

Appendix 1

Correspondence



**SENATOR THE HON. ERIC ABETZ
LEADER OF THE GOVERNMENT IN THE SENATE
MINISTER FOR EMPLOYMENT
MINISTER ASSISTING THE PRIME MINISTER FOR THE PUBLIC SERVICE
LIBERAL SENATOR FOR TASMANIA**

Senator Dean Smith
Chairman
Parliamentary Joint Committee on Human Rights
Parliament House
CANBERRA ACT 2600

19 NOV 2014

Dear Senator

I refer to your further letter of 28 October 2014, concerning the Parliamentary Joint Committee on Human Rights' review of the Commonwealth Cleaning Services Repeal Instrument 2014.

The Committee's assertion that the repeal of the Commonwealth Cleaning Services Guidelines may breach Australia's Human Rights obligations is unfounded as is the assertion that revoking the Guidelines disproportionately impacts workers based on their racial background. The latter allegation is, to be frank, repugnant. I firmly repudiate any such claims. Not even the unions make such a bizarre and offensive assertion.

I again re-iterate that the Cleaning Services Guidelines were a small scale Government procurement policy that would have applied to less than one per cent of the cleaning workforce. It is not the role of the Australian Government to impose policies over and above the safety net provided through the established workplace relations framework. In particular, it is not this Government's policy to permit special wage fixing deals for highly unionised industries, to misuse the Government's procurement rules to serve union interests, or to circumvent the role of the Fair Work Commission.

The Guidelines were flawed and applied to less than one percent of the entire cleaning industry. The Guidelines mandated that employers hand out union membership material and forced them to pay their workers well above award wages, without any requirement to demonstrate genuine productivity gains. The Committee's repeated views avoid engaging with and appears difficult to reconcile with my earlier advice that the Guidelines had no impact whatsoever on the more than 99 percent of workers in the industry that don't work in Government offices located in central business district locations. These matters do not give rise to human rights issues. Wage setting in Australia, is and has been for many years, the responsibility of the Fair Work Commission and not the Government of the day. The previous government's decision to issue the Guidelines, to give special arrangements to a tiny subset of workers in the industry, in cooperation with a particular union, undermined that role. The Cleaning Services Award 2010 sets minimum wages and conditions for all cleaners in Australia and, beyond this, higher wages and conditions should rightly be negotiated via enterprise bargaining. To assert otherwise and then suggest racial discrimination has the logical (but I am sure unintended) consequence of accusing the Fair Work Commission of such behaviour.

The existing enterprise bargaining system meant that many cleaners (through at least 65 Government cleaning contracts) were remunerated at the higher levels before the Guidelines commenced in 2012. Agencies continue to have the flexibility to engage cleaning companies that pay above award wage and conditions. Since the revocation of the Guidelines, that is still occurring.

This exercise would indicate the Committee has seriously lost its way by attempting to conflate matters of government procurement, and the payment of wages above relevant minimum standards, with issues of human rights. Such an approach, if I may say, does not appear to be the most effective use of the Committee's time and serves only to discredit the more serious and worthy issues of human rights.

I trust the matter will rest.

Yours sincerely

ERIC ABETZ



THE HON MICHAEL KEENAN MP
Minister for Justice

MC14/18879

Senator Dean Smith
Chair
Parliamentary Joint Committee on Human Rights
Suite 1.111
Parliament House
CANBERRA ACT 2601



Dear Senator *Dean*

I refer to the comments of the Parliamentary Joint Committee on Human Rights in its *Eleventh Report of the 44th Parliament* concerning the *Commonwealth Places (Application of Laws) Act 1970* (the Commonwealth Places Act). I note that the Government cannot provide legal advice to the Committee. However, I provide the following general comments for your consideration.

The Committee has sought further information about categories of Commonwealth places to which the Commonwealth Places Act applies. Section 3 of the Commonwealth Places Act defines a 'Commonwealth place' to be a place (not being the seat of government) with respect to which the Commonwealth Parliament, by virtue of section 52 of the Constitution, has, subject to the Constitution, exclusive power to make laws for the peace, order, and good government of the Commonwealth. Section 52 of the Constitution gives the Commonwealth Parliament exclusive powers to make laws with respect to:

- i) the seat of government of the Commonwealth and all places acquired by the Commonwealth for public purposes;
- ii) matters relating to any department of the public service the control of which is by the Constitution transferred to the Executive Government of the Commonwealth;
- iii) other matters declared by the Constitution to be within the exclusive power of the Parliament.

Therefore, the most significant category of Commonwealth places is 'all places acquired by the Commonwealth for public purposes', such as airports, post offices, defence establishments and other Commonwealth places throughout the States.

As the status of a Commonwealth place can at times be a complex question, the Commonwealth Places Act was created to ensure consistency of laws across a state jurisdiction and provide legal certainty consistent with underlying federal considerations. The Commonwealth passed the Act to avoid the potential for unpredictable legal 'vacuums' created in places acquired by the Commonwealth. This followed the High Court decision in *Worthing v Rowell and Muston Pty Ltd (1970) 123 CLR 89* (Worthing), in which the High Court considered whether Mr Worthing could rely on state lifts and scaffolding legislation to support a personal injury claim against his employer. The High Court held (by a 4-3 majority) that state lifts and scaffolding legislation did not apply as the laws were enacted after the place in question had been acquired by the Commonwealth and become a Commonwealth place.

The Committee noted that it considers the Commonwealth Places Act is likely to be incompatible with human rights. It is unclear from the Committee's report on what factual basis the Committee has come to the conclusion that Australia is likely to be in breach of its obligations, nor does it identify which obligations or treaty the Commonwealth Places Act is inconsistent with. In response to these concerns, I wish to clarify that the Act is a facilitative Act which operates to 'pick up' state legislation and apply it in Commonwealth places except in certain circumstances. This is critical to the orderly operation of Australia's legal system. The constitutional position of the Commonwealth within the federation requires such arrangements in certain areas.

The Commonwealth Places Act picks up specific powers and obligations of state law which may have applied to a Commonwealth place in the federal context. In that sense, it is not intended to affect the balance of Australia's human rights obligations.

The Committee has also recommended that newly enacted state laws which would be picked up by the Commonwealth Places Act are subject to an assessment of human rights compatibility in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. State laws are made by state parliaments and are subject to relevant state parliamentary processes. It would not be appropriate for the Commonwealth to assess the content of state laws for their human rights compatibility.

The Committee also recommended that the Commonwealth Places Act should be amended to provide that state laws apply only to the extent that they are compatible with Australia's obligations under international human rights law. I do not consider that this would be an appropriate reform. Australia, comprised of the Commonwealth and the States and Territories, has obligations under the international human rights treaties. The Commonwealth does not have responsibility to ensure the consistency of State and Territory laws with these obligations—that is a matter for the relevant Parliaments. As set out above, the purpose of the Commonwealth Places Act is to ensure consistency and certainty of laws across a state.

I trust that this information is of assistance to your Committee.

Yours sincerely

Michael Keenan

02 OCT 2014



**THE HON CHRISTOPHER PYNE MP
MINISTER FOR EDUCATION
LEADER OF THE HOUSE
MEMBER FOR STURT**

31 OCT 2014

Our Ref: MCI4-030440

Senator Dean Smith
Chair
Parliamentary Joint Committee on Human Rights
S1.111
Parliament House
CANBERRA ACT 2600

Dear Chair,

Thank you for the opportunity to respond to the Committee's *Twelfth Report of the 44th Parliament* insofar as it relates to the *Higher Education and Research Reform Amendment Bill 2014* (the Reform Bill).

