

ParentsNext should be abolished or made voluntary

Below is my submission to the: **Inquiry Workforce Australia Employment Services** specifically relating to the ParentsNext program.

ParentsNext is not run to the legislation. ParentsNext provides opportunity for illegal activity. ParentsNext is a tool to funnel public money into private interests. ParentsNext is sexist. ParentsNext providers breach Domestic and International Law. ParentsNext undervalues the unpaid work women do in the home.

I was a “compulsory voluntary” participant of ParentsNext in 2018 until my child turned 5 years old on December 7th 2018 and I met the legislative requirements for compulsory participation. I was unable to exit the program before 7th Dec 2018 and was restrained as a compulsory voluntary participant for several months. I was able to confirm my ineligibility for the program in several ways- legally with my lawyers, by reading the legislation and applying the stated requirements and by the evidence I received in the form of an FOI where the then Department of Jobs wrote in an email that I was in fact “ineligible”. None of this mattered- I was still forced to participate. I was also forced by a ParentsNext “provider” to sign a Privacy Waiver that gives that individual (with no skills or education) the legal right to contact my GP without my permission by using the form I was forced to sign. If I didn’t sign the Privacy Waiver I was told my payments (to feed my child) would be cut. I recorded this conversation and have it as evidence. It is illegal to force a person to sign over their right to privacy under threat of penalty. Please ask for the recorded evidence I have.

As part of my FOI information I found out that the Department of Jobs had been backgrounding me. The Department of Jobs had included me in their Media Monitoring database and were sending internal emails about me and the unrelated work I’d done in the community, and commenting unfavourably on it/me during their lunchtime emails. Highly unprofessional and sadly, not surprising.

We all know that ParentsNext is a great way for the Government to funnel public money to private interests. Contrary to popular belief, parents are not stupid. ParentsNext is thinly veiled as a program to “help parents (women) back to work”. However, this vastly undermines and devalues the **work** that women are doing at home caring for children. If the Government really wanted to help women return to work why not ask women what would help instead of imposing a ridiculous program that forces women out of their homes to take children to swimming lessons and making their parenting payment (and ability to feed and house children) contingent on doing an arbitrary activity? Also, why not force absent fathers into training programs to be more present and active fathers? Or actually revamp the Child Support system so absent fathers are held accountable?

ParentsNext “providers” are just job network providers. They are not specially trained, they have no skills or experience working with ‘*potentially vulnerable women*’ (which is the line the Govt uses to justify this ridiculous and discriminatory program), who may be escaping family violence. Why does the Government think it’s acceptable to expose these *vulnerable women* to untrained and uneducated providers? Why are there KPIs set for *vulnerable women* and children? Why do the ParentsNext providers force women who have found their own work to provide payslips? Why do the providers use in house “training” (eg: watch a YouTube video on Microsoft Word)? Because we all know the ParentsNext “providers” get a cash bonus for these things. So in a shining moment of altruistic intelligence the Government incentivises the ParentsNext workers while penalising the mothers who are caring for children.

ParentsNext is sexist. This can’t be denied. Women make up 96% of the participants. I once received a brochure from a ParentsNext provider. This brochure had an image of a woman sitting on a couch and the brochure said “get off the couch!” in relation to the ParentsNext program. So, the Government actually believes that women who are single and sole parents are just sitting around doing nothing. This is disgusting and not factual in any way. I have a degree in Social Science with a Double Major in Government and Policy and worked at NSW State Parliament and parenting is the hardest thing I’ve ever done.

Labor should care about all workers, and women who work caring for children are important to society and should be valued as such. This program doesn’t work, and the only people saying it does are those with vested interests- and why would you listen to those people? Listen to the 50,000 people who have signed my petition, or the 2000 people who are on my Facebook group, or just the intelligent and educated researchers who have submitted to inquiries about this ridiculous and punitive program over the years. If it really was about helping women, the Govt would actually listen to them.

Please see the document below that I had my lawyers produce in 2018 that clearly indicates how the ParentsNext breaches International and Domestic law. Really, it shouldn’t be up to individual women in the community to defend the rights of women and children in the community- this should be the role of the Government. Please do better.

