



Australian Permanent Mission
to the United Nations
Geneva

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Ms Beatriz Balbin
Chief
Special Procedures Branch
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
Palais des Nations
1211 Geneva 10
Switzerland

Dear Madam

Communication from the Special Rapporteur on concerns regarding the Social Services Legislation Amendment Act 2017.

I refer to the communication concerning information received on the *Social Services Legislation Amendment Act 2017* (Amendment Act) and a relevant individual complaint through the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*.

The Australian Government acknowledges the communication discussing comments and concerns raised by Professor Philip Alston, the United Nations Special Rapporteur on extreme poverty and human rights, and welcomes the opportunity to respond. As Professor Alston identified, a number of important legislative reforms to Australia's welfare system have recently been legislated, and some are currently before Parliament. These reforms aim to help those Australians most in need, and ensure the sustainability of the welfare system, in line with the intent and purposes of the Australian Social Security system.

The Government is focussed on making meaningful and evidence-based reforms to ensure that the Social Security system continues to serve the continuing and changing needs of the community. Many of the reforms, including those in the Welfare Reform and Payment Integrity Bills, have faced additional scrutiny from the Senate Community Affairs Legislation Committee. In all instances, and after careful consideration, the Committee has found that the Bills ought to be passed by the Parliament.

Australia has one of the strongest social safety nets in the world. This is achieved by the significant expenditure on Social Security and welfare of around \$160 billion a year — or a third of all government expenditure; representing 80 per cent of all individual income tax raised in Australia. The Government believes in supporting people to get the skills they need for work and to locate themselves in areas where work is available. These reforms are intended to enable people to work as this provides the greatest ongoing benefit to their welfare.

It is important to note that social security payments operate in conjunction with taxation concessions, productivity initiatives, employment services and labour market strategies, as part of an integrated package to support workforce participation objectives.

The Government's aim is to make the social safety net protecting Australians stronger through reforms that better target payments to those most in need and support workforce participation. The Government maintains that the reforms in the Amendment Act that include extending the Ordinary Waiting Period to Youth Allowance (other) and Parenting Payment recipients, pausing the indexation of the Parenting Payment ordinary income free area for three years, and pausing the indexation of Family Tax Benefit rates for two years are fair and meet this objective.

Many of your specific questions request further details of the analysis and evaluation undertaken by the Government and evidence of due consideration as to the impacts of reform on individuals and families. Disclosure of a detailed analysis of the alternative reform scenarios considered or the arguments for the reform path chosen would not respect the confidence of the Cabinet. The confidentiality of Cabinet is an essential feature of the Australian system of Government and key to robust deliberation and decision-making by the Government.

While providing specifics is not possible, speaking generally, advice provided to the Government on new policy and reforms is informed by the thorough analysis of the current and future policy environment using available data and data sought specifically. Payment types and policies are not considered in isolation and the Government's analysis looks at the risks to and opportunities for improving Australian's rights and security across the entire population.

While the Cabinet process is confidential, once reforms and new policies are officially proposed and legislation drafted they are subject to both public scrutiny and the rigours of parliamentary process. Bills are publically available and their purpose and context are explained through explanatory memoranda and bills digests to support and invite public consideration and scrutiny. Bills are scrutinised in committees, which invite public submissions and expert commentary. The Parliamentary Joint Committee on Human Rights examines all bills and legislative instruments for their compatibility with human rights, as defined under a number of treaties, and publishes its report stimulating further debate in public and the Parliament.

Despite their origins being confidential, through these processes of public debate, scrutiny and reflection all new policy and reforms, including the ones of concern in the communication, are a reflection of the Australian community's aspirations to develop a social security system that sustainably protects human rights.

The following information is provided in response to your specific questions.

In determining the extent of the benefit reduction, has your Excellency's Government given due consideration to the minimum essential levels of support that all persons in need may require in order to enjoy an adequate standard of living, taking into account their varying circumstances such as the family size, family composition, gender, disability, health conditions and housing costs in different regions? Please provide evidence of any such analysis, if available.

The Australian welfare system is needs based and targeted to individuals and families that most require support and assistance. It provides a comprehensive range of assistance for individuals and families. This includes income support and family assistance payments to assist with day-to-day living costs, assistance with medical and transport costs through concession cards, and rent assistance to help with housing costs. In addition, government funded programs and services are available to support vulnerable individuals achieve an adequate standard of living.