A measure by measure analysis of the Reform Bill, as the Committee requested, is contained in the attached document. In summary, the Australian Government does not consider that the policy measures in the Reform Bill will limit human rights in any way. The Reform Bill is fully compatible with human rights, maintaining both the right to higher education and the right to equality and non-discrimination. Indeed, as outlined in the attachment, the measures expand access to subsidies for students undertaking sub-bachelor courses and those attending private and non-university institutions. The removal of the current FEE-HELP and VET FEE-HELP limits will also actually expand access and support the right to higher education.

In accordance with article 26 of the *International Covenant on Civil and Political Rights* (ICCPR), all persons will be treated equally under this law. Any differential impact individuals come as a result of their own circumstances depending on the cost of the course of study they choose to undertake, their employment and wage outcomes and when their income reaches the repayment threshold for the income-contingent loan scheme.

The reforms do not limit the right to access higher education or the right to non-discrimination for women or any other population sub-group. The proposed measures will instead increase the choices and pathways available for all students to pursue higher education. Protection for these important human rights is maintained through the Higher Education Loan Programme (HELP). Regardless of the course or institution at which a person is enrolled, they will be able to defer the full cost of their study through HELP. As at present, there will be no requirement to repay any HELP debt until a person's income reaches the minimum repayment threshold, and any repayments will be within moderate and reasonable limits, based on income.

At the same time, access to study and lifelong education will be encouraged through a range of measures, such as the extension of subsidies to additional courses and institutions and the removal of loan fees and loan limits, providing individuals with the opportunity to retrain or gain further qualifications.

In addition, the effect of the package as a whole in driving greater quality and economic prosperity needs to be considered. Currently, Australia's higher education system is not well positioned to meet the challenges of an increasingly competitive global market. Unless we act now, we run the risk of future generations of Australians being left behind. This is a balanced and necessary set of reforms that will help to ensure that in the face of growing costs and competitive pressures, all Australians will continue to be able to access quality higher education in the decades to come.

The attached measure by measure analysis outlines in detail why the Government does not consider the policy measures to limit human rights. It also contains further information on why these measures are being pursued and why they are proportionate to legitimate objectives.

I thank the Committee for its consideration of the Reform Bill.

Yours sincerely

Christopher Pyne MP

Encl. Detailed response to the Parliamentary Joint Committee on Human Rights

THE HIGHER EDUCATION AND RESEARCH REFORM AMENDMENT BILL 2014

Detailed response to the Joint Parliamentary Committee on Human Rights

The Higher Education and Research Reform Amendment Bill 2014 engages the right to education, including access to higher education on the basis of capacity, found in Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the right to an adequate standard of living, found in article 11(1) of ICESCR, and the right to equality and non-discrimination, found in articles 2, 16 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR).

A measure by measure analysis of the human rights implications of the Bill is provided below.

Schedule 1 Deregulation, expansion of demand driven system and other measures

Schedule 1 includes the following measures:

- the removal of the cap on the number of Commonwealth funded places in sub-bachelor degree courses, such as diplomas, advanced diplomas and associate degrees
- the introduction of Government subsidies to bachelor and sub-bachelor courses at private universities and non-university higher education providers
- the reduction of subsidies for new Commonwealth supported students at universities by an average of 20 per cent
- the removal of the current maximum student contribution amounts
- the merging of the FEE-HELP and HECS-HELP loan schemes for all higher education students
- the removal of the up-front payment discount for HECS-HELP loans and the voluntary repayment bonus for HELP loans
- the removal of the FEE-HELP lifetime limit and loan fee.

The impact of these measures on the right to education, and the right to equality and non-discrimination, are analysed separately below. The reforms will affect the full range of sub-groups with the student population, including women who make up the majority of the students. In 2013, there were almost a million domestic higher education students, with women comprising around 56 per cent of all students enrolled, as well as of all students commencing in that year. As such, the reforms to higher education clearly have important implications for women, as they do for men, both in terms of their impact on fees and subsidies, and on access and quality.

Does this schedule limit human rights?

Expansion of the demand driven system to include sub-bachelor courses

Right to education

The Government believes that this measure provides for more opportunity and choice in the higher education system, supporting the right to education for around 48 000 additional students each year by 2018. This measure removes the discriminatory treatment of students who wish to enrol in sub-bachelor courses, including those at private and non-university higher education providers. These sub-bachelor courses provide vocational qualifications as well as effective pathways to further

education for disadvantaged students. Expanding Government subsidies to these places will mean that they are more affordable for students, which will in turn increase access to higher education.

Right to equality and non-discrimination

This measure is fully compatible with the right to equality and non-discrimination. The extension of subsidies to include sub-bachelor courses will provide more opportunities for all people to access higher education suitable to their needs and capabilities. In particular, people who take time out of the workforce will have access to more Government support for retraining or updating their qualifications as a result of the extension of subsidies to sub-bachelor courses.

Proportionality to policy objectives

The investment in this measure is proportionate to the need to improve access to sub-bachelor courses at higher education providers, to provide opportunities for vocational training and pathways to higher education, particularly for disadvantaged students.

Extension of subsidies to private and non-university higher education providers

Right to education

The Government believes that this measure is fully compatible with the right to education, providing for an expansion in access to include students undertaking courses at private universities and at non-university higher education providers. The extension of subsidies will create greater competition in the higher education market, expanding the choices and opportunities for students, and creating a downward pressure on course costs.

Private providers have indicated that, as a result of the subsidy, they will be able to decrease their course costs. This will increase the choices available to students and will remove a significant financial barrier to higher education facing many students.

As a result of this measure, the Government expects that by 2018 around 35 000 additional students each year will gain access to Government subsidies for their education.

Right to equality and non-discrimination

This measure will not infringe on the right to equality and non-discrimination. It will remove the discriminatory treatment against students attending private and non-university providers. Currently, students who wish to undertake their undergraduate study at these providers are not eligible to receive any Government subsidy for their education and must pay a loan fee. Private universities and non-university higher education providers may be able to deliver courses more suited to a student's needs and, under this measure, will be eligible to receive Government support, removing this element of discrimination against students attending private and non-university providers. This measure will enable students to have equal access to Government subsidies for higher education, regardless of their choice of provider.

Additionally, more women than men are enrolled in courses at private providers. This means that women are more likely to benefit from the extension of the demand driven system to include private providers. As private providers have indicated they will be able to lower course costs, women will

benefit from the reduced financial burden of undertaking study at the provider of their choice, and will be able to access Government subsidies.

Proportionality to policy objectives

The investment in this measure is proportionate to the need to improve access to higher education, and reduce costs for students wishing to study at private and non-university providers. As well as improving access, this measure will drive greater competition and quality across the sector.

To manage the costs, non-university providers will be funded at a lower rate (70 per cent) which recognises the unique, and often legislated, demands on universities, including those relating to research and community outreach, while still providing a level of funding that will encourage competition.

Reduction of subsidies for new Commonwealth supported students at universities

Right to education

This measure will reduce subsidies for new Commonwealth supported students at universities by an average of 20 per cent. Commonwealth Grant Scheme funding tiers will also be simplified and restructured from eight to five funding tiers, providing a more coherent basis for funding different units of study with regard to teaching methods and the infrastructure required to support delivery.

This measure will not of itself increase course costs for students. Private providers receiving Government subsidies for the first time will have the ability to reduce course costs, which will provide benefits for those who choose to enrol at these providers.

There will be no negative impact on the right to education. This right will continue to be assured by the HELP scheme which will ensure that all higher education students at registered providers will be able to defer the full cost of their study. There will not be any requirement to repay any HELP debt until a person's income reaches the minimum repayment threshold of more than \$50 000 per year, and any repayments will continue to be within moderate and reasonable limits, based on income.