Human rights implications of the ParentsNext program

Prepared by Marque Lawyers, 15 October 2018

1. This paper reviews the ParentsNext program's compatibility with human, social or economic rights. These rights have been either created or codified in international conventions to which Australia is a party. The paper explains these rights and considers their interaction with the ParentsNext program, as it exists in both the enabling legislation and implemented policy.
2. **Summary**
 - 2.1 ParentsNext is designed as a pre-employment program which connects parents of young children to services in their local community to help them plan and prepare for employment by the time their youngest child reaches school age.
 - 2.2 However, participation in the program is mandatory for those deemed eligible. Failure to attend an appointment with their provider, sign a Participation Plan or undertake the compulsory activities in the Participation Plan can result in the suspension, reduction or cancellation of the parenting payment.
 - 2.3 There are strong arguments that the legislative regime that implements this program is not compatible with key rights and freedoms listed in the *Human Rights (Parliamentary Scrutiny) Act 2011*. The program effectively limits the rights to receive social security and an adequate standard of living. The Statement of Compatibility with Human Rights accompanying the *Social Security (Parenting payment participation requirements – classes of persons) Instrument 2018 (No. 1) (Instrument)* does not adequately justify the legitimate objective for linking the program with parenting payments. Consequently, it is arguable that the program unfairly burdens human rights in breach of the Australia's international convention obligations.
 - 2.4 The stated objectives of the ParentsNext policy include:
 - (a) targeting early intervention assistance to parents at risk of long-term welfare dependency;
 - (b) helping parents identify their education and employment related goals and participate in activities that help them achieve their goals; and

- (c) connecting parents to local services that can help them address any barriers to employment.

The program could still meet its stated objectives without connecting program participation with the receipt of parenting payments.

2.5 Further evidence would be required to justify the necessity of potential suspension, reduction or cancellation of parenting payments in achieving these outcomes for individuals recognised as less advantaged and in need of greater support.

2.6 The four potential paths forward to challenge the laws are to make a submission to the Special

Rapporteur on Extreme Poverty and Human Rights, bring an individual complaint under the human rights treaties, a domestic complaint, or bring a local administrative challenge to a decision to put someone into the program.

3. Legislative regime

3.1 The legislative regime that implements the ParentsNext policy is structured as follows:

- (a) A person will qualify for a parenting payment if they meet the eligibility requirements under s500(1) of the *Social Security Act 1991* (Cth) (**the Act**).
- (b) To be eligible, a person who falls within a 'specified class' of persons must meet any 'participation requirements' that apply to that person under s500A; s500(1)(ca) of the Act.

The specified classes of people for 'targeted participants' or 'intensive participants' in the ParentsNext program, are contained within the Instrument. They are classified by geographical location. The Instrument replaces an earlier legislative instrument underpinning the trial ParentsNext program.

- (c) 'Participation requirements' which a person must meet include entering into a Parenting Payment Employment Pathway Plan when required to do so by the Secretary under s 501 of the Act. They must then comply with the requirements of the plan, be prepared to enter into another plan if required by the Secretary and comply with any requirements notified by the Secretary under s 502(1).
- (d) This is the key trigger for a person to be brought within the ParentsNext program. A Parenting Payment Employment Pathway Plan can only be

made a participation requirement (and thus, an eligibility requirement) for a person who:

- (i) is in one of the geographical classes in the Instrument; and
- (ii) is then directed by the Secretary (in their discretion) to enter the program.

3.2 Participants will be subject to the new targeted compliance framework where they do not comply with the above requirements.¹ Payments may be affected, suspended, reduced or cancelled under the targeted compliance framework.

3.3 The combination of the above has established a legislative regime which links the receipt of a parenting payment for identified classes of people with participation in, and compliance with, the ParentsNext program.

4. **ParentsNext Program**

4.1 ParentsNext commenced in 10 local government areas on 4 April 2016, and the expanded program under the Instrument commenced on 1 July 2018.

4.2 There are two compulsory streams: intensive and targeted (dependent on location, with different eligibility criteria for each).

(a) The intensive stream is a more rigorous program that services 30 locations (10 existing from initial program and 20 new locations),² where there is a high proportion of Parenting Payment recipients who are Indigenous.³

(b) The targeted stream applies in non-remote areas that are not part of the intensive stream.⁴

(c) The program can also be accessed by voluntary participants.⁵

4.3 A person's participation requirements for the ParentsNext program are typically administered by private non-government entities. Participants are required to attend an initial face to face appointment with their program provider, and then regular, at a minimum, quarterly contacts.

