Chapter 2

Concluded matters

2.1 This chapter considers the responses of legislation proponents to matters raised previously by the committee. The committee has concluded its examination of these matters on the basis of the responses received.

2.2 Correspondence relating to these matters is included at Appendix 1.

Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014

Portfolio: Communications
Introduced: House of Representatives, 22 October 2014

Purpose

2.3 The Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014 (the bill) amends the *Broadcasting Services Act 1992* (BSA), the *Radiocommunications Act 1992* and the *Australian Communications and Media Authority Act 2005* to remove a number of existing requirements, including to:

- introduce a new formula for captioning for subscription sports services, allowing the captioning target to be averaged across a group of sports channels;
- remove existing reporting requirements on free-to-air broadcasters to report on whether they have complied with captioning requirements; and
- exempt new subscription services from meeting captioning targets for a period of 12 months (which could extend to almost two years depending on when the new service commences).

Background

2.4 The committee reported on the bill in its *Sixteenth Report of the 44th Parliament*.[1]

Right to equality and non-discrimination

2.5 The committee sought the advice of the Minister for Communications as to the compatibility of the amendments to the captioning obligations 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) (including monitoring compliance with obligations under the CRPD), and particularly:

1 Parliamentary Joint Committee on Human Rights, *Sixteenth Report of the 44th Parliament* (25 November 2014) 1-5.

- 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.

Minister's response on averaging of captioning requirements

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 requirements across sports channels

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 l 30ZV(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.

Committee response

2.6 **The committee thanks the Minister for Communications for his response. The committee considers that the change to allow averaging of captioning targets does not limit the right to equality and non-discrimination and has concluded its examination of this aspect of the bill.**

Minister's response on removing annual reporting requirements

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.

Committee response

2.7 **The committee thanks the Minister for Communications for his response. The committee considers that the changes to reporting requirements limit the right to equality and non-discrimination but, for the reasons given by the minister, the limitation is justifiable and the measure is therefore compatible with human rights. The committee has concluded its examination of this aspect of the bill.**

Minister's response on exemptions from captioning requirements for new subscription services

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 I 30ZV 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.[2]

Committee response

2.8 **The committee thanks the Minister for Communications for his response.**

2.9 However, the committee remains concerned that a blanket exemption from captioning requirements for all new subscription television services for at least one year may have an adverse impact on deaf and hearing impaired viewers. If there are no captioning requirements for all new television subscription content then such content will be inaccessible to deaf and hearing impaired viewers during the period of the exemption. As such, the measure limits the right to equality and non-discrimination.

2.10 The committee notes that the right to equality and non-discrimination can be limited if the limitation is aimed at achieving a legitimate objective. The stated objective of the measure is to 'encourage subscription television licensees to bring new content and channels to Australian audiences'. It is also intended to save both licensees and the Australian Communications and Media Authority (ACMA) resources, as new subscription services would not need to make an application for an exemption.

2.11 While the committee appreciates the desire for efficient regulation of television broadcasting, a human right may only be limited to achieve an objective that addresses an area of public or social concern that is pressing and substantial enough to warrant limiting the right. It is not clear to the committee in this case that the stated objectives of encouraging new content and regulatory efficiency amount to legitimate objectives for the purposes of international human rights law.

2.12 Further, even if the stated objectives were sufficient to justify the limitation on the right to equality and non-discrimination, it is not clear to the committee that the limitation is proportionate to those objectives. This is because there is currently a mechanism by which a subscription service can seek an exemption if required (that is, through an application to ACMA, which must assess each application on its merits).

2.13 **The committee therefore considers that the automatic exemption for at least 12 months for all new subscription services from the requirement to provide captioning of content may be incompatible with the right to equality and non-discrimination. The committee has concluded its examination of this aspect of the bill.**

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2 See Appendix 1, Letter from the Hon. Malcolm Turnbull MP, Minister for Communications, to Senator Dean Smith (received 6/1/2015) 2-5.