Right to equality and non-discrimination

This measure will not limit the right to equality and non-discrimination. The reduction of subsidies applies to all new Commonwealth supported students equally, regardless of their course. There is no reason to expect any disproportionate impact on women. In fact the new cluster rates are specifically designed to moderate the impact on important disciplines such as teaching and nursing, in which women are more represented.

Proportionality to policy objectives

This measure will save \$1.95 billion over four years. Given it can be achieved without compromising access, it is proportionate to the objective of contributing to the repair of the Budget, so as to ensure the ongoing sustainability and excellence of Australia's higher education system.

Removal of the cap on student contribution amounts

Right to education

The introduction of greater competition into the higher education market, in the form of fee deregulation, will result in greater price differentiation among providers. Higher education providers will be able to set their own course fees, and to compete on price and quality to attract students.

Competition between providers will create downward pressure on fees. As indicated above the right to education will continue to be protected by the HELP scheme which will ensure that all eligible higher education students will be able to defer the full cost of their study and will not be required to make any repayments until they are earning sufficient income.

Right to equality and non-discrimination

The Government does not believe that this will limit the right to equality and non-discrimination in any way. It is an explicit aim of these reforms to improve choice and ensure that all people, regardless of gender, will have the opportunity to choose the course that best suits their needs.

Proportionality to policy objectives

This policy is critical to achieve the long-term objective of improving Australia's higher education sector to compete in a global market. It will enable higher education providers to improve the quality and diversity of course offerings, in order to stand out in the higher education market, which will help to promote greater quality and choice across the system.

Merging of the FEE-HELP and HECS-HELP loan schemes

Right to education

This measure will have no impact on the right to education. As the major differences between the HECS-HELP and FEE-HELP loan schemes will be removed in this package of reforms, the two loan schemes will be merged to simplify arrangements for students and providers. The removal of these anomalies for students will support and expand the right to education, as detailed below in the discussion of 'Removal of the loan fee and lifetime limit on FEE-HELP loans'. The eligibility criteria for accessing a HELP loan have not been altered, ensuring ongoing access to higher education for all student groups that previously had access to the HECS-HELP and FEE-HELP schemes.

Right to equality and non-discrimination

This measure will not impact on the right to equality and non-discrimination.

Proportionality to policy objectives

This measure is a logical extension of other measures, providing for a simplification of existing programme arrangements without any impact on access.

Removal of the up-front payment discount and the voluntary repayment bonus for HELP loans

Right to education

This measure is fully compatible with the right to education. It would not prevent a person from accessing higher education. HELP will continue to be available to allow students to defer their tuition costs if they choose not to pay these up-front.

Right to equality and non-discrimination

The removal of the voluntary repayment bonus and the up-front payment discount restores the right of all students to be treated equally. Currently some students obtain a financial benefit because they may have sufficient income to make voluntary repayments, or can afford to pay up-front for their courses.

Proportionality to policy objectives

This measure will contribute to sustainability of the HELP system and repair of the Budget without any negative impact on access.

Removal of the loan fee and lifetime limit on FEE-HELP loans

Right to education

The removal of the lifetime loan limit and the loan fee for FEE-HELP under this schedule also removes barriers to higher education. Under the current HELP scheme, the lifetime limit that a person may borrow is \$96 000, or \$120 002 for medicine, dentistry and veterinary science courses.

The HELP loan fee and limit can create barriers to access for people who are unable to afford up-front contributions, particularly when they have incurred HELP debts for previous study. If a student's FEE-HELP balance is such that the fees charged by the provider would cause them to go over the limit, and they do not have private resources, the system effectively denies them the opportunity to study at a private provider or in an unfunded sub-bachelor or postgraduate course. In contrast, undergraduate students at public universities are not subject to any limit and can undertake as many courses at this level at public universities as they choose.

This represents a major inequity in the system, discriminating against students attending private providers and undertaking unsubsidised sub-bachelor courses. The lifetime limit is also a potential barrier to access for students in unfunded postgraduate courses. The removal of the loan fee and lifetime limit is critical to addressing the inequities for these various categories of students.

Given the phase out of undergraduate fee-paying places in public universities, the FEE-HELP loan fee now only applies to students at private universities and non-university higher education providers. In addition, FEE-HELP loans tend to be larger on average than those incurred by students in Commonwealth supported places. The limit on loans mean that there may be significant limitations to access to retraining or to further study for an individual who already has a HELP loan, particularly when the burden of the loan fee is added to the existing cost of the course. Abolition of the loan fee and the lifetime limit will increase accessibility to higher education.

Right to equality and non-discrimination

The removal of the loan fee and the loan limit ensures equitable access for students, regardless of the type of course or the provider the student has chosen. Removing the loan fee will reduce costs for students currently studying without any Commonwealth subsidy and it will also remove pricing inequity between public and private providers, discussed above. Based on 2013 data, it is estimated that removing the loan fee will benefit more than 50 000 higher education students per year. The average loan fee in 2013 for such students was around \$2600 per year.

Additionally, the removal of the lifetime HELP loan limit and the loan fee will provide more pathway options and opportunities to retrain or to update qualifications if they have taken time out of the workforce. This can be particularly important for women given their tendency to have greater caring responsibilities.

Additionally, there are more women in fee-paying places than men. This indicates that the FEE-HELP loan fee has a greater financial impact on women than men. By removing the punitive FEE-HELP loan fee and lifetime limit there will be fewer financial barriers to access to higher education for women. More women are likely to benefit from these changes than are men.

Proportionality to policy objectives

This measure will ensure that students are not denied access to higher education because they cannot meet the upfront costs, and will ensure the costs of higher education are manageable for all students. It is also a critical element in ensuring consistent treatment of students and providers across the higher education system.

Schedule 2 New Commonwealth Scholarship Scheme

Schedule 2 of the Bill provides for the creation of a Commonwealth Scholarship scheme. This would require providers with 500 or more equivalent full time Commonwealth supported students to set aside 20 per cent of additional revenue raised from the deregulation of student contributions to a scholarship fund to support disadvantaged students.

Does this schedule limit human rights?

The measure will help support an individual's right to education by creating a Commonwealth Scholarship scheme to expand access to higher education for disadvantaged students. This scholarship scheme will be run by providers to provide tailored, individualised support for disadvantaged students enrolled in higher education at that provider. This could take the form of help with costs of living while they study, fee exemptions, relocation expenses, or tutorial and other academic support.

This measure will support the right to education for disadvantaged students by removing barriers to further study. The Commonwealth Scholarship scheme may also promote the right to an adequate standard of living, depending on what type of support a higher education provider offers for its students.

This measure also guards against the possibility of a two-tiered system emerging by ensuring that all providers receiving significant additional revenue, including the largest and most prestigious universities, will need to meet access and equity objectives.

There are more women from disadvantaged backgrounds who study in higher education than disadvantaged men, and as such women are more likely than men to gain the benefits of the new Commonwealth Scholarship scheme.

Are the actions taken proportionate to the policy objective?

This measure promotes equity and access to higher education. Requiring providers to set aside one dollar in every five of additional revenue to support disadvantaged students is reasonable. This will create many thousands of scholarship opportunities for disadvantaged students, and it is proportionate to the policy objective of promoting equity and access to higher education for disadvantaged students.

Schedule 3 Indexation of HELP debts

Schedule 3 changes the indexation of HELP loans from the Consumer Price Index (CPI) to the 10 year Government bond rate, capped at 6 per cent per annum.