¹ The *Social Services Legislation Amendment (Welfare Reform) Bill 2017* was assented to on 11 April 2018, and changed the compliance framework from 1 July 2018. The framework is contained in Part 3, Div 3A of the *Social Security (Administration) Act 1999*.

4.4 Compulsory participants must sign a Participation Plan with at least one compulsory activity.⁶

This can include a pre-vocational activity⁷ or a vocational activity.⁸ There are no minimum

² **New South Wales:** Bankstown, Shellharbour, Wyong, Dubbo, Sydney-Central, Mid Coast, Orange, North Coast, Tamworth. **Northern Territory:** Darwin-Palmerston, Alice Springs.

South Australia:

Playford, Port Adelaide, Port Augusta & Whyalla. **Queensland:** Logan, Rockhampton, Cairns, Toowoomba, Mackay, Townsville. **Western Australia:** Kwinana, Perth-South, Geraldton, Broome, Perth-East. **Tasmania:** Burnie, Brighton. **Victoria:** Greater

Shepparton, Hume, Mildura. ³ Compulsory eligibility in the Intensive Stream is based on:

- i. receipt of a parenting payment for at least 6 months;
- ii. a youngest child under 6 years old;
- iii. no employment earnings in previous 6 months; and
- iv. one of the following high risk/high priority criteria:
 - a) is an early school leaver (aged under 22 years and has not completed secondary school or equivalent level of education) AND not undertaking full time study with a youngest child at least 6 months of age;
 - b) has a youngest child aged at least 5 years; or
 - c) is eligible for Parents next based on a JCSI (Job Seeker Classification Instrument) assessment with a youngest child at least 6 months of age. ⁴ Compulsory eligibility in the Intensive Stream is based on:

- i. receipt of a parenting payment for at least 6 months;
- ii. a youngest child under 6 years old;
- iii. no employment earnings in previous 6 months; and
- iv. one of the following high risk/high priority criteria:
 - a) is an early school leaver (aged under 22 years and has not completed secondary school or equivalent level of education) AND not undertaking full time study with a youngest child at least 1 year of age;
 - b) has a youngest child aged at least 5 years and is part of a jobless family (family has no reported employment earnings in previous 6 months); or
 - c) is eligible for Parents next based on a JCSI (Job Seeker Classification Instrument) assessment with a youngest child at least 3 years of age.

⁵ Parenting payments are not linked to participation in the program for voluntary participants. The program can be accessed voluntarily where the parent: (1) receives a parenting payment; (2) lives in an intense stream location; and (3) has a child younger than 6 years of age.

⁶ The Participation Plan must take into account the parent's individual circumstances and cannot include unsuitable or unreasonable requirements, and parents cannot be required to participate in a job search activity.

⁷ Suitable pre-vocational activities include parenting courses, confidence building courses, financial management, and attendance at medical or health related appointments or activities (can only be optional term in participation plan).

⁸ Suitable vocational preparation activities may include training or education activities (e.g. TAFE, secondary school, adult education courses), part-time work, voluntary work, Skills for Education and Employment program, Adult Migrant English program, Defence Force Reserves, and various government programs (e.g. jobactive, NEIS, Regional Employment Trials Program).

hourly participation requirements, but participants must fulfil the hourly requirements agreed in the Participation Plan.

4.5 Exemptions are available to compulsory participants, where they will not be obligated to meet the requirements for a particular period.²

4.6 We understand there was information previously published online about the providers which has since been removed and as a result we cannot verify its relevance. This information indicated that the costs of the compulsory activity would be covered by the provider, but transport and childcare costs must be paid by the participant.

5. **Compliance with Australia's International Human Rights Obligations**

5.1 In compliance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, a Statement of Compatibility with Human Rights (**Human Rights Statement**) accompanied the explanatory statement for the revised Instrument.

5.2 This statement seeks to justify the Instrument as compatible with the human rights and freedoms recognised or declared in the international instruments listed in the *Human Rights (Parliamentary Scrutiny) Act*.

5.3 The Human Rights Statement addresses the following rights.

- (a) the right to social security;
- (b) the right to an adequate standard of living;
- (c) the right to work;
- (d) the right to education;
- (e) the right to equality and non-discrimination; and

² Examples of listed exemptions include domestic violence, temporary incapacity, temporary reprieve due to pregnancy/birth of a child, major personal crisis, or major personal disruption to the parent's home.

