Ministerial responses — Report 5 of 2021[1]

1 This can be cited as: Parliamentary Joint Committee on Human Rights, Ministerial responses, *Report 5 of 2021*; [2021] AUPJCHR 52.

PARLIAMENT OF AUSTRALIA • HOUSE OF REPRESENTATIVES

PAUL FLETCHER MP

Federal Member for Bradfield
Minister for Communications,
Urban Infrastructure,
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MS21-000235

Dr Anne Webster MP
Chair
Parliamentary Joint Committee on Human Rights
Parliament House
Canberra ACT 2600

Dear Chair Anne

Thank you for your letter of 18 March 2021 seeking additional information to inform the deliberations of the Parliamentary Joint Committee on Human Rights (the Committee) about the Online Safety Bill and the Online Safety (Transitional Provisions and Consequential Amendments) Bill 2021.

I have noted the comments of the Committee in its *Report 3 of 2021* that the Online Safety Bill (the Bill) is likely to promote numerous human rights, particularly the rights of women, the child and privacy and reputation.

I provide the attached information about the Online Safety Bill (the Bill) in response to its requests of the Committee. This provides details of:

- the expected use by the Commissioner of the power to issue blocking requests and notices under Part 8 of the Bill;
- the operation of the proposed Online Content Scheme under Part 9 of the Bill and
- the impact on the rights of the child and on human rights of the provisions relating to disclosure of information under Part 15 of the Bill.

I trust this information will be of assistance to the Committee in its deliberations.

Yours sincerely

Paul Fletcher

30/3/2021

Enc.

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Online Safety Bill:

Information provided in response to the Committee's requests at paragraphs 1.27, 1.38, 1.50 and 1.60 of Report 3 of 2021

Impact on Freedom of Expression

1.43 The committee has not yet formed a concluded view in relation to this matter. It considers further information is required to assess the human rights implications of this bill, and as such seeks the minister's advice as to the matters set out at paragraphs [1.27] and [1.38].

Additional information in relation to the power of the eSafety Commissioner to issue blocking requests and blocking notices to Internet Service Providers under part 8 of the Bill is provided in relation to each question at 1.27.

1.27 In order to assess the proportionality of this measure with the right to freedom of expression, further information is required, in particular:

a) what is meant by the term 'significant harm' and what guidance would be provided to the Commissioner in determining what reaches the threshold of 'significant harm' (as opposed to 'harm') in practice;

The intent of the power of the Commissioner to issue blocking requests or notices is to prevent the rapid distribution of abhorrent material online, as occurred, for example, after the 2019 terrorist attacks in Christchurch, New Zealand where the perpetrator streamed the attacks and the footage was shared on many sites.

This power is intended to be used under circumstances where such material is being disseminated online in a manner likely to cause significant harm to the Australian community and that warrants a rapid, coordinated and decisive response by the online industry.

While 'significant harm' is not defined in the Bill, it is a requirement the Commissioner have regard to the three criteria provided in subclauses 95(4) and 99(4) before making a determination that the material met this threshold. These criteria are the nature of the material, the number of end-users likely to access the material and such other matters as are relevant.

In terms of guidance provided to the Commissioner, it is the intention that these powers work in tandem with any protocol developed by the Commissioner, in consultation with ISPs and the Communications Alliance (a key industry organisation for the communications industry), that sets out detailed arrangements for how blocking requests and blocking notices will work.

It should also be noted that the issuing of blocking notices would be subject to merits review by the Administrative Appeals Tribunal under subclause 220(13) and internal review under clause 220A which may provide persuasive guidance about the appropriate threshold of significant harm.

b) whether material which could be used to inform journalistic analysis of violent incidents (for example, raw protest footage filmed by participants, or footage of violent police misconduct) but which was not itself made by a journalist, would be exempt from removal by the Commissioner;

Part 8 of the Bill relates to powers of the Commissioner's to issue blocking requests or notices to internet service providers rather than powers to issue removal notices.