Commonwealth Places (Application of Laws) Act 1970

Portfolio: Justice

Act No. 121 of 1970

Purpose

2.14 The application of state laws to Commonwealth places is generally governed by the *Commonwealth Places (Application of Laws) Act 1970* (the CP Act), which was enacted in response to a decision of the High Court in 1970.[1] That case found section 52(i) of the Constitution excludes the direct application of state laws to Commonwealth places.[2]

2.15 The effect of the CP Act is that the provisions of an applied state law generally take effect as a Commonwealth law in relation to the Commonwealth place.[3]

Background

2.16 The committee consider the CP Act in the context of its examination of the G20 (Safety and Security) Complementary Act 2014 in the *Sixth Report of the 44th Parliament*,[4] *Ninth Report of the 44th Parliament*[5] and *Tenth Report of the 44th Parliament*.[6]

2.17 The committee reported on the CP Act in its *Eleventh Report of the 44th Parliament*.[7] The committee determined that, as the CP Act effectively provides for the enactment of Commonwealth laws without the requirement for a human rights

1 *Worthing v Rowell and Muston Pty Ltd* (1970) 123 CLR 89. See also *Attorney-General (NSW) v Stocks and Holdings (Constructors) Pty Ltd* [1970] HCA 58; (1970) 124 CLR 262; and *R v Phillips* [1970] HCA 50; (1970) 125 CLR 93).

2 Section 52(i) of the Constitution provides: The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to: (i) the seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes.

3 See *Pinkstone v R* [2004] HCA 23; 219 CLR 444 at [34], where McHugh and Gummow JJ described the applied state law as operating as 'a surrogate federal law'. See also McHugh J in *Cameron v R* [2002] HCA 6; 209 CLR 339, at [46].

4 Parliamentary Joint Committee on Human Rights, *Sixth Report of the 44th Parliament* (14 May 2014) 15-17.

5 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44th Parliament* (15 July 2014) 107-109.

6 Parliamentary Joint Committee on Human Rights, *Tenth Report of the 44th Parliament* (26 August 2014) 163-165.

7 Parliamentary Joint Committee on Human Rights, *Eleventh Report of the 44th Parliament* (2 September 2014) 2-5.

assessment under the *Human Rights (Parliamentary Scrutiny) Act 2011*,[8] it would undertake an assessment of the CP Act for compatibility with human rights (as provided for by section 7(b) of the *Human Rights (Parliamentary Scrutiny) Act 2011*). The committee therefore requested that the Minister provide a statement of compatibility for the CP Act to assist in the committee's assessment of the human rights compatibility of the CP Act. The committee also indicated that 'identification of particular state laws that impact on the assessment, as well as the number and area of Commonwealth places would be particularly relevant to the human rights assessment.'[9] As no statement of compatibility was provided, the committee's assessment of the compatibility of the CP Act with human rights was conducted on the basis of information publicly available.

2.18 In its assessment in the *Eleventh Report of the 44th Parliament*, the committee considered that the CP Act is likely to be incompatible with human rights, and recommended that newly applied state laws be subject to an assessment of human rights compatibility. It also recommended that the CP Act be amended to provide that state laws apply only insofar as they are compatible with Australia's obligations under international human rights law. The committee also requested further information from the Minister for Justice regarding categories of Commonwealth places.

State laws applied by the CP Act

Multiple rights

2.19 The committee noted that the CP Act was likely to engage multiple human rights, and requested the Minister for Justice to provide it with categories of Commonwealth places to which the *Commonwealth Places (Application of Laws) Act 1970* applies.

Minister's response

> 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

8 See *R v Porter* [2001] NSWCCA 441; 165 FLR 301; 53 NSWLR 354; [41] (Spigelman CJ, with whom Studdert J and Ireland AJ agreed).

9 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44th Parliament*, para 1.524.

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.[10]

Committee response

2.20 **The committee thanks the Minister for Justice for his response.**

2.21 As noted above, the CP Act allows provisions of a state law to take effect as a Commonwealth law in relation to the Commonwealth place.[11] Such Commonwealth laws are 'facilitative' of state laws regardless of whether or not applied state laws comply with Australia's international human rights obligations.

2.22 This minister's response confirms that the CP Act permits the application of state laws to Commonwealth places irrespective of whether they engage or limit human rights, and the committee is concerned that there may be numerous state laws applying to Commonwealth places that engage and significantly limit human rights.[12]

2.23 The committee notes that the CP Act was enacted in 1970, prior to the development of parliamentary human rights scrutiny mechanisms. The committee acknowledges that the human rights implications of the CP Act may have been less

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10 See Appendix 1, Letter from the Hon Michael Keenan MP, Minister for Justice, to Senator Dean Smith (dated 2/10/2014) 1-2.