- (f) the obligation to consider the best interests of the child in all actions concerning children.

5.4 Given the link between participation in the program and parenting payments, the key rights concerns are with the right to social security and the right to equality and non-discrimination.

6. **Right to Social Security and Right to Adequate Standard of Living**

- 6.1 The right to social security is provided for by the International Covenant on Economic, Social and Cultural Rights (**ICESCR**).

- 6.2 Article 9 of the ICESCR states that:

The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance.

- 6.3 Article 4 allows for limitations on the rights in the ICESCR, but ‘the State may subject such rights **only to such limitations as are determined by law** only in so far as this may be **compatible with the nature of these rights** and **solely for the purpose of promoting the general welfare in a democratic society**’.

- 6.4 The UN Committee on Economic, Social and Cultural Rights has stated that limitations must be proportional, the least restrictive alternative and, where permitted, of limited duration and subject to review. This is highlighted in the Human Rights Statement, although it is noted that this view is influential but not binding.

- 6.5 The UN Economic and Social Council has stated that there is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant.³ This refers to the obligation to not take unjustifiable backward steps that might affect the right, and this has also been interpreted directly from the wording in article 2 of the ICESCR.¹¹

- 6.6 The right to social security is also enshrined in article 26 of the Convention on the Rights of the Child (**CRC**), which provides for every child to benefit from social security and takes into account the circumstances of both the child *and persons having responsibility for the maintenance of the child*. There are

³ United Nations Economic and Social Council, General Comment No 19: The Right to Social Security (art 9), UN Doc. E/C.12/GC/19 (4 February 2008). ¹¹ United Nations Human Rights Office of the High Commissioner:
<https://www.ohchr.org/en/issues/escr/pages/whataretheobligationsofstatesonescr.aspx>.

also obligations against discrimination based on gender and race for the right to social security, which is discussed further below.

6.7 The Human Rights Statement simultaneously addresses the right to an adequate standard of living and the right to social security.⁴

6.8 Unjustifiable limitation on the right to social security

6.9 It is acknowledged in the Human Rights Statement that the ParentsNext program is a limitation on the right to social security. However, it is sought to be justified on the basis that it has a legitimate objective and that the objective is rationally connected to the limitation.

6.10 The majority of the analysis relates to the benefits of the program for participants, including identifying and addressing barriers to employment and connecting parents to local services that could support and assist in achieving their education and employment goals. The benefits of these services – if not connected to the receipt of a parenting payment and accessed on a voluntary basis – could be accepted.⁵

6.11 However, the central issue that has not been overcome in the Human Rights Statement is justifying the use of the compliance framework in connection with the program (i.e. connecting participation in the program to the receipt of parenting payments).

6.12 The only justification for this link was that ‘the risk of compliance action has proved to be effective in ensuring participants engage with providers’, and that this also acts as a ‘reengagement mechanism to ensure participants continue to actively participate and are focussing on the long term outcomes for themselves and their children’.⁶ These assertions were unsupported by studies or evidence in the Human Rights Statement.

6.13 Further, the Human Rights Statement noted that ‘participants are frequently reluctant to participate in programs like ParentsNext’. It was also acknowledged that participants often come from families that were subject to intergenerational disadvantage and had barriers to employment and education.

6.14 However, there was no analysis of the reasons for reluctance to participate or how these were being addressed within the program. There was no reference to evidence or studies that demonstrated the necessity of linking the parenting payment to participation, or how this overcame the underlying issues causing reluctance to enter the program.

⁴ The right to an adequate standard of living is contained in article 11 of the ICESCR, and article 27 of the CRC.

⁵ It is noted that ParentsNext is stated to have helped 22,000 participants to meet their individual employment and educational goals, and nearly 400 participants left the program after finding stable employment.

⁶ *Social Security (Parenting Payment Participation Requirements – Classes of Persons) Instrument 2018 (No. 1)*, Explanatory Statement, Attachment A (‘Statement of Compatibility with Human Rights’), p 9.

6.15 Additionally, the Human Rights Statement compares the participation requirements to jobseekers stating that the requirements are ‘much less than standard participation requirements for those serviced by jobactive employment service providers’.⁷⁸ This directly contrasts to the statement that ‘Participants will not be required to look for work’.⁹¹⁰

6.16 The justification of the program as a proportionate measure based on comparing its (apparently relatively low) burden to the workload of an individual seeking employment is unhelpful and irrelevant. The individuals in this program are carers for young children, and the intent of the program is not to force parents with young children to seek work.

