance to families to adjust to a major life event – the birth of a baby. There are also two weeks of paid parental leave available to all new fathers and partners as well.

12 Mani et al 2013, ‘Poverty impedes cognitive function’, *Science*, 30 August 2013: 341(6149), pp.976-980. [<http://www.sciencemag.org/content/341/6149/976.abstract> Accessed 11/12/2013]

The current PPL scheme is funded by the government but can be topped up by employers. For eligible employees, those who have been employed for 10 of the previous 13 months, the payment is paid to employees by their employers.

This is an important economic right that has taken a long time to achieve.

Given the significance of paid parental rights for workers, the Australian Council of Trade Unions have argued that now altering the payment mechanism of the Paid Parental Leave scheme, so that payments are paid via Centrelink rather than employers, will have the unintended consequence of turning what should be viewed as a workforce entitlement into a welfare payment.¹³

This perspective has been reinforced by large not-for-profit employer, Uniting Care, who stated in their submission to the inquiry:

This issue has particular relevance to the Not-for-profit sector as its workforce is predominately made up of women. It is essential that any Paid Parental Leave scheme encourages ongoing workforce participation in this vital social services sector.¹⁴

The Paid Parental Leave was specifically designed to maintain the role of employers in delivering parenting payments. The Productivity Commission found this arrangement to be the most suitable after weighing all the evidence from a range of stakeholders including businesses and employees.

In their final report, the Productivity Commission states:

Overall, the Commission continues to consider that the administrative and signalling benefits from assigning payment responsibility to employers are sufficient to favour that approach over direct government payment in most cases.¹⁵

The ACTU also note that this Bill may result in significant numbers of parents receiving separate payments from Centrelink and their employer, where employees have secured additional paid parental leave rights as a result of their enterprise bargaining agreements.¹⁶

On the weight of this evidence, it is the view of the Australian Greens that these arrangements should not be modified at this time.

13 Australian Council of Trade Unions, *Submission 62*, p. 8.

14 Uniting Care Australia, *Submission 64*, p. 4.

15 Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children*, 2009, Section 8.34.

16 Australian Council of Trade Unions, *Submission 62*, p. 6.

Recommendation 1

1.1 The Australian Greens recommend that Schedules 1, 1A, 3, 4, 5 and 7 not be passed.

Senator Rachel Siewert