11 State laws which are applied are subject to express or implied limitations on the legislative power of the Commonwealth Parliament. Those state laws that are inoperative by virtue of inconsistency with a Commonwealth law and thus invalid to the extent of the inconsistency pursuant to section 109 of the Constitution, are not applied by the CP Act.

12 See, for example, *Law Enforcement (Powers and Responsibilities) Act* 2002 (NSW), part 6A; *Summary Offences and Sentencing Amendment* (Vic); *Vicious Lawless Association Disestablishment Act* 2013 *(VLAD)* (Qld) *Criminal Law (Criminal Organisations Disruption) Amendment Act* 2013 *(Qld).*

apparent to Parliament or the executive in that context. However, with the enactment of the *Human Rights (Parliamentary Scrutiny) Act 2011*, which is intended to ensure human rights assessment of (generally) all new and proposed Commonwealth legislation, the operation of the CP Act effectively reduces the intended scope of human rights assessment of Commonwealth legislation.

2.24 The committee notes the minister's view that it 'would not be appropriate for the Commonwealth to assess the content of state laws for their human rights compatibility'.

2.25 However, the committee notes that, in reporting to various treaty body committees, the Commonwealth is required to (and does) respond to human rights concerns in relation to both Commonwealth and state laws. The federal government possesses relevant powers to ensure compliance with Australia's international obligations.[13] The committee further notes that the division of federal-state responsibilities does not negate Australia's obligations under international human rights law.[14]

2.26 In light of the scheme of the CP Act and the Commonwealth's obligations and powers in respect of human rights, the committee is of the view that the application of state laws via the CP Act should be subject to requirements for any such state laws to be assessed for compatibility with human rights.

2.27 Accordingly, the committee reiterates its conclusions and recommendations set out in the committee's *Eleventh Report of the 44th Parliament*.[15] In particular, the committee reiterates its suggestion that newly applied state laws be subject to an assessment of human rights compatibility.

2.28 **The committee recommends that newly applied state laws be subject to an assessment of human rights compatibility.**

2.29 **The committee recommends that the *Commonwealth Places (Application of Laws) Act 1970* be amended to provide that state laws apply only insofar as they are compatible with Australia's obligations under international human rights law.**

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13 See Australian Constitution, sections 51(xxix), 52(i), 109.

14 See, for example, Vienna Convention on the Law of Treaties, 1969, article 27; International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, articles 1 – 3, http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf (accessed 27 August 2014).

15 Parliamentary Joint Committee on Human Rights, *Eleventh Report of the 44th Parliament* (2 September 2014) 5.

Minerals Resource Rent Tax Repeal and Other Measures Bill 2014

Portfolio: Treasury
Introduced: House of Representatives, 1 September 2014

Purpose

2.30 The Minerals Resource Rent Tax Repeal and Other Measures Bill 2014 (the bill) seeks to repeal the mineral resources rent tax (MRRT) by repealing a number of acts (schedule 1).[1] It also seeks to make consequential amendments to other legislation,[2] required as a result of the repeal of the MRRT (schedules 2 - 9).

2.31 The bill also seeks to repeal the following MRRT-related measures:

- loss-carry back (schedule 2);
- geothermal expenditure deduction (schedule 5);
- low-income superannuation contribution (schedule 7);
- income support bonus (schedule 8); and
- schoolkids bonus (schedule 9).

2.32 The bill also seeks to revise the following MRRT-related measures:

- capital allowances for small business entities (schedules 3 and 4); and
- the superannuation guarantee charge percentage increase (schedule 6).

Background

2.33 The bill is a reintroduction of the Minerals Resource Rent Tax Repeal and Other Measures Bill 2013, which the committee considered in its *First Report of the 44th Parliament*,[3] and subsequently in its *Eighth Report of the 44th Parliament*.[4]

2.34 The measures were then reintroduced as the Minerals Resource Rent Tax Repeal and Other Measures Bill 2013 [No. 2], which the committee reported on in its *Ninth Report of the 44th Parliament*.[5]

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1 *Minerals Resource Rent Tax Act 2012*; *Minerals Resource Rent Tax (Imposition—Customs) Act 2012*; *Minerals Resource Rent Tax (Imposition—Excise) Act 2012*; and *Minerals Resource Rent Tax (Imposition—General) Act 2012*.

