

Social Services and Other Legislation Amendment (2014 Budget Measures No. 2) Bill 2014

Portfolio: Social Services

Introduced: House of Representatives, 18 June 2014

Purpose

1.391 The Social Services and Other Legislation Amendment (2014 Budget Measures No. 2) Bill 2014 (the bill) seeks to amend various Acts relating to social security, family assistance, veterans' entitlements and farm household support to make the following changes to certain Australian Government payments:

- pause indexation for three years of the income free areas and assets value limits for student payments, including the student income bank limits from 1 January 2015;
- pause indexation for three years of the income and assets test free areas for all pensioners (other than parenting payment single) and the deeming thresholds for all income support payments from 1 July 2017;
- provide that all pensions are indexed to the Consumer Price Index only by removing from 20 September 2017:
 - benchmarking to Male Total Average Weekly Earnings; and
 - indexation to the Pensioner and Beneficiary Living Cost Index.

1.392 The bill would also:

- reset the social security and veterans' entitlements income test deeming thresholds to \$30 000 for single income support recipients, \$50 000 combined for pensioner couples, and \$25 000 for a member of a couple (other than a pensioner couple) from 20 September 2017;
- generally limit the overseas portability period for disability support pension to 28 days in a 12-month period from 1 January 2015;
- exclude from the social security and veterans' entitlements income test any payments made under the new Young Carer Bursary Programme from 1 January 2015;
- include untaxed superannuation income in the assessment for the Commonwealth Seniors Health Card (with products purchased before 1 January 2015 by existing cardholders exempt from the new arrangements), and extend from six to 19 weeks the portability period for cardholders;
- remove relocation scholarship assistance for students relocating within and between major cities from 1 January 2015;
- cease the pensioner education supplement from 1 January 2015;

- cease the education entry payment from 1 January 2015;
- extend youth allowance (other) to 22 to 24 year olds in lieu of the Newstart allowance and sickness allowance From 1 January 2015;
- require young people with full capacity to learn, earn or Work for the Dole from 1 January 2015;
- implement the following family payment reforms from 1 July 2015:
 - limit the family tax benefit Part A large family supplement to families with four or more children;
 - remove the family tax benefit Part A per-child add-on to the higher income free area for each additional child;
 - revise the family tax benefit end-of-year supplements to their original values and cease indexation;
 - reduce the primary earner income limit of family tax benefit Part B from \$150 000 a year to \$100 000 a year;
 - limit family tax benefit Part B to families with children under six years of age, with two-year transitional arrangements for current recipients with children above the new age limit; and
 - introduce a new allowance for single parents on the maximum rate of family tax benefit Part A for each child aged six to 12 years inclusive, and not receiving family tax benefit Part B.
- increase the qualifying age for the age pension and the non-veteran pension age to 70 (increasing by six months every two years from 1 July 2025).

Committee view on compatibility

Right to social security

1.393 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.

1.394 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).

1.395 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.

1.396 Specific 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.

1.397 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.

Changes to indexation of pensions

1.398 Schedule 1 of the bill would remove indexation of pensions by reference to Male Total Average Weekly Earnings and the Pensioner and Beneficiary Living Costs Index (PBLCI), with the result that all pensions will be indexed against the Consumer Price Index (CPI) from September 2017.

1.399 The statement of compatibility explains that the objective of the measure is to achieve 'consistency of indexation arrangements across the social security system', and noting that payments will be indexed twice a year, and that their 'purchasing power will be maintained'. It concludes that the measure is compatible with human rights because it 'does not limit access to social security'.¹

1.400 However, this assessment does not address potential differences in the rate of growth between CPI and MTAW/PBCLI indexation (and thus their relative efficiency in maintaining the purchasing power of the benefit). The committee notes that indexation by CPI rather than MTAW/PBCLI may result in slower growth of payments (given that MTAW generally increases at a higher rate), thus reducing the purchasing power of those payments over time. To the extent that this reduction may impact on the ability of recipients to enjoy the rights to social security and an

1 Statement of compatibility, p. 1 (see explanatory memorandum).

adequate standard of living, the measure may be seen as potentially limiting those rights.

1.401 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.

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

1.403 The committee therefore seeks the Minister for Social Services' advice as to whether the changes to indexation of pensions are 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 indexation of income and asset test thresholds for a range of benefits

1.404 Schedule 1 of the bill would pause indexation of income and asset test thresholds for a number of Australian government payments for three years from 1 January 2015. This includes: the income free areas and assets value limits for student payments, including the student income bank limit; the parental income free area; and the family actual means free area.

