

Dental Benefits Amendment Bill 2012

Introduced into the House of Representatives on 12 September 2012

Portfolio: Health and Aging

Committee view

1.2 The committee notes that this bill engages the right to health contained in article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The committee observes that the bill draws a distinction based on age because it provides that children under 2 years of age are ineligible to receive benefits under the Child Dental Benefits Schedule. The committee proposes to seek clarification from the Minister for Health regarding the decision for excluding children under 2 years of age from the Schedule before forming a view on the compatibility of this bill with the right.

Purpose of the bill

1.3 This bill amends the *Dental Benefits Act 2008* to allow the establishment of the Child Dental Benefits Schedule under the Act by extending the age range of people eligible for dental benefits to children aged at least 2 years but less than 18 years. The Act currently provides for eligibility for children aged at least 12 years but less than 18 years.

Compatibility with human rights

1.4 The statement of compatibility states that the bill engages and promotes the right to health in article 12(1) of the ICESCR and the right to social security in article 9 of the ICESCR.

1.5 Extending the age range of children eligible for dental benefits to include children aged 2-11 clearly advances children's rights to health and social security.

1.6 The committee however observes that the bill draws an arguable distinction based on age because it provides that children under 2 years of age are ineligible to receive these benefits.

1.7 The right to non-discrimination is protected in Article 2(2) of the ICESCR, which prohibits discrimination on prohibited grounds in the exercise of the economic, social and cultural rights guaranteed in the Covenant. In addition article 26 of the International Covenant on Civil and Political Rights (ICCPR) contains an independent guarantee of equal protection of the law. Article 26 of the ICCPR prohibits discrimination in law or in practice in any field regulated by public authorities. This means that when the Commonwealth legislates in any particular

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

area, it must do so without discriminating on the prohibited grounds. Article 26 of the ICCPR is a 'free-standing' bar on discrimination and is not limited to the ICCPR rights.

1.8 Discrimination means any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of all rights and freedoms.

1.9 The grounds of prohibited discrimination are not closed, and include race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The UN Human Rights Committee (HRC) has not issued any specific guidance on the meaning of 'other status', preferring instead to treat it on a case by case basis. It has nevertheless indicated that a clearly definable group of people linked by their common status is likely to fall within the category of 'other status'. Among other things, the HRC has found age to qualify as prohibited grounds under 'other status'.

1.10 A difference in treatment on prohibited grounds, however, will not be directly or indirectly discriminatory provided that it is (i) aimed at achieving a purpose which is legitimate; (ii) based on reasonable and objective criteria, and (iii) proportionate to the aim to be achieved.

1.11 International human rights law has generally acknowledged that personal characteristics are often legitimate factors that may be taken into account in formulating tax and benefit measures. Further, given the multi-faceted economic and social purposes of tax and benefit measures, governments are usually accorded a degree of deference in these matters, provided that there is a reasonable basis and a relationship of proportionality between the legitimate aim pursued and the means used and overall strike a fair balance between the interests of the community and the individual.

1.12 The committee proposes to write to the Minister for Health to seek further information regarding the reasons for excluding children under 2 years of age from the Child Dental Benefits Schedule before forming a view on the compatibility of the bill with human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*.