Clause 104 of the Online Safety Bill sets out a range of material which would be exempt from the Commissioner's power to request or require blocking. These are based on the defences available in the Criminal Code Act (at section 474.37). Paragraph 104(1)(e) of the Online Safety Bill provides for an exemption for material that relates to a news or current affairs report. There is no implication that the material would need to be created by the journalist involved – rather that material relates to a news report that is created by a professional journalist and is in the public interest. Further, journalistic analysis of material relating to protests of violent police misconduct may remain available given that paragraph 104(1)(h) includes an exemption for accessibility of material for the purpose of advocating for lawful procurement of a change to any matter established by law, policy or practice.

c) what guidance would be provided to the Commissioner, and what factors would they take into consideration, in determining whether access to material is in the public interest;

It is expected that news and current affairs reports provided by mainstream media sites would meet the public interest test as per clause 104(1)(e)(i).

No specific guidance would be provided to the Commissioner who would be expected to assess this on a case by case basis to balance the interest for the public to be informed about news and current affairs against the expectation that the public would be protected from gratuitous exposure to this material. It is expected that the Commissioner would form a view based on such resources as the Press Council of Australia standards of practice1 and broadcasting codes of practice registered with the Australian Communications and Media.2

It should also be noted that the issuing of blocking notices would be subject to merits review by the Administrative Appeals Tribunal under subclause 220(13) and internal review under clause 220A.

d) what range of steps the Commissioner could specify in a blocking notice or request (beyond those examples in subclauses 95(2) and 99(2)), and what limits (if any) are there on the steps which the Commissioner could request or require;

There are no additional specifications or limits other than the examples specified in subclauses 95(2) and 99(2).

e) why the bill does not specify that the Commissioner may require the removal of an individual piece of content (or class of content), rather than requiring the blocking of an entire domain or URL, where satisfied that this would be effective;

This is not needed in Part 8 of the Bill because the powers of the Commissioner to order the removal of individual pieces of content are in other parts of the Bill. Clauses 95 and 99 require the Commissioner to have regard to whether any other powers conferred on the Commissioner (such as the removal notices for class 1 material under Part 9 or the AVM notice power under the Criminal Code) could be used to minimise the likelihood that the availability of the material online could cause significant harm to the Australian community. The intention is that this power be used

[1] Standards of Practice - Australian Press Council
[2] Standards and codes for TV and radio broadcasters | ACMA

if this is the most effective mechanism to stop the potential harm to a large number of end-users quickly.

f) why it would not be as effective to provide for an interim blocking notice of short duration—with no requirement for procedural fairness—together with the power to issue a blocking notice of longer duration, but only where the internet service provider or other relevantly affected person has been provided with the opportunity to make a submission as to the content in question; and

It is anticipated that in the first instance, the Commissioner would issue a voluntary blocking request. There are no sanctions for non-compliance with a blocking request and the Commissioner may also revoke such a request. Each blocking request must only remain in force for a maximum of 3 months.

It is intended that where an ISP does not comply with a blocking request, the Commissioner may consider issuing a blocking notice. Non-compliance with the requirements under a blocking notice attracts a civil penalty and other enforcement mechanisms. Each blocking notice must only remain in force for a maximum of 3 months.

The proposal for an interim blocking notice would be inconsistent with the intent of proposed blocking request and blocking notice powers. Blocking requests and notices are designed to be time-limited to minimise any adverse effects on blocked domains while still achieving the purpose of preventing the harmful proliferation of material that depicts, promotes, incites or instructs in abhorrent violent conduct. Although the maximum time for a blocking notice is three months, it is more likely that the Commissioner would revoke them much sooner than this when the material is no longer available (under clauses 97 and 99).

As noted above, a decision of the Commissioner to issue of blocking notices would be subject to merits review by the Administrative Appeals Tribunal under subclause 220(13) and internal review under the internal review scheme that is required by clause 220A.

g) why the Commissioner would not be required to revoke a blocking notice or request should circumstances relevantly change prior to its original expiration.

Clause 97 provides the Commissioner with the power to revoke a blocking request. The Explanatory Memorandum notes that the Commissioner may use this power if the domain or URL ceases to host material subject to the blocking request or if sufficient time has passed to reduce the likelihood of the material reaching a large number of end-users. Similarly, clause 101 provides the Commissioner with the power to revoke a blocking notice.