1.405 Schedule 1 would also, for three years from 1 July 2017, pause indexation of the income test and assets test free areas for social security pension payments (other than parenting payment single) and equivalent Veterans' Affairs pension payments, as well as the deeming thresholds for all income support payments.

1.406 In concluding that the bill is compatible with human rights, the statement of compatibility explains:

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 customers' circumstances change, such as their income or assets increasing in value.²

2 Explanatory memorandum (EM), p. 6.

1.407 However, the committee notes that this assessment appears not to take into account the impact of inflation, which may have the effect that persons 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 people will lose and/or have reduced their entitlement to benefits if, due to inflation, their incomes, or the value of their assets, rise above a relevant threshold over the period. To the extent that this loss of or reduction in 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.

1.408 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.

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

1.410 The committee therefore seeks the Minister for Social Services' advice as to whether the these measures in Schedule 1 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.**

Removal of eligibility for Newstart allowance for 22-24 year olds

1.411 Schedule 8 of the bill would provide that 22-24 year olds are no longer eligible for Newstart allowance (or Sickness Allowance), and are instead eligible for youth allowance. Existing recipients of Newstart allowance (or sickness allowance) would continue to receive those payments until such time as they are no longer eligible.

1.412 The statement of compatibility for the bill notes that the measure engages the right to social security, and states that it 'provides incentives to young unemployed Australians to acquire the required skills to obtain gainful employment'. It concludes that the measure is compatible with human rights because it 'generally advances human rights including the opportunity for education and gainful

employment'; and that any limitations on human rights are 'reasonable and for legitimate reasons'.³

1.413 The committee notes that, for single people living away from home, the rate of youth allowance is approximately \$95 a fortnight less than the Newstart allowance.⁴ The effect of the measure would therefore appear to be to reduce the quantum of social security payments available to 22-24 year olds. To the extent that this reduced payment 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. However, the statement of compatibility provides no assessment of this potential limitation on human rights.

1.414 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.

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

1.416 The committee therefore seeks the Minister for Social Services' advice as to whether the removal of eligibility of 22-24 year olds for the Newstart allowance 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.**

Twenty-six week waiting period for social security payments for under-30 year olds

1.417 Schedule 9 of the bill would introduce a requirement, from 1 January 2015, that individuals under the age of 30 be subject to a 26-week waiting period before social security benefits become payable. The measure would apply to applicants

3 Statement of compatibility, pp 16-17.

4 Department of Human Services website, 'Payment rates for Newstart Allowance', <http://www.humanservices.gov.au/customer/enablers/centrelink/newstart-allowance/payment-rates-for-newstart-allowance> (accessed 8 July 2014); and 'Youth Allowance', <http://www.humanservices.gov.au/customer/services/centrelink/youth-allowance> [accessed 8 July 2014].

seeking Newstart allowance, youth allowance (other) and special benefit. The 26-week waiting period may be reduced if a person has previously been employed, and there are a range of exemptions for parents and individuals with a disability.

1.418 After the initial 26-week waiting period, jobseekers may be eligible to receive income support for 26 weeks. After that 26-week payment period, a person will be subject to a further 26-week non-payment period, unless an exemption applies. This cycle will continue, with income support generally payable for 26 weeks in every year until a person finds a job, undertakes full-time study or turns 30 years of age.

1.419 The statement of compatibility for the bill states that the measure is intended to provide 'incentives for young unemployed Australians to either acquire employment or the required skills to obtain gainful employment'.⁵ While the statement of compatibility does not explicitly identify the measure as potentially limiting human rights, it concludes that, to the extent that the measure 'may limit the right to social security and the right to an adequate standard of living, the impact is reasonable and for legitimate reasons'.⁶

1.420 The committee notes that the effect of the measure would be that individuals would be ineligible for income support for periods of six months at a time. On its face, the measure appears to remove those individuals' capacity to provide their own adequate food and shelter, and therefore to be incompatible with the rights to social security and to an adequate standard of living. However, while the statement of compatibility identifies a number of exemptions 'to allow flexibility in exempting certain vulnerable persons from the measure', and states that young people 'often have access to family support to enjoy an adequate standard of living',⁷ it provides no assessment of this potential limitation on human rights.

1.421 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.

1.422 The committee notes that information regarding the likely impact of the measure on individuals and their families, and how individuals subject to the measure will retain access to adequate shelter and food, is particularly relevant to the human rights assessment of the measure. Further, noting that the stated objective of the measure is to improve the employment rate of young people, the committee would expect the assessment to include a sufficiently evidence-based

5 Statement of compatibility, p. 20.

6 Statement of compatibility, p. 20.

7 Statement of compatibility, p. 20.

analysis to demonstrate how the measure will achieve its objective of increasing youth employment.