6.17 It is also stated that, by signing the Participation Plan, ‘the person agrees that the compulsory activity is appropriate and undertakes to complete the activity’.¹¹¹² But if the participant does not sign a Participation Plan, they could be subject to the compliance framework. Therefore, it does not represent true consent that the participant believes that the compulsory activity is appropriate, as signing a Participation Plan is linked to the receipt of their parenting payment.

6.18 The argument is put forward that a payment will often be reinstated in full (including back payment) once the participant re-engages with the program. However, the financial burden of a suspension or reduction in the parenting payment, even if temporary, may have consequences difficult to remedy by a back payment. The use of the compliance framework to enforce participation can be construed as a punitive measure to force compliance with the program. The ability to review a decision to apply a financial penalty is not sufficient to overcome the punitive nature of the measure. It does not consider the potential difficulties in challenging a government decision faced by people who (in accordance with the program’s purpose) may be inherently disadvantaged.

6.19 We understand there was previously information published online about the providers which has since been removed and as a result we cannot verify its relevance. This information indicated that it is the providers who are able to make determinations in relation to whether an excuse for non-compliance is reasonable. If correct, there is a real risk of conflict for the providers, given their financial incentives are tied to participation in the program.

6.20 The statement that participants usually see its benefits very quickly and choose to actively engage for the benefit of themselves and their families does not, of itself, justify forced participation being linked to the receipt of parenting payments.

⁷ *Social Security (Parenting Payment Participation Requirements – Classes of Persons) Instrument*

⁸ (No. 1), Explanatory Statement, Attachment A (‘Statement of Compatibility with Human Rights’), p 10.

⁹ *Social Security (Parenting Payment Participation Requirements – Classes of Persons) Instrument*

¹⁰ (No. 1), Explanatory Statement, Attachment A (‘Statement of Compatibility with Human Rights’), p 11.

¹¹ *Social Security (Parenting Payment Participation Requirements – Classes of Persons) Instrument*

¹² (No. 1), Explanatory Statement, Attachment A (‘Statement of Compatibility with Human Rights’), p 10.

6.21 These parents are selected based on high risk factors that make them vulnerable, and they are caring for young children. However, a punitive measure is being utilised to enforce compliance rather than an incentivised measure to encourage compliance on a voluntary basis.

6.22 This is recognised as a limitation on the right to social security, but it has not been demonstrated that it is a reasonable, necessary or proportionate measure to link participation in the program to the receipt of a parenting payment.

7. **Right to equality and non-discrimination**

7.1 The right to equality and non-discrimination is enshrined in multiple international conventions.

7.2 Article 26 of the International Covenant on Civil and Political Rights (**ICCPR**) states that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

7.3 This is also supported by articles 2(1) and 16 of the ICCPR, which refer to non-discriminatory measures.

7.4 In relation to women, the Convention on the Elimination of all Forms of Discrimination Against Women (**CEDAW**) contains non-discrimination provisions in articles 2, 3 4 and 15. Article 11(1)(e) also specifically states:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

...

(e) **The right to social security**, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave...

7.5 In relation to racial discrimination, the Convention on the Elimination of All Forms of Racial Discrimination (**CERD**) specifically states in article 5(e)(iv):

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone,

without distinction as to race, colour, or national or ethnic origin,
to equality before the law, notably in the enjoyment of the following rights:

...

(e) Economic, social and cultural rights, in particular:

...

(iv) The right to public health, medical care, **social security** and social services...

7.6 The Human Rights Statement refers to direct discrimination, where there is a distinction made with the *purpose* of adversely affecting human rights, or indirect discrimination, where there is a distinction made with the *effect* of adversely affecting human rights.

7.7 Further, the Human Rights Statement refers to the influential but non-binding view of the UN

Human Rights Committee that indirect discrimination is 'a rule or measure that is neutral on its face or without intent to discriminate' that exclusively or disproportionately affects people with a particular attribute.

7.8 Unjustifiable limitation on the right to non-discrimination

7.9 It is acknowledged in the Human Rights Statement that the ParentsNext program is a limitation on the right to non-discrimination. In particular, the direct discrimination on the basis of race by selecting locations based on the high level of parenting payment recipients who are Indigenous. Further, the indirect discrimination based on gender as the vast majority of those affected are female.