Does this schedule limit human rights?

Right to an adequate standard of living

This measure will not limit the right to an adequate standard of living. Replacing CPI indexation with bond rate indexation will not create increased costs for students while they study, and they will still be able to defer the entire cost of their tuition through the HELP scheme. As is currently the case, they will not be required to make any repayments until they are earning a good income. This measure will not lead to any change to the rate of annual repayments or the proportion of annual household income directed towards repaying their HELP debt. Therefore, while graduates may take longer to repay their HELP loans, there will be no reduction in their annual disposable income as a result and no impact on their capacity to maintain an adequate standard of living.

Right to education

This measure will not limit the right of a person to access higher education. It is possible that the application of the bond rate of indexation to HELP debts may create an incentive for some students to pay back their debts earlier or pay their costs upfront, however there will be no requirement for students to pay more before or during their study as a result of this measure. HELP will continue to provide the opportunity for all Australian students to defer their tuition costs.

Furthermore, the measure will ensure the sustainability of HELP for the long term, meaning that future generations of students will also be able to borrow their share of the cost of their tuition.

Right to equality and non-discrimination

Under the current system, the population that tend to earn lower incomes or spend time out of the workforce take longer to repay their debts. On average, women tend to repay their student loans over a longer period of time than men. This is in a large part due to the greater likelihood that women will elect to work part time or exit the workforce, and the greater likelihood of being in lower paid professions. This results in the Government on average providing women with a higher deferral subsidy as a percentage of outstanding debt (refer Table 1 below).

The Government also provides an effective subsidy to students who will never repay some or all of their debt, Debt Not Expected to be Repaid (DNER). On average women benefit more from this subsidy than men, and this will not change under the reforms (refer Table 1).

The reforms may increase the time it will take for part time workers, or those who elected to leave the workforce, to repay their HELP debt. However, this would apply to all such groups, regardless of gender.

Women will not face any limitations to their right to access a HELP loan, and therefore higher education courses, as a result of the change in indexation. They will not have to pay any of their

tuition costs upfront, and will have access to Government subsidies for more courses, including sub-bachelor courses, and courses at private providers, that may be more suitable to their needs.

Are the actions taken proportionate to the policy objective?

This measure will more accurately reflect the cost of borrowing to the Government, recognising the rapidly increasing cost to the Government of borrowing money in order to provide HELP loans. This measure will also effectively remove the indirect subsidy that all taxpayers contribute to higher education students.

The Government 10 year bond rate, with a cap of 6 per cent per annum, is much lower than the rate of a commercial loan. This means that a student would still pay very little interest on their HELP loan compared to an equivalent loan with a bank or a financial institution. This measure will provide certainty for students through the creation of the interest rate ‘safety cap’, ensuring that HELP loans will not be indexed at a rate higher than 6 per cent per annum.

The proposed change to the bond rate is proportionate to the policy objectives of repairing the Budget, and ensuring that the HELP scheme remains sustainable into the future.

Table 1: Outstanding HELP debt by gender and age as at 30 June 2013

Age on completion	Outstanding debt (\$m)	Deferral subsidy as a percentage of debt	DNER as a percentage of debt
Males			
- less than 30	9,778	17.0%	19.5%
- 30 to 55	2,161	11.9%	29.1%
- over 55	114	5.0%	66.1%
All Males	12,053	15.9%	21.7%
Females			
- less than 30	12,503	18.2%	20.7%
- 30 to 55	3,212	13.2%	26.4%
- over 55	174	5.1%	65.7%
All Females	15,889	17.0%	22.4%
All groups	27,942	16.6%	22.1%

Source: Australian Government Actuary

Note: deferral subsidy is the cost to the Government of providing students with concessional loans which have no real interest rate. That is the difference between the Government’s cost of borrowing and the Consumer Price Index.

Schedule 4 Minimum repayment income for HELP loans

Schedule 4 of the Bill creates a new repayment threshold for HELP loans. When a person's annual income reaches \$50 638 they would be required to repay the HELP debt at a rate of 2 per cent per annum.

Does this schedule limit human rights?

Right to an adequate standard of living

This schedule does not impact on the right to an adequate standard of living. The \$50 638 minimum repayment threshold is well above the minimum liveable wage, and will be annually adjusted to take inflation into account.

Additionally, to minimise the impact of the introduction of a lower minimum repayment threshold, graduates who earn more than \$50 637 but less than the previous minimum repayment threshold (estimated to be \$56 264 in 2016–17) would only be required to pay 2 per cent of their annual income towards the HELP scheme. Taxpayers with incomes in this range would be required to pay back around \$1013–\$1125 in 2016–17.

Those who have accessed a HELP loan and believe that they are experiencing serious financial hardship will be able to apply to the Australian Taxation Office to defer their payments, or to the Department of Finance to have their debt waived, further safeguarding the right to an adequate standard of living.

For the above reasons, there is no risk that this measure will limit the right to an adequate standard of living.

Right to education

This measure does not limit the right to access higher education. Annual payments will remain within the current reasonable limits, and will continue to be income-contingent, which will ensure this measure does not impact on the right to an adequate standard of living or create a significant deterrent to accessing higher education.

Right to equality and non-discrimination

This measure is fully compatible with the right to equality and non-discrimination on the grounds of gender. The new repayment threshold applies to everyone, regardless of gender and still represents an income substantially above the minimum liveable wage.

Women are more likely than men to work part-time, and to remain under the minimum repayment threshold. This means that women are less likely to be required to make any repayments at all on their HELP loans. Furthermore, when a person's income, regardless of gender, falls below the repayment threshold for any financial year, they would not be required to direct any proportion of their income towards repayments.

Are the actions taken proportionate to the policy objective?

This measure is proportionate to the policy objective of ensuring the long-term sustainability of HELP, while not adversely impacting on the lives of graduates by requiring repayments on a low income level. By reducing the minimum income repayment threshold, the Government will ensure that individuals who have the financial means will begin to repay their HELP debts earlier and will reduce the level of doubtful debt incurred through HELP loans.

Schedule 5 Research funding and research students

Schedule 5 of the Bill will provide funding for the Future Fellowships scheme, and amend the Australian Research Council Act (ARC Act) to apply an efficiency dividend for 2014–15, before applying indexation to existing amounts and adding an additional forward estimate for funding into the 2017–18 financial year.

This schedule will allow Research Training Scheme (RTS) students to be charged a capped student contribution amount, which will allow providers to offset the 10 per cent reduction in funding for the RTS announced in the Budget.

Does this schedule limit human rights?

This measure will not limit the right to education. RTS students that are charged a tuition fee amount will be able to defer the fee through the HELP scheme in the same manner as tuition fees for undergraduate places subject to meeting the eligibility criteria for the HELP scheme. This will ensure that eligible RTS students will not have to pay this contribution amount upfront.

Additionally, the low cap of \$3900 per EFTSL for high-cost courses and \$1700 per EFTSL for low-cost courses will ensure that this price signal is not a deterrent for students to commence higher degrees by research. This is a small proportion of the total cost of the RTS course, and will not restrict access to tertiary education or higher degrees by research.

Additionally, the amount provided over the forward estimates to the ARC is a substantial increase in funding. This will allow the ARC to fund high-quality research to address the challenges Australia will face in the future, and to improve the quality of people's lives, as well as support the development of new industries to remain competitive in the global knowledge market. The overall increase in funding will expand the capacity of the ARC to support higher degrees by research, and graduate research capabilities.

Are the actions taken proportionate to the policy objective?