Online Content Scheme

Additional information in relation to the operation of the Online Content Scheme is provided in response to each question under 1.38.

1.38 In order to assess the proportionality of this measure with the right to freedom of expression, further information is required, and in particular:

a) what evidence demonstrates that the full range of materials which would fall within Classes 1 and 2 (in particular, material depicting consensual sex between adults) would be harmful to adult end-users;

The Bill relies on the categories set out in the *Classification (Publications, Films and Computer Games) Act 1995* (Classification Act). To the extent possible, the principles and community standards that underpin the classification system also underpin the Bill. These principles include that adults should be able to read, hear, see and play what they want and children should be protected from material that may harm or disturb them. The Bill does not prohibit adults from viewing class 2 material online which includes material depicting consensual sex between adults. As described in more detail below, it limits the availability of class 2 material that would be classified 'X18+' material to sites hosted overseas and requires class 2 material provided from Australia, that would be classified 'R18+,' to be behind a system limiting access to those under 18 years of age.

Class 1 material is material that has been, or is likely to be, classified 'Refused Classification' under the Classification Act. It contains content that is very high in impact and falls outside generally-accepted community standards. It includes non-consensual sexual activity, for example descriptions or depictions of child sexual abuse or any other exploitative or offensive descriptions or depictions involving a person who is, or appears to be, a child under 18 years, promotion or provision of instruction in paedophile activity, sexual violence and bestiality. It also includes gratuitous, exploitative or offensive depictions of fetishes or practices which are offensive or abhorrent or incest fantasies or other fantasies which are offensive or abhorrent. Offline, films, computer games and publications that are classified 'Refused Classification' cannot be sold, hired, advertised or legally imported in Australia. To the extent possible, the approach taken to this type of material under the Bill is consistent with the offline approach. That is, it should not be accessible to Australian end-users and is subject to removal notices.

Class 2 material may be material that has been, or would likely be, classified 'X18+' or 'Category 2 Restricted' under the Classification Act. This content contains real depictions of actual sexual intercourse and other sexual activity between consenting adults. Any depictions of non-adult persons or adult persons who look like they are under 18 years or portrayed to be minors are not permitted. No violence, coercion or sexually assaultive language is permitted. Fetishes such as body piercing, application of substances such as candle wax, 'golden showers', bondage, spanking or fisting are also not permitted. Offline, X18+ material is restricted to adults and is only available for sale or hire in the Australian Capital Territory and some parts of the Northern Territory. Category 2 Restricted publications may not be publicly displayed and may only be displayed in premises that are restricted to adults such as adult shops. To the extent possible, the approach taken with respect to this type of material under the Bill is consistent with the approach taken offline. That is, in the offline world this type of material should not be displayed in public spaces where it can be accessed by children and online it would be subject to removal notices where available on a service provided from Australia. This approach also recognises the jurisdictional limitations in enforcing Australian community standards overseas.

Class 2 material may also be material that has been, or would likely be, classified 'R18+' or 'Category 1 Restricted' under the Classification Act. This material is considered to be unsuitable for minors and may offend some sections of the adult community. Both offline and online this type of material must be restricted to adults. This is consistent with the principles that adults should be able to read, hear, see and play what they want, minors should be protected from material likely to harm or disturb them and everyone should be protected from exposure to unsolicited material they find offensive.

b) why the Commissioner would be empowered to require the removal of mainstream pornography, rather than requiring that it must be accessible only via a restricted access system;

See above - to the extent possible, the approach taken with respect mainstream pornography under the Bill is consistent with the approach taken offline. That is, it should not be displayed in public spaces where it can be accessed by children and is subject to removal notices where available on a service provided from Australia. The approach also recognises the jurisdictional limitations in enforcing Australian community standards overseas and does not seek to remove X18+ material from services provided from overseas.