7.10 However, it is sought to be justified on the basis that the program has a legitimate objective and that the objective is rationally connected to the limitation.

7.11 It is justified on the basis that the 'program is designed to provide those groups with support to address the specific disadvantage they face'.¹⁸ However, there has been no justification for the proposition that supporting the individuals identified as disadvantaged must (or can only) be done through linking their parenting payments to compliance with the program.

¹⁸ *Social Security (Parenting Payment Participation Requirements – Classes of Persons) Instrument*

2018 (No. 1), Explanatory Statement, Attachment A ('Statement of Compatibility with Human Rights'), p 12.

7.12 Further, it is stated that parents are being 'assisted' to gain employment related skills and education earlier.¹³¹⁴ But a more accurate description is that the parents are being mandated to do so, and this is the limitation that has not been justified.

7.13 Accepting that support should be provided to those most disadvantaged, it is still not appropriate to link that support to a financial penalty for non-compliance. Particularly when there may be underlying barriers causing reluctance to enter similar programs that are not being addressed.

8. Possible paths forward

8.1 There are four potential paths forward to stimulate further political consideration of human rights implications of the legislation. These will not invalidate it but may result in change to the policy. They are to make a submission to the Special Rapporteur on Extreme Poverty and Human Rights (**Special Rapporteur**), to bring an individual complaint under the human rights treaties, or to make a domestic complaint.

8.2 Complaint under human rights treaties

8.3 Each of the treaties referred to above has a relevant treaty body,¹⁵ and an individual can make a complaint against a State party alleging a violation of that treaty where the State is party to the complaints mechanism.¹⁶ A complaint may be brought on behalf of another person provided that their written consent is obtained.

8.4 Submission to the Special Rapporteur

8.5 A submission may also be made to the Special Rapporteur by any individual, group, civil society organisation, inter-governmental entity or national human rights body. Communications may then be sent from the Special Rapporteur to Governments outlining the alleged human rights violations and requesting clarification. The Special Rapporteur also reports to the Human Rights Council and the General Assembly.

8.6 A similar procedure was adopted previously, when a submission was made about changes to parenting payments in Australia in 2012 and a communication was sent from the Special Rapporteur to the Australian Government seeking clarification.

8.7 Domestic complaint/recourse

8.8 Firstly, the Parliamentary Joint Committee on Human Rights may inquire into, and report on, any human rights matter referred to it by the Attorney-General. This was

¹³ *Social Security (Parenting Payment Participation Requirements – Classes of Persons) Instrument*

¹⁴ (No. 1), Explanatory Statement, Attachment A ('Statement of Compatibility with Human Rights'), p 12.

¹⁵ The Committee on Elimination of Discrimination against Women can receive complaints about CEDAW; the Human Rights Committee can receive complaints about the ICCPR; and the Committee on the Elimination of Racial Discrimination can receive complaints about CERD.

¹⁶ (1) Australia has not ratified the Optional Protocol to the ICESCR, allowing an individual to make a complaint to the Committee on Economic, Social and Cultural Rights. (2) Australia has not ratified the Optional Protocol (on a communications procedure) to the Convention on the Rights of the Child, allowing for individual children to make a complaint to the Committee on Rights of the Child.

done previously for changes to parenting payments in Australia in 2012, where an inquiry was commenced.

8.9 The Australian Human Rights Commission can investigate individual complaints or broader complaints about legislation, but only has the power to report to Parliament with recommendations. The government does not have an obligation to adopt the recommendations.

8.10 Secondly, it may be possible for an individual with appropriate standing (ie. a person who is mandated to be involved in the program) to bring an administrative challenge before the Australian courts to challenge a government decision. There is a discretion within s 501 of the Act when the Secretary decides who must meet the participation criteria. This creates the opportunity to consider whether that decision is properly made, including:

- (a) by seeking reasons for the decision;
- (b) considering whether the Secretary is actually using that discretion by reviewing each case on its merits, or whether there has been a fettering of discretion; and/or
- (c) whether a person may have a legitimate expectation that the Secretary will (unless otherwise advised by the Secretary) make a decision in accordance with the human rights conventions to which Australia is a party, when exercising the discretion under the Act.