The rates of income support payments are developed with consideration of a recipient's personal circumstances including whether they are partnered, have dependent children, require rental assistance or live in a remote location. Pauses to income free area values do not impact on recipients with no income or very low income apart from their income support payment, as these recipients are already receiving the maximum rate of assistance. As stated in the human rights compatibility statement of the Bill, income support payments are not reduced because of these measures, unless a recipient's circumstances change, such as their income increasing in value.

The Government's primary consideration in providing family assistance is to ensure that all children have access to at least a basic and acceptable standard of living, as the wellbeing of children is important to all Australians and essential for the future of the nation. Family Tax Benefit ensures a minimum, adequate standard of living for families with children. The structure of Family Tax Benefit Part A takes into account the circumstances of each family. The rate of payment is based on family income, along with the number and ages of children. Family Tax Benefit Part B provides extra assistance for families with one main earner, including single parents and some couple families.

Under the new Amendment, the current Family Tax Benefit payment rates will be maintained for two years at their current levels from 1 July 2017 and there will be no cuts to Family Tax Benefit payments. Certain elements of Family Tax Benefit, namely rent assistance, newborn supplement, and multiple birth allowance, will continue to be indexed. Government assistance for housing and income support for parents has also continued to be indexed.

The Government recognises that people with a disability and people with health issues require additional support to enjoy an adequate standard of living. To provide this additional support, people may be eligible for a variety of other payments and supports including Carer Payment, Disability Support Pension and concession cards as well as the National Disability Insurance Scheme.

What monitoring mechanisms have been put in place to assess the implementation of the Amendment Act and monitor its impact on the rights of those affected? What processes or mechanisms for redress will be included?

As with all major reforms to Government policy, the department monitors the impacts of such reforms through data analysis and evaluations. This includes the evaluation of patterns of requests for review and appeals lodged with independent bodies such as the Administrative Appeals Tribunal and the Commonwealth Ombudsman. Any further reforms to the Social Security system will impact on Government outlays and will therefore be considered carefully by the Government in a Budget context.

Australia has a generous welfare system in comparison to other OECD countries. In terms of public spending on family benefits, Australia spends 2.75 per cent of GDP, this is higher than the OECD average of 2.43 per cent of GDP¹.

Could you please provide information on all alternative measures considered by the Government in lieu of the abovementioned provisions introduced by the Amendment Act and on how the Government assessed that they were the least restrictive measures in relation to the rights to social security and to an adequate standard of living?

The Government is unable to provide information about alternative measures considered by Government as work undertaken in the development of Budget measures remain In-Confidence unless announced in a Budget context.

However, the final report of an independent review of Australia's Welfare system *A New System for Better Employment and Social Outcomes*, released in 2015 contains evidence and recommendations that support the measures in the Amendment Act. The review made recommendations around the ongoing sustainability of the welfare system. The savings measures contained in the Amendment Act contribute to making the welfare system sustainable into the future.

Was an impact assessment conducted with regard to the impact of the Amendment Act on the level of enjoyment of the right to an adequate standard of living by the individuals and families affected by the Amendment Act, including children?

Impact assessments were not conducted for these particular reforms. However, in relation to the Ordinary Waiting Period, the potential limitations on the right to an adequate standard of living are proportionate to the policy objective of encouraging self-support while providing a safety net. Australian residents who have no means to support themselves, can have the Ordinary Waiting Period waived.

What measures have been put in place to ensure that the implementation of the Amendment Act would not indirectly discriminate against women?

The Amendments to Family Tax Benefit contained in the Amendment Act were to ensure that the family payments system remains sustainable in the long term and is targeted to support those who need it most. The United Nations Committee on Economic, Cultural and Social Rights has stated that a social security scheme should be sustainable. Ensuring the sustainability of the family payments system helps preserve the right to social security over the long term.

The amendments apply irrespective of gender. It is clear that many mothers rely on family payments, particularly when their children are very young, and they combine work with child rearing activities as their children get older. Their working hours tend to increase markedly as their youngest child reaches school age. The amendments will not reduce assistance for women, but they will forgo a small increase in payment that would have occurred under the normal indexation arrangements. The impacts are sufficiently small as to be proportionate to the objective of preserving access to the family payments system over the long term.