This treatment of mainstream pornography under the Bill has not changed - it is the same as the current approach under Schedules 5 and 7 of the *Broadcasting Services Act 1992*. That is, X18+ material must not be provided from or hosted within Australia and is subject to removal notices by the eSafety Commissioner.

c) why the bill could not require that the Commissioner must consider the purpose for which that content was published (for example, an educative, academic, medical, or health-related purpose); whether it would be in the public interest to remove material (on the basis that it may be unsuitable for a child to view, but may be reasonable for an adult to have access to); and how the interests of affected parties and end users would be affected;

The nature of the class 1 and class 2 material covered by the proposed online content scheme is such that unrestricted access it would be harmful to Australians, particularly children, and accordingly to the extent that the Bill lawfully restricts freedom of speech through these provisions, those restrictions are reasonable, proportionate and necessary to achieve the legitimate objective of protecting Australians online.

In practice, the Commissioner would consider the context or purpose for which the material was published during an investigation, including whether it is in the public interest. Under clause 42 the Commissioner may conduct any investigation as they think fit and e may refuse to investigate a complaint under clause 43.

The approach taken under the Bill with respect to the removal of certain class 2 material provided from Australia is consistent with the approach taken to this type of material offline. Both online and offline systems seek to limit the provision of this type of material while recognising that adults have the right to read, see, hear and play what they want and minors should be protected from material that may harm or disturb them.

d) what types of systems the Commissioner could declare a 'restricted access system', and whether these would require the provision of personal information in order to log in; and

Clause 108 of the Bill allows the Commissioner to declare by written instrument that a specified access control system or a class of such system is a ‘restricted access system’ in relation to online material for the purposes of the Bill. The purpose of a restricted access system declaration is not to prevent access to age-restricted content, but to seek to ensure that access is limited to persons 18 years and over and that the methods used for limiting this access meet a minimum standard.

The Commissioner would consult with industry in the development of any restricted access system declaration made under the regime. Industry is best placed to consider the most appropriate system for restricting access to content on their services, including whether a particular system

requires the provision of personal information to log in and what protections should be in place to secure that information.

e) in order to ensure procedural fairness, why this scheme could not instead provide for the issue of an interim removal, link-deletion, app removal, or remedial notice, followed by a further order only once the relevant service had been given the opportunity to make submissions as to the appropriateness of the content remaining accessible.

The interests of service providers are protected under the scheme through the review of decisions procedures provided by clauses 220 and 220A of the Bill.

Clause 220 provides for the review, by the Administrative Appeals Tribunal (AAT), of certain decisions made by the Commissioner, and sets out who may make an application for such review.

Internal review of the Commissioner's decisions is provided by clause 220A, under which the Commissioner must, by notifiable instrument, formulate a scheme for internal review of decisions of a kind referred to in clause 220. These decisions include review of a decision by the Commissioner under clauses 109, 110, 114, 115, 119, 120, 124 and 128.

Under subclause 220A (2) the internal review scheme may empower the Commissioner to, on application, review such a decision and affirm, vary or revoke the decision concerned.

Disclosure of information and rights of the child

1.50 In order to assess the compatibility of this measure with the rights of the child, further information is required as to:

a) whether the requirement for the Commissioner to have regard to the Convention on the Rights of the Child in the performance of their functions will require the Commissioner to consider the rights of the child as a primary consideration, and give due weight to the child's wishes in accordance with the age and maturity of the child, when considering whether to disclose information to teachers, principals, parents and guardians; and

Article 3(1) of the *Convention on the Rights of the Child* (CROC) provides that in all actions concerning children, the best interests of the child shall be a primary consideration. Subclause 24 (1) of the Bill provides that the Commissioner must have regard to the CROC in the performance of their functions. The Bill supports the best interests of the child by providing mechanisms so that children are protected from cyber-bullying.

The CROC also recognises the right of a child not to be subjected to unlawful attacks on their honour and reputation. By providing remedies for a child who is the target of such material, the Bill advances these rights.

b) whether the rights of the child would be better protected if clauses 213 and 214 were amended to expressly provide that the Commissioner may disclose information to teachers, principals, parents and guardians where to do so would be in the best interests of the child complainant and, after first giving due weight to the child's wishes in accordance with the age and maturity of the child.

Under subclause 213(1), the Commissioner may disclose information to a teacher or school principal if satisfied that the information will assist in the resolution of a complaint about cyber-bullying of a child made under clause 30 of the Bill. For example, where cyber-bullying involves a

group of school students, enlisting the help of the school or schools attended by the students may be the quickest and most effective means of resolving the complaint. Subclause 213(2) allows the Commissioner to impose written conditions to be complied with in relation to information disclosed under subclause 213(1). For example, the Commissioner may impose a condition preventing secondary disclosures to third parties.