The RTS measure will save approximately \$174 million over three years, and will help to create a sustainable funding model for research students into the future. Given the significantly better employment and wage outcomes that postgraduates have when compared to bachelor level graduates, it is reasonable to ask RTS students to contribute a small proportion of the total cost of their course.

The application of a one-off efficiency dividend is proportionate to the policy objective of repairing the Budget, while the continuation of funding is reasonable given the importance of research to Australia's continued economic growth into the future.

Schedule 6 VET FEE-HELP loan fees and limits

Schedule 6 provides for the removal of the VET FEE-HELP loan fee and the lifetime loan limit.

Does this schedule limit human rights?

As discussed under Schedule 1, the removal of the loan fee and the lifetime loan limit will remove barriers to higher education and improve access for students. This is fully compatible with the right to education.

Restricting the amount that a student may borrow for their education impedes the ability of people to retrain, change careers or update their qualifications after a period out of the workforce. This measure will create more pathways for students and workers who need to access additional study or training over their lifetimes, without the barrier of a punitive loan fee or up-front costs for their course.

It is estimated that over 80 000 students undertaking vocational education and training will benefit each year from the removal of the loan fee. In 2013, the average VET FEE-HELP loan fee was around \$1600 per student.

Most VET FEE-HELP students are women. In 2013, two-thirds of students accessing VET FEE-HELP loans were women (67 100 out of 100 000). Eligible female students were slightly more likely to access a loan (83 per cent) than eligible male students (79 per cent). As a result, removal of the VET FEE-HELP and loan-fee limits will be of significant benefit to women, and can be expected to further improve their access to vocational education and training and therefore opportunities for labour force participation.

Are the actions taken proportionate to the policy objective?

This measure is proportionate to the objective of ensuring equitable treatment and removing elements of discrimination against students studying VET courses in unsubsidised places. This will protect their right to access relevant VET courses regardless of their capacity to pay. The cost of these measures is manageable in the context of the overall balanced package of reforms.

Schedule 7 HECS-HELP benefit

Schedule 7 discontinues the HECS-HELP benefit.

Does this schedule limit human rights?

This will not have adverse effects on higher education access. The Kemp-Norton Review of the Demand Driven System found that the HECS-HELP Benefit has not created any significant incentive for students to choose courses in the targeted areas of maths, science, education or nursing since its inception in 2008 and recommended that it be removed.

Furthermore, the uptake of the programme was low and did not justify the costs of administering the scheme. In 2011–12 only 2500 benefits were granted to graduates, and in 2012–13 only 7220 benefits were granted.

In light of this, the Government has decided to remove this ineffective programme. It will not impede access to higher education, or affect eligibility for HELP loans in any way.

Are the actions taken proportionate to the policy objective?

The removal of the HECS-HELP benefit is reasonable given that it was not successful in creating behavioural change, or providing an incentive for students to choose courses in the targeted areas.

The removal of this programme is expected to save \$87 million over three years from 2015–16. The discontinuation of inefficient schemes such as the HECS-HELP benefit will contribute to the repair of the Budget.

Schedule 8 Indexation of amounts

Schedule 8 replaces the Higher Education Grants Index calculation with CPI.

Does this schedule limit human rights?

This schedule is fully compatible with the right to education. The calculation of all higher education grants under the *Higher Education Support Act 2003* at CPI will ensure the continued and sustainable growth of funding.

Are the actions taken proportionate to the policy objective?

It is reasonable to simplify the indexation arrangements for higher education grants. This measure is part of a government-wide initiative to streamline and reduce the complexity of Government programmes.

This measure will also ensure the sustainable growth of Government funding to the higher education sector, including research grants and Australian Postgraduate Awards. It is proportionate to the policy objective of ensuring the continued excellence of Australia's higher education providers, as well as the objective of creating sustainable funding arrangements into the future.



THE HON STEVEN CIOBO MP
Parliamentary Secretary to the Treasurer

Senator Dean Smith
Chair
Parliamentary Joint Committee on Human Rights
S1.111
Parliament House
CANBERRA ACT 2600

11 DEC 2014

Dear Senator ^{Dean} Smith

Thank you for your letter, originally directed to the Treasurer, regarding the *Minerals Resource Rent Tax Repeal and Other Measures Bill 2014* (the Bill). I am responding on the Treasurer's behalf.

I note the Bill passed both Houses of Parliament on 2 September 2014 and the *Minerals Resource Rent Tax Repeal and Other Measures Act 2014* (the Act) received Royal Assent on 5 September 2014.

Subsequent to the Bill passing, the Parliamentary Joint Committee on Human Rights sought further information as to whether it is compatible with the right to social security and the right to an adequate standard of living.

Given the current fiscal situation, the Act is a necessary and proportionate response to the failure of the Minerals Resource Rent Tax (MRRT) to raise the forecast revenue to fund the associated measures. The objective of the Act is to ensure the measures linked to the revenue expected from the failed MRRT did not result in the Government living beyond its means.

The Act does not result in payments being reduced to below the minimum level necessary for recipients to meet their basic needs in relation to essential health care, basic shelter and housing, water and sanitation, foodstuffs and the most basic forms of education. The Government is advised the Act is therefore compatible with human rights.

I trust this information will be of some assistance to the Committee.

Yours sincerely

Steven Ciobo



**The Hon Kevin Andrews MP
Minister for Social Services**


Parliament House
CANBERRA ACT 2600

Telephone: (02) 6277 7560
Facsimile: (02) 6273 4122

MN14-001018

Senator Dean Smith
Chair
Parliamentary Joint Committee on Human Rights
S1.111
Parliament House
CANBERRA ACT 2600

22 SEP 2014

Dear Senator Smith 

Thank you for your correspondence of 26 August 2014 about the Parliamentary Joint Committee on Human Rights (the Committee's) examination of the Social Security (Administration) (Declared income management area – Ceduna and surrounding region) Determination 2014 (the legislative instrument), for which I have portfolio responsibility.

Thank you also for enclosing the Committee's *Tenth Report of the 44th Parliament* setting out the Committee's comments and request for further advice following its examination of the legislative instrument. Please find enclosed my response as requested.

Should you wish to discuss this matter further please contact Mr Chris Browne in my office on 02 6277 7560.

Yours sincerely

KEVIN ANDREWS MP

Encl.

Response to the Parliamentary Joint Committee on Human Right's examination of the Social Security (Administration) (Declared income management areas – Ceduna and Surrounding Region) Determination 2014 [F2014L00777]

General advice

Income management supports vulnerable individuals and families by helping to ensure that a portion of a person's income support and family payments are spent on essential needs, and limiting expenditure on excluded items such as alcohol, tobacco, pornography and gambling goods and services.

The programme promotes the protection of human rights by ensuring that income support payments are spent in the best interests of welfare payment recipients and their dependents, whilst also helping to improve their budgeting skills so that they can meet priority needs. To the extent that the programme limits human rights, those limitations are reasonable, necessary and proportionate to achieving the legitimate objectives of the programme [as set out in Part3B of the *Social Security (Administration) Act 1999*], which include:

- reducing immediate hardship and deprivation by directing welfare payments to the priority needs of recipients, their partner, children and any other dependents;
- helping affected welfare payment recipients to budget so that they can meet their priority needs;
- reducing the amount of discretionary income available for alcohol, gambling, tobacco and pornography;
- reducing the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments;
- encouraging socially responsible behaviour, particularly in relation to the care and education of children; and
- improving the level of protection afforded to welfare recipients and their families.

Evaluations of the income management programme to date have found that there are many positive perceptions that income management promotes socially responsible behaviour and improves wellbeing for communities and children. The programme has been found to help direct funds towards people's priority needs and that the BasicsCard has been a useful tool to ensure income managed funds are spent on essential items.