2 Including the *Income Tax Assessment Act 1997* and the *Taxation Administration Act 1953*.

3 Parliamentary Joint Committee on Human Rights, *First Report of the 44th Parliament* (10 December 2013) 35-40.

4 Parliamentary Joint Committee on Human Rights, *Eighth Report of the 44th Parliament* (24 June 2014) 51-53.

5 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44th Parliament* (15 July 2014) 56-62.

2.35 The committee then reported on the bill in its *Twelfth Report of the 44th Parliament*.[6]

2.36 The bill was passed by both Houses of Parliament and received Royal Assent on 5 September 2014.

Right to social security and an adequate standard of living

Deferral of proposed increase in compulsory superannuation contribution

2.37 The committee sought the Treasurer's advice as to whether the deferral of the proposed increase to the compulsory superannuation contribution by 10 years 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 a reasonable and proportionate measure for the achievement of that objective.

Repeal of low-income superannuation contribution

2.38 The committee sought the Treasurer's advice as to whether the repeal of the low-income superannuation contribution 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 a reasonable and proportionate measure for the achievement of that objective.

Repeal of the low-income support bonus

2.39 The committee sought the Treasurer's advice as to whether the measure to repeal the low-income support bonus 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 a reasonable and proportionate measure for the achievement of that objective.

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6 Parliamentary Joint Committee on Human Rights, *Twelfth Report of the 44th Parliament* (24 September 2014) 15-20.

Minister's response

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.[7]

Committee response

2.40 **The committee thanks the Parliamentary Secretary to the Treasurer for his response.**

2.41 However, the committee notes that the response does not provide further information regarding the compatibility of the measures with Australia's international human rights obligations. Instead, the response reiterates the government's view that the measures are compatible. The committee refers to Guidance Note 1 on the committee's website regarding the requirements for statements of compatibility and the type of information required to justify measures that limit a human right.

2.42 **On the basis of the information provided, the committee considers that the deferral of the proposed increase in compulsory superannuation contributions, the repeal of the low-income superannuation contribution and the repeal of the low-income support bonus may be incompatible with the right to social security and the right to an adequate standard of living.**

7 See Appendix 1, Letter from the Hon. Steven Ciobo MP, Parliamentary Secretary to the Treasurer, to Senator Dean Smith (dated 11/12/2014) 1.

Telecommunications Legislation Amendment (Deregulation) Bill 2014

Portfolio: Communications
Introduced: House of Representatives, 22 October 2014

Purpose

2.43 The Telecommunications Legislation Amendment (Deregulation) Bill 2014 (the bill) contains a number of amendments, including to:

- repeal the *Telecommunications Universal Service Management Agency Act 2012* to abolish the Telecommunications Universal Service Management Agency (TUSMA);
- transfer TUSMA's functions and contractual responsibilities to the Department of Communications;
- amend the *Australian Communications and Media Authority Act 2005*, *Export Market Development Grants Act 1997* and *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Consumer Protection Act) to make amendments consequential on the regulation of the supply of telephone sex services via a standard telephone service being removed from the Consumer Protection Act;
- amend the *Do Not Call Register Act 2006* to enable an indefinite registration period for numbers on the register; and
- reduce requirements on carriage service providers in relation to customer service guarantees.

Background

2.44 The committee reported on the bill in its *Sixteenth Report of the 44th Parliament*.[1]

Committee view on compatibility

Repeal of Part 9A of the Consumer Protection Act

Rights of the child

2.45 The committee sought the advice of the Minister for Communications as to whether the proposed repeal of Part 9A of the Consumer Protection Act (CPA) is compatible with the rights of the child, and particularly:

- whether the proposed changes are aimed at achieving a legitimate objective;

1 Parliamentary Joint Committee on Human Rights, *Sixteenth Report of the 44th Parliament* (25 November 2014) 23-24.

- 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.