Similarly, subclause 214(1) enables the Commissioner to disclose information to a parent or guardian of an Australian child if the Commissioner is satisfied that the information will assist in the resolution of a complaint made under clause 30 of the Bill. Subclause 214(2) allows the Commissioner to impose written conditions to be complied with in relation to information disclosed under subclause 214(1). Such conditions may include a requirement preventing secondary disclosures to third parties.

Resolution of a complaint by teachers or principals, or parents or guardians, has advantages over the more formal regulatory channels available under the Bill. Disclosure under clauses 213 and 214 may help quickly resolve the cyber-bullying complaint and as such promote the rights of the child.

It would be expected that the Commissioner would consider the child's views, consistent with the child's age and maturity, in deciding whether or not to exercise the Commissioner's discretion to disclose information under clauses 213 and 214. Part 15 of the Bill provides that the Commissioner may disclose information in certain circumstances. It should be noted that Part 15 does not require disclosure.

Disclosure of information to the authority of a foreign country and human rights

1.60 In order to assess the compatibility of this measure with human rights, further information is required as to:

a) what is the nature and scope of personal information that is authorised to be disclosed to the authority of a foreign country;

Part 15 of the Bill deals with the disclosure of information and provides that the Commissioner may disclose information in certain circumstances. Part 15 only applies to information that was obtained by the Commissioner as a result of the performance of a function, or the exercise of a power, conferred on the Commissioner by or under this Act. Consequently the Part does not provide for the disclosure of all information the Commissioner may receive or have access to.

Subclause 212(1) of the Bill authorises the Commissioner to disclose information to any of a variety of authorities listed in that clause, if satisfied that the information will enable or assist the authority to perform or exercise any of its functions or powers. This disclosure enables these authorities to function to its maximum extent to protect the best interests of affected children and victims of cyber-abuse or image-based abuse. The Commissioner would be expected not to disclose personal information about victims without their consent

b) what conditions is it expected the Commissioner will impose on the disclosure of information with the authority of a foreign country and what are the consequences, if any, of that authority failing to comply with those conditions, particularly where an individual's right to privacy is not protected;

To ensure adequate protection of privacy, subclause 212(2) contains a provision which empowers the Commissioner, by writing, to impose conditions to be complied with in relation to information

disclosed under this clause. This may include, for example, conditions that prevent further disclosure by the recipient to third parties.

c) why there is no requirement in the bill requiring that the Commissioner, when disclosing information to a foreign country, must impose conditions in relation to privacy protections around the handling of personal information, and protection of personal information from unauthorised disclosure;

The Commissioner may disclose information to designated foreign authorities only, who are responsible for regulating matters or enforcing laws relating to the safe use of certain internet services or material accessible to the end-users of certain internet services.

Paragraph 212(1)(h) and paragraph 212(1)(i) allows the Commissioner to disclose information to an authority of a foreign country that is responsible for regulating matters or enforcing laws of that country relating to either or both the capacity of individuals to use social media services, relevant electronic services and designated internet services in a safe manner, or material that is accessible to, or delivered to, end-users of social media services, relevant electronic services and designated internet services. For example, the Commissioner may disclose information to the United States Department of Justice or the Commissioner's counterpart (i.e. Online Safety Commissioner) in another country.

As stated in the previous response, to ensure adequate protection of privacy, subclause 212(2) empowers the Commissioner, by writing, to impose conditions to be complied with in relation to information disclosed under this clause.

d) what is the level of risk that the disclosure of personal information could result in: the investigation and conviction of a person for an offence to which the death penalty applies in a foreign country; and/or a person being exposed to torture or cruel, inhuman or degrading treatment or punishment in a foreign country; and

The disclosure of information is at the discretion of the Commissioner, limited only to regulators or law enforcement agencies dealing with online safety and can be subject to further conditions.

Subclause 212(1) of the Bill provides the Commissioner may disclose information to any of a variety of authorities listed in that clause, if satisfied that the information will enable or assist the authority to perform or exercise any of its functions or powers.