In addition to engagement of the human rights obligations as outlined in the committee's report, *The Tenth Report of the 44th Parliament*, income management also supports a range of other human rights obligations. The right to housing is promoted by helping to ensure that a portion of a person's income support payments is spent on priorities such as housing costs (for example, rent). The programme also promotes the rights of children by ensuring that a portion of income support payments is used to cover essential goods and services, which in turn improves the living conditions for the children of income support recipients. It therefore advances the right of children to benefit from social security, the right of children to the highest attainable standard of health and the right of children to an adequate standard of living (articles 24, 26 and 27 of the Convention on the Rights of the Child, respectively).

The Legislative Instrument in question establishes the Ceduna region as a declared income management area for the purposes of Part 3B, Section 123UCA, and 123UFA of the *Social Security (Administration) Act* (the Vulnerable and Voluntary measures of income management). Due to the nature of the Voluntary measure, it is unlikely to be incompatible with human rights obligations given that individuals choose to be on this measure and any limitation on their rights is not imposed. The State of South Australia has previously been declared a Child Protection Income Management area.

Consultations

The Government funded Ninti One Ltd to conduct a scoping study in August 2013 in Ceduna and the neighbouring communities of Oak Valley, Scotdesco, Koonibba and Yalata to ask people what they thought about income management. Community members, service providers and a range of key stakeholders, particularly the West Coast Alcohol and Substance Misuse Action Group took part in the study to gauge community views on income management and its potential to assist with some of the social issues facing communities in the Ceduna region. A summary of the final project report is available on the Ninti One website <http://www.nintione.com.au/news/new-report-ceduna-income-management-report>

The Department held consultations about income management in the Ceduna region in South Australia in February 2014. Over 50 meetings were held with community members as well as key stakeholders including health clinics, local councils, Aboriginal corporations, outback stores, local organisations, the police and schools.

Overall, feedback from the consultations was positive with community members acknowledging problems with alcohol and drug abuse and some children not receiving enough food. In addition, participants at various meetings supported voluntary income management and recognised that the BasicsCard, in particular, may assist with reducing substance abuse and provide more food for children.

The final report can be found at <http://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/income-management/income-management-ceduna-region-consultations-report>

Advice on specific human rights compatibility issues

1. The rights of equality and non-discrimination
 - a. Racial discrimination

1.347 The committee therefore seeks the advice of the Minister for Social Services as to whether the income management measures in the Ceduna and Surrounding Regions are compatible with the rights to equality and non-discrimination in light of the potential for indirect racial discrimination, 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 a reasonable and proportionate measure for the achievement of that objective.*

The relevant international treaties define discrimination as ‘impermissible differentiation of treatment among persons or groups that result in a person or a group being treated less favourably than others, based on a prohibited ground for discrimination, such as race’. However, the United Nations Human Rights Committee has recognised that ‘not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective, and if the aim is to achieve a purpose which is legitimate under the Covenant’.

As discussed above, the introduction of income management to Ceduna and Surrounding Region is aimed at achieving a legitimate objective: to reduce immediate hardship and deprivation by directing welfare payments to the priority needs of recipients, their partner, children and any other dependents, amongst other things.

Income management is not applied based on race or cultural factors. People may go onto income management for a range of reasons. In areas where there is income management, people can be eligible for income management because they:

- receive particular welfare payments, and/or
- have been referred for income management, or
- have volunteered to participate.

The introduction of income management into Ceduna and Surrounding Region does not discriminate on the basis of race. Anyone residing in the prescribed area is eligible for income management, as long as specific eligibility criteria are met. Income management is therefore not targeted at people of a particular race, but to income support recipients who meet particular criteria.

The Ceduna region was chosen as a new site for the operation of income management following strong support from the community and having regard to a range of criteria, including unemployment levels, youth unemployment, skills gaps, the number of people receiving welfare payments, and the length of time people have been on income support payments. These factors are reasonable, objective and non-race based criteria.

To the extent that the income management measures may disproportionately affect Indigenous people, any such limitation is reasonable and proportionate to achieve the

objectives of the programme. As evidenced by the evaluations of income management conducted to date in the locations in which it operates, the programme has led to an increase in funds being directed towards people's priority needs, leading to improvements in wellbeing for individuals, families and children.

There are two distinct pathways through which a person may be determined to be a Vulnerable Welfare Payment Recipient. The first involves a comprehensive assessment by a qualified social worker, and the second involves a person meeting a set of criteria that deems them Vulnerable due to the payment type that they receive, or have received (*see Social Security (Administration) (Vulnerable Welfare Payment Recipient) Principles 2013*). The cultural background of the individual and his or her family is not relevant to this process. In relation to Child Protection Income Management, which is not yet operating in Ceduna and Surrounding Region, it is expected that the same model operating in Playford will be introduced following finalisation of the bilateral agreement with the South Australian Government. This involves a consent-based approach to referrals by the Department for Education and Child Development to the Department of Human Services. Individuals can also choose to volunteer for income management if they decide that it would be beneficial to themselves and/or their family.

Sufficient regard has been paid to the rights and interests of those affected. Extensive consultations undertaken in the region found that, on the whole, people were in favour of the introduction of income management. Protections to safeguard against error or abuse, via review and appeal rights, are in place under the programme. There are also set criteria which must be followed to assess whether income management would help an individual, preventing any abuse in discretionary application.

b. Gender discrimination

1.350 The committee therefore seeks the advice of the Minister for Social Services as to whether income management measures within the Ceduna and Surrounding Regions are compatible with gender equality under the rights to equality and non-discrimination, 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 a reasonable and proportionate measure for the achievement of that objective.*

The income management measures within the Ceduna and Surrounding Regions are compatible with gender equality under the rights to equality and non-discrimination. As discussed above, income management is aimed at achieving a legitimate objective and is targeted to vulnerable people on specified income support payments who meet a certain criteria, as opposed to being targeted to persons who have a particular characteristic, such as gender.

A person who is in receipt of a 'category H' welfare payment may be eligible for the income management measures introduced into Ceduna and Surrounding Region so long as they also meet other criteria. The 'eligibility' payments under this category are not payments which are targeted to women or which are known to be received predominately by women, such as Family Tax Benefit which is not, on its own, an eligibility payment for the purposes of the programme.

To the extent that the income management programme may limit the rights of women to full enjoyment of equality and non-discrimination, as indicated above (see racial discrimination) in the case of the Vulnerable Welfare Payment Recipients measure of income management, an assessment or set of specific criteria is used in the first instance to determine whether income management would help that particular individual or family. This assessment is gender neutral and proportionate to achieving the objectives of income management. Ongoing support is then provided on a case-by-case basis. Women can also choose to volunteer for income management if they decide that it would be beneficial to themselves and/or their family. A significant proportion of people consulted during community consultations were women, and, given the outcomes of the consultations were positive. This suggests that there is strong support for the introduction of the measures from women in the communities. It is worth noting that there was also strong support from women in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands for the introduction of income management in that location.

In other areas where the two measures set out in this Determination already operate, data suggests that women are less likely than men to have income management applied under the Vulnerable measure, with only 43% of participants being female. Additionally, women are more likely than men to volunteer with 58% of all participants in the voluntary measure being women. Evaluations of income management have found that women in particular value being able to volunteer for income management and have found it beneficial in reducing humbugging.