1.423 The committee therefore seeks the Minister for Social Services' advice as to whether the 26 week waiting period for social security benefits for those under 30 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.**

Change to eligibility criteria for the large family supplement

1.424 Schedule 10 of the bill seeks to change the eligibility criteria for the family tax benefit large family supplement so that it will apply to families with four or more children, instead of those with three or more children as currently.

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

Limiting the family tax benefit Part A large family supplement better targets this supplement to families with four or more children. To the extent that this limits the right to social security, this change is reasonable and proportionate. Very large families will have extra support.⁸

1.426 However, while the statement of compatibility identifies the measure as limiting the right to social security, it provides no information in support of its assessment of the measure as compatible with human rights.

1.427 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.

1.428 The committee notes that information regarding the number of families likely to be affected by the measure, and the expected impact of the withdrawal of the supplement on those families, is particularly relevant to the human rights assessment of the measure.

8 Statement of compatibility, p. 22.

1.429 The committee therefore seeks the advice of the Minister for Social Services as to whether the change to the eligibility criteria for the family tax benefit large family 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.**

Reduced access to family tax benefit Part B

1.430 Schedule 10 of the bill also seeks to reduce access to family tax benefit Part B to only those families with the youngest child under 6 years of age. Currently, Part B is available to families with a child under 16 years of age or with a full-time secondary student up to 18 years of age. A transitional two-year period will apply for families currently receiving Part B.

1.431 In addition, the bill would introduce a single parent supplement for single parents eligible for the maximum Part A payment, and with children aged 6 to 12. This supplement is intended to 'offset partially the loss of assistance' to single parent families as a result of the reduced access to Part B.⁹

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

Limiting the age of eligibility for family tax benefit Part B to families with a youngest child aged under six acknowledges that care requirements for children are higher when children are very young. To the extent that this limits the right to social security, it is reasonable and proportionate. This change encourages parents to participate in the workforce.¹⁰

1.433 The committee notes that the effect of the measure would be to reduce access to family tax benefit Part B for families with a child under 16 years of age or with a full-time secondary student up to 18 years of age. To the extent that those families' loss of access to the benefit may impact on their ability to enjoy an adequate standard of living, the measure may be regarded as limiting the rights to social security and to an adequate standard of living. However, the statement of compatibility provides no assessment of this potential limitation on human rights.

1.434 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

9 EM, p. 49.

10 Statement of compatibility, p. 23.

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.

1.435 The committee notes that information regarding the number of families impacted by the measure, and the expected financial impact of the measure on those families, is particularly relevant to the human rights assessment of the measure.

1.436 The committee therefore seeks the advice of the Minister for Social Services as to whether the proposed reduction in access to family tax benefit Part B 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.**

Increase to age pension entitlement age

1.437 Schedule 11 of the bill would increase the age pension qualification age from 67 to 70 years by increments of six months every two years from 1 July 2025.

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

This Schedule changes the qualification arrangements for the age pension. However, other social security income support payments will remain available for claimants in the affected age groups who cannot fully support themselves before qualifying for the age pension. The Schedule is compatible with human rights because it does not limit or preclude people from gaining or maintaining access to social security.¹¹

1.439 The committee notes that the effect of the measure is to effectively reduce access to the age pension by increasing the qualification age. To the extent that the reduced access to the benefit may impact on a person's ability to enjoy an adequate standard of living, the measure may be regarded as limiting the rights to social security and to an adequate standard of living. However, the statement of compatibility provides no assessment of this potential limitation on human rights.

1.440 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

11 Statement of compatibility, p. 24.

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.

1.441 The committee notes that information regarding: the number of persons affected by the measure; the expected financial impacts of the measure; and the eligibility criteria and relative value of other income support schemes available to affected persons is particularly relevant to the human rights assessment of this measure.

1.442 The committee therefore seeks the advice of the Minister for Social Services as to whether the increase in age eligibility for the age pension 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 equality and non-discrimination

1.443 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).¹² These are fundamental human rights that are 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.

1.444 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.¹³

12 See also article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), articles 1, 2, 4 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), article 2 of the Convention on the Rights of the Child (CRC), articles 2, 3, 4 and 15 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and articles 3, 4, 5 and 12 of the Convention on the Rights of Persons with Disabilities (CRPD).

13 The prohibited grounds are race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Under 'other status' the following have been held to qualify as prohibited grounds: age, nationality, marital status, disability, place of residence within a country and sexual orientation.