Paragraph 212(1)(h) and paragraph 212(1)(i) allows the Commissioner to disclose information to an authority of a foreign country that is responsible for regulating matters or enforcing laws of that country relating to either or both the capacity of individuals to use social media services, relevant electronic services and designated internet services in a safe manner, or material that is accessible to, or delivered to, end-users of social media services, relevant electronic services and designated internet services.

Subclause 212(2) allows the Commissioner to impose written conditions to be complied with in relation to information disclosed under subclause 212(1). This provides a safeguard by which the Commissioner may limit further disclosure of the information, where it is appropriate to do so.

e) what, if any, safeguards are in place to ensure that information is not shared with the authority of a foreign country in circumstances that could expose a person to the death penalty or to torture or cruel, inhuman or degrading treatment or punishment, including:

(i) the approval process for authorising disclosure;

(ii) the availability of any guidelines as to when disclosure would not be appropriate in certain cases and to certain countries; and

(iii) whether there will be a requirement to decline to disclose information where there is a risk that it may expose a person to the death penalty or to torture or cruel, inhuman or degrading treatment or punishment.

By authorising the disclosure of information obtained by the Commissioner, to the authorities of foreign countries for the purpose of assisting them to perform or exercise any of their functions or powers, clause 212 engages and limits the right to privacy. However, the provision is necessary to allow the authorities to protect the best interests of affected children and victims of cyber-abuse and image-based abuse.

To ensure adequate protection of privacy, subclause 212(2) empowers the Commissioner to impose conditions to be complied with in relation to information disclosed under this clause, which may include, for example, conditions that prevent further disclosure to third parties.

Where information is provided to foreign law enforcement, it would be provided via Australian Federal Police and Interpol. Any information provided would therefore be consistent with the protocol of not disclosing law enforcement information to foreign agencies in circumstances where it might lead to prosecution involving the death penalty.

Senator the Hon Michaelia Cash
Minister for Employment, Skills, Small and Family Business
Deputy Leader of the Government in the Senate

Reference: MC21-001330

Dr Anne Webster MP
Chair
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By email: human.rights@aph.gov.au

Dear Dr Webster

Thank you for your email of 25 February 2021 regarding the *Social Security (Parenting payment participation requirements – class of persons) Instrument 2021* (the Instrument).

ParentsNext is a highly successful pre-employment program that helps parents plan and prepare for employment before their youngest child starts school. Parents receive personalised assistance to help them identify their education and employment goals, improve their work readiness and link them to services in the local community.

The Instrument streamlines eligibility requirements for ParentNext participants from 1 July 2021. The changes to eligibility will better support those parents most in need and ensure all participants have access to financial assistance to help them achieve their education and employment goals. The Participation Fund, a flexible pool of funds to support work preparation expenses of participants, and access to wage subsidies will be available to all participants. This assistance is currently only available to those in the Intensive stream (40 per cent of participants).

This Instrument does not introduce compulsory participation or the Targeted Compliance Framework (TCF) to ParentsNext participants. The TCF has applied to ParentsNext participants since the national roll-out of the program on 1 July 2018.

In relation to the Committee's request for further information regarding participation requirements for ParentsNext, please find my responses below.

(a) what percentage of participants in the ParentsNext program are: Indigenous; from a culturally and linguistically diverse background; or identify as a person with disability

Percentage of ParentsNext participants by Indigenous, CALD, and Disability status as at 28 February 2021*	
Indigenous	18 per cent
CALD	21 per cent
Persons with Disability	15 per cent

*A participant who identifies with more than one of the above characteristics is included separately in each count.

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(b) how reducing, suspending or cancelling a person's parenting payment where they fail to participate in the ParentsNext program would be effective to remove barriers to employment and education, and stabilise family life for those participants

This instrument makes no changes to the program's participation requirements or consequences for non-compliance. Compulsory participation in active labour market programs has been shown to result in significantly better outcomes for participants.

ParentsNext continues to demonstrate positive outcomes for parents. Between 1 July 2018 and 28 February 2021:

- 69,528 participants had commenced education
- 35,153 participants had commenced employment
- 4,909 participants had exited the program after achieving stable employment.