2. Rights to social security and an adequate standard of living

1.362 The committee therefore seeks further advice from the Minister for Social Services as to whether the income management scheme is compatible with the rights to social services and 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 a reasonable and proportionate measure for the achievement of that objective.***

In relation to engaging the right to social security, the United Nations Committee on Economic, Social and Cultural Rights has stated that implementing this right requires a country to, within its maximum available resources, provide 'a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education'.

Income management does not limit the right to social security as the programme itself does not detract from the eligibility of a person to receive income support or reduce the amount of a person's social security entitlement. Instead, it provides a mechanism to ensure that certain recipients of social security entitlements who are found to be vulnerable use a proportion of their entitlement to acquire essential goods and services such as rent, utilities and food. The United Nations Committee on Economic, Social and Cultural Rights has stated that the right to social security encompasses the right to access and maintain benefits 'in cash or in kind'. The programme does not at all detract from the situations in which someone has a right to social security, such as unemployment and workplace injury, and family and child support, it simply supports a person further once they have achieved their right to receive social security.

With regards to the right to an adequate standard of living, income management does not limit this right given that the programme supports individuals to achieve and maintain an adequate standard of living through the purchase of essential goods and services, including food, clothing, water and housing, which are all classified as priority needs under Part 3B of the Act and which income managed funds can be used to purchase. The programme therefore aims to advance this right through ensuring that money is available for priority goods and services such as housing, food and clothing, in situations where individuals need additional support to meet these needs. In turn, this helps stabilise an individual's living circumstances and financial situation, enabling them to focus on caring for children and/or joining or returning to work.

Income management does not restrict the availability, adequacy and accessibility of essential needs required to maintain an adequate standard of living. The availability, adequacy and accessibility of essential needs is maintained through the ability of income managed recipients to purchase goods and services through a range of payment options, including via direct deductions to third parties through the Department of Human Services and a wide footprint of merchants which accept BasicsCard, both within and outside of areas in which income management currently operates. Recipients are not required to pay for replacement BasicsCards. The process is much simpler to access than through mainstream banking services, where non-income managed funds would usually be held, and there is much more tailored and intensive support available.

3. Right to privacy

1.369 The committee therefore seeks the Minister for Social Services' advice as to whether the restrictions on the autonomy of individuals to control their own finances through income management measures is compatible with the right to privacy, 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.***

As discussed above, the income management programme is aimed at achieving a legitimate objective. The programme does not limit the right not to have one's privacy, family and home unlawfully or arbitrarily interfered with. In the case of the Vulnerable Welfare Payment Recipients measure of income management, income management is lawfully targeted and may be triggered via an assessment or set of specific criteria used to determine whether income management would help that particular individual or family – it is not applied in a blanket approach. Individuals can also choose to volunteer for income management if they decide that it would be beneficial to themselves and/or their family, which is not imposed.

It has been noted in evaluations that some people may feel ashamed by having income management applied. However, these evaluations also note that other people have found a sense of pride in being able to better manage their money and meet their basic needs. In all areas where income management is in operation, a Voluntary measure is in operation alongside the compulsory measures to reduce the likelihood of a person being stigmatised by income management.

With the reduced likelihood of a person being stigmatised through the concurrent operation of the Voluntary measure, it is a reasonable and proportionate limitation to the right to privacy in order to promote other rights such as the rights of the child and the right to an adequate standard of living.

The allocation of income managed funds is arranged through consultation with the Department of Human Services to determine where funds should be directed, and an individual may also seek assistance through Financial Wellbeing and Capability services. Referrals to additional support services such as the Financial Wellbeing and Capability services are free and confidential.

4. Right to self-determination

1.375 The committee therefore requests further information from the Minister for Social Services on the consultative process, within the Ceduna and Surrounding Regions area specifically.

1.376 The committee also seeks further advice from the Minister for Social Services as to whether the income management scheme is compatible with the right to self-determination, 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 a reasonable and proportionate measure for the achievement of that objective.*

The income management programme does not impinge on the right to self-determination as it does not affect the means of subsistence or political status of any person or group. While income management does to an extent limit a person's ability to freely spend their social security payments on excluded goods (alcohol, Gambling products, tobacco and pornography), it does not impact on or interfere with their right to freely pursue their economic, social or cultural development.

This limitation is reasonable and proportionate to achieve a legitimate objective, as discussed above, and is necessary to promote other rights by ensuring that income support payments are used to meet the essential needs of vulnerable people and their dependents, and that these people are protected against risks of homelessness and financial exploitation. Any limitation that may occur is therefore necessary to pursue the legitimate objectives of the programme.

The people in Ceduna and Surrounding Region were also consulted about how income management might support people and what model would work best. These consultations found that people in the region were, on the whole, in favour of income management.



The Hon Malcolm Turnbull MP

MINISTER FOR COMMUNICATIONS

Senator Dean Smith
Chair
Parliamentary Joint Committee on Human Rights
S1.111
Parliament House
CANBERRA ACT 2600

Communications portfolio response - Parliamentary Joint Committee on Human Rights' sixteenth report of the 44th Parliament

Dear Chair 

Thank you for your letter dated 25 November 2014 in which the Parliamentary Joint Committee on Human Rights has sought my response to issues raised in its Sixteenth Report of the 44th Parliament about the Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014 (Broadcasting Bill), and the Telecommunications Legislation Amendment (Deregulation) Bill) 2014.

Telecommunications Legislation Amendment (Deregulation) Bill) 2014

Repeal of Part 9A of the Telecommunications (Consumer Protection and Service Standards) Act 1999

The Committee has sought advice on whether the repeal of Part 9A is compatible with the rights of the child, and whether the deregulation of Part 9A may expose children to a risk or harm.

Part 9A currently has two key regulatory functions:

1. Regulating the prefixes of numbers used by telephone sex services; and
2. Preventing telephone sex services from being bundled with the supply of other goods and services.

Although Part 9A previously contained provisions specifically aimed at protecting children from accessing age restricted content via telephone sex services, these provisions were repealed following the introduction of the *Communications Legislation Amendment (Content Services) Act 2007*, which introduced a new Schedule 7 into the *Broadcasting Services Act 1992* (the BSA) and amalgamated the regulation of all content services delivered via carriage services.

Schedule 7 of the BSA includes a strong range of measures specifically designed to prevent children from accessing R18+ content via a range of platforms, including via telephone sex services by effectively:

- requiring an application for access to the content;
- requiring proof of age that the applicant is over 18 years of age;
- ensuring a risk analysis of the kind of proof of age submitted;
- verifying the proof of age by applying the risk analysis;
- providing warnings as to the nature of the content;
- providing safety information for parents and guardians on how to control access to the content;
- limiting access to the content by the use of a PIN or some other means;
- including relevant quality assurance measures; and
- requiring age verification records be retained for a period of 2 years after which the records are to be destroyed.

In summary, the proposed repeal of Part 9A is compatible with the rights of the child. The existing protections under the BSA that help ensure children are protected from adult content (delivered by telephone sex services or other means) remain and are not impacted by the proposed repeal of Part 9A.

Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014

Captioning amendments proposed in Schedule 6 - Background

The Committee has sought advice on proposed amendments to captioning obligations, and their compatibility with the right to equality and non-discrimination and the related rights of persons with disabilities under the Convention on the Rights of Persons with Disabilities (CRPD). I note that in particular the Committee is seeking advice on whether the proposed changes are aimed at achieving a legitimate objective.

Captioning supports access to a range of services, including television services, by people who are hearing-impaired. To enhance access to captioning for this audience the *Broadcasting Services Amendment (Improved Access to Television Services) Act 2012* introduced Part 9D to the BSA, which mandates targets for captioning of free-to-air and subscription television programs, and sets out a framework for determining captioning quality. Compliance with the Part 9D captioning obligations is a license condition for commercial free-to-air and subscription broadcasters.