1.445 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.

1.446 Differential treatment will not constitute discrimination if it can be shown to be justifiable, that is, if it can be shown to be based on objective and reasonable grounds and is a proportionate measure in pursuit of a legitimate objective.

Residency requirements for the disability support pension

1.447 Schedule 2 of the bill would change the residency requirements for the disability support pension so that, from 1 January 2015, recipients may only travel overseas for 28 days in a 12-month period. If recipients travel for longer periods they will lose their benefit and have to reapply on return to Australia. Currently, recipients of the disability support pension may travel for up to six weeks at a time, and there are a number of exceptions that permit absences longer than six weeks.

1.448 To the extent that the bill proposes to impose conditions on eligibility to continue to receive benefits on persons with disability apply that are more restrictive than those which apply to other social welfare recipients, such as age pension recipients, the measure involves differential treatment on the basis of the status of disability. Under article 26 of the ICCPR and articles 9 (social security) and 12 (adequate standard of living) of the ICESCR such differential treatment will constitute a violation of the guarantees of equal protection of the law and non-discrimination in the enjoyment of the rights to social security and to an adequate standard of living, unless the measure can be shown to be based on objective and reasonable grounds in pursuit of a legitimate objective. However, the statement of compatibility does not identify the measure as engaging and potentially limiting the right to equality and non-discrimination.

1.449 The committee therefore requests the Minister for Social Services' advice on the compatibility of the proposed changes to residency requirements for disability support pension recipients with the right to equality and non-discrimination and in particular, whether these measures are:

- **based on objective and reasonable grounds; and**
- **is a proportionate measure in pursuit of a legitimate objective.**

Age criteria for Newstart allowance and exclusion periods

1.450 The committee notes that the following two measures discussed above seek to effect changes to current entitlements that would operate with reference to a person's age:

- Schedule 8 would provide that 22-24 year olds are no longer eligible for Newstart allowance (or Sickness Allowance), and are instead eligible for youth allowance; and

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- Schedule 9 would introduce a requirement, from 1 January 2015, that individuals under the age of 30 be subject to a 26-week waiting period before social security benefits become payable. The measure would apply to applicants seeking Newstart allowance, youth allowance (other) and special benefit.

1.451 The committee notes that a measure that impacts differentially on individuals based on their age is likely, on its face, to be incompatible with the right to equality and non-discrimination. However, the statement of compatibility does not identify the measures as engaging and potentially limiting the right to equality and non-discrimination.

1.452 The committee notes that, to establish that the apparent discrimination against people on the basis of their age is not arbitrary, a human rights assessment of the measures would require an assessment of how the proposed age cut offs are necessary, reasonable and proportionate to achieve a legitimate objective. Such an assessment should, for example, provide a detailed and evidence based explanation of why the six-month exclusion period should apply to 29 year olds and not 30 year olds.

1.453 The committee therefore requests the advice of the Minister for Social Services as to the compatibility of the proposed measures in schedules 8 and 9 with the right to equality and non-discrimination and in particular, whether these measures are:

- **based on objective and reasonable grounds; and**
- **is a proportionate measure in pursuit of a legitimate objective.**

Reduced access to family tax benefit Part B

1.454 As noted above, Schedule 10 of the bill seeks to reduce access to family tax benefit Part B to only those families with the youngest child under 6 years of age. Currently, Part B is available to families with a child under 16 years of age or with a full-time secondary student up to 18 years of age.

1.455 In addition, the bill would introduce a single parent supplement for single parents eligible for the maximum Part A payment, and with children aged 6 to 12. This supplement is intended to 'offset partially the loss of assistance' to single parent families as a result of the reduced access to Part B.¹⁴

1.456 The committee notes that the measure may have a disproportionate and therefore discriminatory effect on women, given that women are generally more likely to be single parents than men.

1.457 Further, the EM for the bill explains that the new supplement only 'partially' offsets the cuts to family tax benefit Part B,¹⁵ which suggests that single parent families with children aged over six are likely to be particularly affected by this measure. Again, single parent households are more likely to be headed by women, which may result in the measure having a disproportionate and therefore discriminatory effect on women.

1.458 The committee therefore requests the advice of the Minister for Social Services on the compatibility of the measure in Schedule 10 with the right to equality and non-discrimination and, in particular, whether these measures are:

- **based on objective and reasonable grounds; and**
- **is a proportionate measure in pursuit of a legitimate objective.**

Right to education

1.459 The right to education is guaranteed by articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and article 28 of the Convention on the Rights of the Child (CRC). The right to an education is a fundamental human right and plays a vital role in promoting human rights and democracy.