Participants are protected from lasting impacts to their payment by safeguards built into the TCF which is designed to give participants every opportunity to meet the mutual obligations that they have agreed with their provider (see further information below).

(c) how many compulsory participants in the ParentsNext program have had their payments suspended, reduced or cancelled, and what is the average duration in each case

Payment suspensions occur when a participant does not meet their participation requirements. Suspensions are lifted with full back-pay once a participant contacts their provider with a valid reason—for example if they or their child is/was unwell. As income support payments are made fortnightly, payment suspensions typically do not result in any delay in the person accessing their payment.

Since 7 December 2020, participants have two business days' 'resolution time' to contact their provider to discuss why they were unable to meet their participation requirement, or to re-engage. Where this occurs, there is no payment suspension. For ParentsNext this has resulted in 35 per cent fewer payment suspensions.

Before ParentsNext participants face any lasting penalty for not meeting their requirements, they attend two assessments to ensure their requirements are appropriate for their circumstances and there is no undisclosed information affecting their capacity to meet requirements. One of these assessments is undertaken by the participant's provider, the other by Services Australia.

Payment reductions and cancellations are targeted to only those participants who have not met their requirements on at least five prior occasions, without a valid reason. As at 28 February 2021, ParentsNext has assisted more than 156,000 parents.

ParentsNext compliance events 2 July 2018 – 28 February 2021		
Type	**Parents**	**Average duration (calendar days)**
Parenting Payment Suspensions	52,343	5
Parenting Payment Reductions	10	14
Parenting Payment Cancellations*	1,072	28

* If a parent's payment remains on hold for more than 28 days, their income support payment is cancelled, and they must reapply.

(d) how it is proportionate to the stated aim of this measure to reduce, suspend or cancel a participant's parenting payments for a failure to meet their engagement requirements under the ParentsNext program

ParentsNext is designed with a focus on meeting the needs of parents. It is flexible, recognises parents' caring responsibilities, does not require them to look for work, and incorporates family friendly sites and activities.

ParentsNext participants are only required to attend a quarterly appointment with their provider. Aside from this quarterly appointment, participants are required to negotiate and agree to a participation plan which identifies education and employment goals, and participate in an agreed activity to assist in working towards those goals. Activities range from attending playgroups or similar activities, which provide social connections and networking opportunities for parents with limited work history, and significant non-vocational barriers, through to further education and training for parents who are work ready. Activities are agreed between the participant and provider and must take into account the participant's personal circumstances, including caring responsibilities. There is no minimum hourly participation requirement.

Compulsory requirements have been shown to be very effective in enabling participants to achieve significantly better outcomes. The achievement of better outcomes for participants is directly relevant to the stated aims of the ParentsNext program.

Where parents are genuinely unable to participate exemptions from requirements can be applied by the provider or Services Australia. There are a range of reasons why exemptions can be applied including due to domestic violence, caring responsibilities, sickness or injury.

(e) whether other, less rights restrictive alternatives to compulsory participation have been considered, and why other, less rights restrictive alternatives (such as voluntary participation, or voluntary participation incentivised by an additional financial payment) would not be effective to achieve the stated aims of the measure

Evidence from earlier similar pilots to the current ParentsNext program (Helping Young Parents and Supporting Jobless Families) in Australia showed significantly better results when the activity requirements were compulsory. Participating in Helping Young Parents (where participating in activities was compulsory) increased the chance of a person attaining a Year 12 or equivalent qualification by 14 percentage points, compared with a more modest 3 percentage points in Supporting Jobless Families (where participation in activities was voluntary).

ParentsNext is designed to engage the most disadvantaged parents. Parents who have experienced long-term disadvantages may not be fully aware of the program's benefits and opportunities for further support, and as a result can be reluctant to participate voluntarily. While parents can volunteer to participate, they rarely do. Since 1 July 2018 only 946 parents have volunteered to participate in the program.

While the most disadvantaged parents are less likely to seek assistance to improve their education or work readiness, program evidence shows that approximately 75 per cent of ParentsNext participants—that is, highly disadvantaged parents—report an improvement in their motivation to achieve their work or study goals. Additionally, the evaluation of the ParentsNext program found that a ParentsNext participant was 6.9 percentage points more likely to participate in employment than a comparable parent who did not participate in the program.