Part 9D replaced the previous exemption orders process administered by the Australian Human Rights Commission under the *Disability and Discrimination Act 1992* (DDA). With the introduction of Part 9D (which is prescribed under the DDA), broadcast licensees' are exempt from further action for unlawful discrimination under the DDA. This prescription creates a level of regulatory certainty for broadcasters and viewers as the television captioning obligations are administered by the one body, the Australian Communications and Media Authority (the ACMA).

Consistent with the Government's deregulation agenda, the amendments to Part 9D introduced by the Broadcasting Bill aim to reduce industry compliance costs, increase flexibility for broadcasters in the way they meet their captioning obligations, and achieve greater administrative simplicity.

The proposed amendments will not reduce annual captioning targets, including future legislated increases for subscription television, or the quality of captioning services provided by both free-to-air and subscription television broadcasters.

The Broadcasting Bill also removes or amends a number of spent or redundant provisions in Part 9D, including provisions that relate to captioning targets from previous financial years. Additionally, some aspects of existing legislation are unnecessarily complex as drafted, and the Broadcasting Bill simplifies these.

The amendments proposed by the Broadcasting Bill aim to achieve the legitimate objective of reducing unnecessary and costly regulation. It is important to note that in doing so, the amendments will not have a significant impact on viewers, and will better support the ability of television licensees' to provide captioning services that benefit Australians with a disability.

Averaging of captioning targets across sports channels supplied by the same channel provider

The Committee has expressed a concern that the proposed changes to captioning requirements for sports channels may result in a reduction in the amount of sports content being made available to those who are hearing-impaired.

The Bill repeals existing subsections 130ZV(1) to (4) and replaces these with new subsections 130ZV(1) to (3). The effect of the amendment is to remove spent captioning targets for the 2012 and 2013 financial years, enhance the readability of the provisions and introduce a modified formula in subsection 130ZV(3) for captioning targets for subscription television sports services.

The provisions have been drafted to ensure that:

- the overall number of hours of captioned programming does not change from existing legislative requirements, and
- there is no reduction in the number of sports channels subject to captioning requirements.

The proposed amendment aims to introduce flexibility for subscription television licensees in meeting their obligations, without changing the number of total hours of captioned programming available to viewers. It operates to allow subscription television licensees to redirect one third of each relevant sports channel's captioning target to another sports channel offered by the same channel provider, for example FOX SPORTS.

Hearing-impaired audiences will benefit from broadcasters being better able to provide captioning for services that are of greater interest to those viewers. To ensure continued diversity of captioning across sports programs, licensees will still be required to meet a captioning target of at least two thirds of the existing captioning target on each individual channel, provided the rest of the annual captioning target is met with captioned content screened on one or more of their other sports channels. This ensures that subscription broadcasters will be prevented from directing all of the aggregated captioning target towards a channel devoted to a particular sport.

Removing annual-reporting requirements relating to captioning compliance for free-to-air television broadcasters

The Committee has sought advice on whether the removal of annual reporting requirements is compatible with the rights to equality and non-discrimination such as are

protected by articles 2, 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR), and the related rights of persons with disabilities, such as provided for under articles 5, 9 and 13 of the CRPD. The Committee's concern is based on the view that removing annual reporting requirements would result in a reduction in transparency and capacity to monitor compliance with captioning arrangements.

The Bill repeals subsections 130ZZC(1) to (4) of Part 9D, which provide that commercial television broadcasting licensees and national broadcasters must, within 90 days after the end of each financial year, prepare and give to the ACMA a report relating to the licensee's compliance with their captioning obligations. The proposed amendment will have the effect of removing annual report requirements for free-to-air television broadcasters in relation to their compliance with captioning obligations. Compliance arrangements will instead be based on existing mechanisms within the BSA, including sections 147 and 150 of the BSA which enable viewer complaints to the ACMA about alleged breaches of Part 9D, and the ACMA's discretionary powers to investigate broadcasters' compliance with licence conditions along with broadcast content matters generally.

In recent years, captioning requirements on the free-to-air television sector have gradually increased such that it is now required to provide 100 per cent captioning from 6am to midnight on primary channels, and for news or current affairs programs transmitted on primary channels at any time. This means it is now clear to consumers when services do not meet captioning requirements on the primary channel, making it appropriate for compliance to be assessed on the basis of complaints and other existing measures provided for in the BSA, rather than through annual reporting arrangements.

Although to date there has only been one reporting cycle, the ACMA reported a high level of compliance with the annual captioning target requirements for the 2012-13 reporting period. For instance, 100 per cent of commercial free to air broadcasters and 99 per cent of subscription broadcasters achieved their annual captioning target. The limited compliance issues identified by the ACMA for the first reporting cycle were of the kind normally associated with new broadcasting regulations so soon after their introduction.

There are significant compliance incentives for broadcasters to meet their captioning obligations. The ACMA will investigate genuine captioning complaints and where it identifies issues of concern, including where it sees a systemic problem with the performance of a broadcaster, will consider a range of responses to ensure broadcaster compliance. Responses can include requiring broadcasters to implement additional procedures to improve quality, or formal measures such as enforceable undertakings, and remedial directions. In severe cases, section 143 of the BSA provides that the ACMA can cancel a broadcaster's licence.

These compliance incentives, increased consumer transparency and high industry compliance rate strongly indicate that the removal of annual reporting requirements for free-to-air broadcasters will not reduce the effectiveness of the captioning arrangements, and will therefore not represent a limitation on the right to equality and non-discrimination.

Automatic exemption from captioning obligations granted to new subscription television channels

The Committee has also sought advice on whether the minimum 12 month exemption from captioning requirements for new subscription television channels is consistent with the

obligation of State Parties to take appropriate measures to ensure persons with disabilities have equal access to information and communications, as provided for under article 9 of the CRPD.

The Bill adds new subsection 130ZV(6), that will provide that new subscription television services transmitted by a licensee are exempt from the captioning targets established by section 130ZV for a period of one to almost two years, depending on when the new service commences. To qualify for the exemption the subscription television service must predominantly consist of programs not previously transmitted in Australia prior to the commencement of the service. Under the proposed new subsection, the exemption from captioning obligations would apply from service commencement until after the financial year beginning on the first 1 July that is at least one year after the service commenced. For example, if a new subscription television service commenced on 1 September 2015, the applicable exclusion period would be 1 September 2015 to 30 June 2017.

The proposed automatic exemption is designed to encourage subscription television licensees to bring new content and channels to Australian audiences and would only apply to channels that mainly consist of content not previously transmitted in Australia. This requirement will also avoid creating an incentive to do little more than 'rebrand' existing content.

Subscription television licensees can currently apply to the ACMA to temporarily exempt channels from captioning obligations on the grounds that providing captioned services would result in unjustifiable hardship. An exemption order exempts a specified subscription television service provided by the licensee from its annual captioning targets for a specified period (one to five financial years). This hardship is likely to be greater for start-up services that do not have established audiences. In practice the ACMA has approved the significant majority of applications (e.g. in December 2013 the ACMA received 41 applications for exemption orders for 2013-14 and made all 41, or 100 per cent, of these). An automatic exemption process would save both licensees and the ACMA resources in completing and considering applications.

However as it is expected that the automatic exemption will encourage investment in new channels and content the ultimate beneficiaries will be hearing-impaired viewers who will have access to a greater diversity of captioned content over time.

I trust this information addresses the Committee's concerns on the effect of these important proposals and their compatibility with Australia's human rights obligations.

Yours sincerely

Malcolm Turnbull