Minister's response

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 R 18+ 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.[2]

Committee response

2.46 **The committee thanks the Minister for Communications for his response.**

2.47 The committee notes that the minister's response states that Part 9A of the CPA is not required to ensure the protection of children from the harm of telephone sex services because of the existing protections in schedule 7 of the BSA. In order to ensure no diminution in protection of children from harm as required by the Convention on the Rights of the Child, schedule 7 of the BSA must provide equivalent protection to Part 9A of the CPA. The committee notes that schedule 7 of the BSA effectively imposes a regulatory regime on telephone sex service providers that is based on industry codes of conduct. The committee considers that the minister's response has not explained how the protections in schedule 7 are equivalent to those proposed to be repealed in Part 9A of the CPA which imposes mandatory compliance obligations.

2.48 **The committee therefore seeks the advice of the Minister for Communications as to whether schedule 7 of the BSA offers a comparable level of protection for children from the harm of telephone sex services to that provided by Part 9A of the CPA as required by the Convention on the Rights of the Child.**

2 See Appendix 1, Letter from the Hon. Malcolm Turnbull MP, Minister for Communications, to Senator Dean Smith (received 6/1/2015) 1-2.

Social Security (Administration) (Declared income management areas - Ceduna and Surrounding Region) Determination 2014 [F2014L00777]

Portfolio: Social Services
Authorising legislation: Social Security (Administration) Act 1999
Last day to disallow: 1 September 2014 (Senate)

Purpose

2.49 The Social Security (Administration) (Declared income management areas - Ceduna and Surrounding Region) Determination 2014 (the instrument) seeks to establish an income management site within Ceduna and the surrounding region in South Australia.

2.50 Income management in the Ceduna and surrounding region will follow the same model that was introduced into five sites across Australia on 1 July 2012 as part of the Government's *Building Australia's Future Workforce* (BAFW) package, and later expanded into the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands of South Australia and the Ngaanyatjarra (Ng) Lands and Laverton in Western Australia.

2.51 Income management will apply to vulnerable families and individuals in the Ceduna and surrounding region, including:

- people referred for income management by State child protection authorities, where they assess that a child is at risk (the child protection measure);
- people classified as vulnerable welfare payment recipients, including those vulnerable to financial hardship, economic abuse or financial exploitation and homelessness/risk of homelessness, and young people on the unreasonable to live at home rate of payment, or those leaving custody and receiving a crisis payment; and
- people who volunteer for income management (voluntary income management).

Background

2.52 The committee has previously held an inquiry into the Stronger Futures in the Northern Territory Bill 2012 and related legislation,[1] and is currently commencing a new examination into the legislation.

2.53 The committee reported on the instrument in its *Tenth Report of the 44th Parliament*.[2]

1 Parliamentary Joint Committee on Human Rights, *Stronger Futures in the Northern Territory Act 2012 and related legislation*, Eleventh Report of 2013, June 2013.

Racial discrimination

The rights of equality and non-discrimination

2.54 The committee sought 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.

Gender discrimination

The rights of equality and non-discrimination

2.55 The committee sought 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.

Disempowerment and discrimination under compulsory income management measures

Right to social security and an adequate standard of living

2.56 The committee sought 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.

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2 Parliamentary Joint Committee on Human Rights, *Tenth Report of the 44th Parliament* (26 August 2014) 111-118.

Right to privacy

2.57 The committee sought 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 a reasonable and proportionate measure for the achievement of that objective.

The right to self-determination

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

2.59 The committee sought 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.

Minister's response

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 tum 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-andchildren/programs-services/income-management/income-management-cedu.na-regionconsultations-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 Pavment 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 of 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 good (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.[3]

Committee response

2.60 **The committee thanks the Minister for Social Services for his response. The committee considers that the response provides useful information which requires further analysis and inquiry by the committee. Noting that the committee is currently undertaking a broader inquiry: *Review of Stronger Futures in the Northern Territory Act 2012 and related legislation* and intends to report in mid-2015, the committee will consider this response as part of that broader inquiry.**

Senator Dean Smith
Chair

3 See Appendix 1, Letter from the Hon Kevin Andrews MP, Minister for Social Services, to Senator Dean Smith (dated 22/09/2014) 2-9.