Compulsory participation requirements are necessary to ensure that the most disadvantaged parents receive the support they need. While an incentive based approach may encourage some parents to volunteer, it would be significantly less effective in targeting support to those most in need.

(f) what safeguards are in place to ensure that persons whose parenting payment is reduced, suspended or cancelled following a mutual obligation failure have funds available to meet their basic needs, and those of their children

The TCF is designed to ensure only participants who are persistently and wilfully non-compliant incur financial penalties while providing protections for the most vulnerable.

Suspensions and penalties under the TCF only affect payments made in respect to the person themselves, such as Parenting Payment. Payments and supplements paid for the support of a person's children such as Family Tax Benefit (FTB) and child care assistance are not affected by the application of the TCF. Rent Assistance for parents is almost always paid through FTB, so it would also be unaffected by any penalties. The rate of payments and supplements paid for the support of a person's child depends on the individual and family circumstances.

I trust this information is of assistance.

Yours sincerely

Senator the Hon Michaelia Cash
11 /07/ 2021

THE HON SUSSAN LEY MP
MINISTER FOR THE ENVIRONMENT
MEMBER FOR FARRER

MC21-002883

14 APR 2021

Dr Anne Webster MP
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Dear Chair Anne

Thank you for your correspondence of 1 April 2021 concerning the consideration by the Parliamentary Joint Committee on Human Rights (the Committee) of the Sydney Harbour Federation Trust Amendment Bill 2021.

I intend to remake the *Sydney Harbour Federation Trust Regulations 2001* in time for the scheduled sunsetting of the regulations on 1 October 2021. As part of this, and subject to the agreement of the Governor-General, regulation 11 will be revised to ensure it is consistent with Australia's human rights obligations. I expect that this will resolve the concern raised by the Committee, which is a function of the regulations, not the Bill. Further detail is provided in the enclosure to this letter.

Yours sincerely

SUSSAN LEY

Enc

Response to the Parliamentary Joint Committee on Human Rights – New and continuing matters, Report 4 of 2021 – Sydney Harbour Federation Trust Amendment Bill 2021

Paragraph 1.6 of the Report the Committee commented that:

By providing for the enforcement of a prohibition against organising or participating in organised assemblies, this bill engages and appears to limit the rights to freedom of expression and assembly.

Paragraph 1.8 of the Report the Committee requested the Minister for the Environment's advice as follows:

Consequently, in order to assess the extent to which this bill engages and may limit the rights to freedom of expression and assembly, further information is required, and in particular:

(a) whether it is intended that section 11 of the Sydney Harbour Federation Trust Regulations 2001 will be retained as drafted, retained subject to amendments, or removed;
(b) how the organisation of, or participation in, a public assembly (including a meeting, demonstration, procession, performance, or sporting event) on Trust land would constitute a threat to public order or public health;
(c) what safeguards exist to protect the rights to freedom of expression and assembly, noting that the regulations establish a broadly defined prohibition on a public assembly which would appear to include assemblies which may pose no threat to public order on public lands (including how often has the Trust issued or refused to issue a permit for the carrying out of assemblies, and on what basis); and
(d) why other, less rights restrictive alternatives (such as only prohibiting activities contravening regulations which constitute a public hazard or a risk to public health) would not be effective to achieve the objective of this measure.

Response to the Committee's request

The Government is in the process of remaking the *Sydney Harbour Federation Trust Regulations 2001* (the Regulations), which are due to sunset on 1 October 2021.

In doing this, the intention is to redraft regulation 11 to ensure it is consistent with Australia's international human rights obligations.

When the Harbour Trust was first formed, the sites were un-remediated and closed to the public with many public health hazards. The regulations drafted in 2001 were, at the time, considered necessary for protecting the public from threats posed by un-remediated sites.

With most of the Trust’s sites now remediated and open to the public, it is intended that regulation 11 will now be amended to be more explicitly compatible with the right of peaceful assembly contained in Article 21 of the International Covenant on Civil and Political Rights.