¹ OECD Family Database - PF1.1 Public spending on family benefits, OECD, viewed 14 December 2017, http://www.oecd.org/els/soc/PF1_1_Public_spending_on_family_benefits.xlsx

Likewise, the reforms to the Ordinary Waiting Period and pausing the indexation of the Parenting Payment ordinary income free area for three years apply irrespective of gender. These reforms are considered proportionate to achieving the objective of encouraging self-reliance through workforce participation and ensuring a sustainable welfare system.

Has there been an independent review of the impact of the Amendment Act? If so, please provide the outcomes of the review.

There has been no independent review of the impact of the measures contained in the Amendment Act. However, in the process of being passed, the Act was publicly scrutinised through the parliamentary process. For example, the relevant bill was examined by the Parliamentary Joint Committee on Human Rights and the Senate Standing Committee for the Scrutiny of Bills. Their comments are publically available and open to independent analysis. The public and stakeholder organisations are invited to make submissions to the relevant legislative committee and these submissions are made available on the parliamentary website. In addition, part of the regular process of monitoring payments is a consideration of their adequacy and the impact of reforms.

What evidence is the Government relying on to justify drug testing as the best option for addressing substance abuse among the poor in Australia? What independent, medical advice has the Government relied upon in reaching this conclusion?

The Australian Institute of Health and Welfare's 2016 National Drug Strategy Household Survey shows that those who were unemployed were 3.1 times more likely to use drugs such as ice and other amphetamines than those who were employed. While there are some existing mechanisms in place for identifying job seekers who have substance abuse issues and assisting them to seek treatment, the Government is committed to trialling new approaches to tackle this problem. A comprehensive evaluation of the drug testing trial, including impacts and outcomes for job seekers, will commence during the trial period. This approach will capture any unintended consequences in real time, allowing them to be handled promptly.

Australia's 2017-18 Budget included a package of measures to address substance abuse by welfare recipients:

- Remove Table 6 (relating to drug or alcohol dependency) from the Disability Support Pension Impairment Tables;
- Trial drug testing for new recipients of Newstart Allowance and Youth Allowance (other);
- Remove mutual obligations exemptions for reasons due to drug or alcohol misuse;
- Tighten the reasonable excuse for non-compliance due to drug or alcohol misuse; and
- Allow drug or alcohol treatments / interventions as an approved activity for Streams A and B job seekers.

The drug testing trial – which combines random drug testing with other interventions (income management and referral to appropriate treatment) – has not been done before. The evidence provided by this trial will help to build a stronger evidence base by testing new ways of encouraging job seekers into treatment.

The Government has spoken to numerous stakeholders in trial sites and a range of drug and alcohol services and peak bodies, and related experts across the country. Stakeholders will continue to be consulted as part of the implementation of the trial with opportunity for input and feedback.

To what extent has the Government assessed the drug-related measures as being the least-restrictive means to achieve the objectives of reducing substance abuse among the poor?

The measures to address substance misuse by welfare recipients are not about penalising job seekers who are drug dependent. The measures reflect that people with substance abuse issues that prevent them from looking for work or undertaking other activities should be taking active steps to address their issues, including through appropriate treatment to allow them to re-enter the workforce. The Government announced in the 2017-18 Mid Year Economic and Fiscal Outlook an extra \$10 million in additional treatment funding to support job seekers with drug and alcohol abuse issues included in the measure. Rather than being restrictive, these measures are intended to assist those affected by substance misuse to not have their future prospects impeded by substance misuse.

As noted earlier, the Government has been engaging with key national and local stakeholders on the measures and particularly the drug testing trial.

I trust the above information will be of assistance to the Special Rapporteur in clarifying the concerns conveyed in the communication. I look forward to the Special Rapporteur's continued engagement with the Australian Government's efforts to protect the rights of individuals in Australia.

Yours sincerely

A handwritten signature in black ink that reads "Elizabeth Wilde". The signature is written in a cursive style with a large, looped initial 'E'.

Elizabeth Wilde
Chargé d'Affaires
Permanent Mission of Australia to the United Nations