1.460 The right to education recognises that accessing education is central to individuals being able to fully exercise a number of other rights. It is a right to an education directed at the development of a person's humanity and dignity, enabling people to effectively participate in a free society. The right to fundamental education is not limited to children; all people, including adults, have the right to life-long learning.

1.461 The right to education requires that the state provide free primary school education and work progressively to providing free secondary and higher education (including vocational training). The right requires:

- that functioning educational facilities are made available, including adequate buildings, sufficient quantities of trained teachers (receiving competitive salaries), teaching materials, and access to information technology;
- that education is accessible to everyone without discrimination, including being located in safe physical reach or via distance learning, and is affordable to all (with measures taken to enhance educational access for people from disadvantaged groups); and

- that education is relevant, culturally appropriate, of good quality and flexible and tailored to the needs of individual students (including education that is suitable for students of all ages and for those with a disability).¹⁶

1.462 Under article 2(1) of ICESCR, Australia has certain obligations in relation to the right to education. 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.

1.463 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.

Removal of the pensioner education supplement

1.464 Schedule 6 of the bill would remove the pensioner education supplement (PES), which is currently payable to pensioners to assist with the costs of their studies. The supplement is currently \$62.40 a fortnight for full-time students.

1.465 The statement of compatibility identifies the measure as engaging and limiting the right to education, but concludes that it is compatible with this right as follows:

The removal of PES, to a small extent, impacts on an individual's ability to participate in education, particularly if they have a low income. However, its impact on individuals is minor (\$31.20 or \$62.40 per fortnight depending on study load), and it does not affect a person's entitlement to other ongoing payments designed to support individuals to engage in education, such as austudy payment and youth allowance (student).¹⁷

1.466 However, in the committee's view, the characterisation of the measure as having a 'low' impact on affected individuals does not give sufficient weight to the relative significance of the lost supplement to persons on low incomes, as is the case with pensioners. Further, while the statement of compatibility sets out the range of

16 *Committee on Economic, Social and Cultural Rights, General Comment 13, The right to education (Twenty-first session, 1999), U.N. Doc. E/C.12/1999/10 (1999).*

17 Statement of compatibility, p. 11.

other support programs and additional measures being introduced to assist tertiary students, it provides no analysis of the accessibility and value of those schemes to those specifically impacted by the removal of the PES.

1.467 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.

1.468 The committee notes that information regarding the number of persons likely to be affected by the measure, and the expected impact on pensioners' access to education (for example, the expected impact on enrolments), is particularly relevant to the human rights assessment of this measure.

1.469 The committee therefore seeks the advice of the Minister for Social Services as to whether removing the PES is compatible with the right to education, and particularly:

- **whether the proposed change is 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.**

Removal of the education entry payment

1.470 Schedule 7 of the bill would remove the education entry payment (EEP), which is currently payable to recipients of a range of social welfare benefits to assist with the up-front costs of education and training at enrolment or commencement of study.¹⁸ EEP is currently \$208 per annum.

1.471 The statement of compatibility identifies the measure as engaging and limiting the right to education, but concludes that it is compatible with this right as follows:

The removal of [EEP], to a small extent, impacts on an individual's ability to participate in education, particularly if they have a low income. However, its impact on individuals is minor (\$208 per annum), and it does not affect a person's entitlement to other ongoing payments designed to support

18 EEP is currently payable to recipients of Newstart allowance, partner allowance, widow allowance, widow B pension, wife pension, parenting payment, disability support pension, carer payment, special benefit partner service pension, invalidity service pension and income support supplement.

individuals to engage in education, such as austudy payment and youth allowance (student).¹⁹

1.472 However, in the committee's view, the characterisation of the measure as having a 'low' impact on affected individuals does not give sufficient weight to the relative significance of the lost payment to persons on low incomes, as is the case with those on the affected benefits. Further, while the statement of compatibility sets out the range of other support programs and additional measures being introduced to assist tertiary students, it provides no analysis of the accessibility and value of those schemes to those specifically impacted by the removal of the payment.

1.473 In addition, no analysis is provided as to the expected impact on the education enrolments rates of social welfare recipients following the implementation of this measure is provided.

1.474 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.

1.475 The committee notes that information regarding the number of persons likely to be affected by the measure, and the expected impact on affected payment recipients' access to education (for example, the expected impact on enrolments), is particularly relevant to the human rights assessment of this measure.

1.476 The committee therefore seeks the advice of the Minister for Social Services as to whether removing the EES is compatible with the right to education, 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.**

19 Statement of compatibility, p. 13.