

**Human Rights Advocacy Tool**

**UPDATED DECEMBER 2019**

**International agreements and UN committee reports & commentary by issue**

*Use this table to determine what international agreements and specific obligations will be relevant to the issue you are considering.*

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**The right to social security generally**

# **Universal Declaration of Human Rights**

# In the Universal Declaration of Human Rights, the right to social security is provided at various articles.

# Article 22 provides that “[e]veryone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”

# Article 25 provides that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control … Motherhood and childhood are entitled to special care and assistance.”

# **International Covenant on Economic, Social and Cultural Rights**

# In the International Covenant on Economic, Social and Cultural Rights, the right to social security is provided at article 9, stating that “[t]he States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.”

# The Covenant also provides at article 11 that “[t]he States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.”

# **Convention on the Rights of Persons with Disability**

# In the Convention on the Rights of Persons with Disability, the right to social security for persons with disabilities is provided at article 28, stating that “States Parties recognise the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realisation of this right without discrimination on the basis of disability … States Parties recognise the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realisation of this right, including measures: … (b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes; (c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care; (d) To ensure access by persons with disabilities to public housing programmes; (e) To ensure equal access by persons with disabilities to retirement benefits and programmes.”

# **Convention on the Rights of the Child**

# In the Convention on the Rights of the Child, the right to social security is provided at article 26: “[t]he Government should provide extra money for the children of families in need.”

# Article 27 further provides that “[c]hildren have the right to a standard of living that is good enough to meet their physical and mental needs. The government should help families who cannot afford to provide this.”

# **Convention on the Elimination of All Forms of Discrimination against Women**

# In the Convention on the Elimination of All Forms of Discrimination against Women, the right to social security, and the right not to be discriminated against in the provision of social security, is provided at article 11: “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.”

# Further, article 13 provides that “States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to family benefits; (b) The right to bank loans, mortgages and other forms of financial credit; (c) The right to participate in recreational activities, sports and all aspects of cultural life.”

# **Declaration on the Rights of Indigenous Peoples**

# In the Declaration on the Rights of Indigenous Peoples, the right to social security is provided at article 21: “Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security … States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.”

# Further, article 39 provides that “Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.”

# **Convention on the Elimination of Racial Discrimination**

# In the Convention on the Elimination of Racial Discrimination, article 5 provides that “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.”

**Bali Declaration**

# The Bali Declaration was adopted at the 16th Asia and the Pacific Regional Meeting of the International Labour Organisation in Bali, Indonesia, on 9 December 2016.

# Article 11 provides that a policy priority for 2016-2021 is “extending social protection, including by establishing sustainable social security systems and by establishing, maintaining and upgrading social protection floors comprising basic social security guarantees.”

# **Access to social security – asylum seekers**

# **International Covenant on Economic, Social and Cultural Rights**

# On 11 July 2017, the United Nations Committee on Economic, Social and Cultural Rights published its Concluding Observations on the fifth periodic report of Australia. At [31], the Committee indicated its concerns about the protection of the right to social security for asylum seekers, including: “(b) Insufficient amounts of benefits under the Status Resolution Support Services Programme for asylum seekers on bridging visas, many of whom have been waiting for years for the outcomes of their asylum claims …” At [32], the Committee recommended that the government: “(a) Reconsider the financial cuts to the social security system, with a view to ensuring that all beneficiaries, especially disadvantaged and marginalised individuals and groups … are able to enjoy an adequate standard of living …; (b) Increase the levels of benefits under the Status Resolution Support Services programme for asylum seekers on bridging visas to ensure that they enjoy an adequate standard of living, and expedite processing of all asylum claims … (d) Consider the Committee’s general comment No. 19 (2007) on the right to social security.”

# At [38], the Committee further recommended that the government “amend relevant policies and legislation, particularly the Migration Act 1958, to end restrictive access to services and entitlements on the basis of a person’s mode of arrival in Australia, and ensure equity and transparency in processing claims for permanent protection and requirements for family reunification.”

# **UN Committee on Economic, Social and Cultural Rights**

# On 23 November 2007, the United Nations Committee on Economic, Social and Cultural Rights published General Comment No. 19 on the right to social security, to which the Committee on Economic, Social and Cultural Rights referred above. At [38], the Committee commented that “[r]efugees, stateless persons and asylum-seekers, and other disadvantaged and marginalised individuals and groups, should enjoy equal treatment in access to non-contributory social security schemes, including reasonable access to health care and family support, consistent with international standards.”

# **Convention on the Rights of the Child**

# On 1 November 2019, the United Nations Committee on the Rights of the Child published its concluding observations on the combined fifth and sixth periodic reports of Australia.

# At para [44] the Committee outlines its concerns surrounding asylum-seeking, refugee and migrant children and at para [45] recommends (h) to implement durable solutions including financial and other support for all refugee and migrant children to ensure their early rehabilitation, reintegration and sustainable resettlement and (I) to introduce adequate mechanisms for monitoring the wellbeing of children involved in asylum, refugee and migration processes.

**Convention on the Elimination of All Forms of Discrimination against Women**

# On 20 July 2018, the United Nations Committee on the Elimination of Discrimination against Women published its Concluding Observations on the eighth periodic report of Australia.

# At [53], the Committee noted its concern that refugee women were “[f]acing restrictions in the access to social, educational and health services, as well as employment, whether in Nauru or on the territory of the state party.”

# **Access to social security – children**

# **Convention on the Rights of the Child**

# On 28 August 2012, the United Nations Committee on the Rights of the Child published its Consideration of reports submitted by States parties under the Convention, including its Concluding Observations on Australia.

# At [68], the Committee expressed concerns that the Paid Parental Leave scheme “is fixed at the national minimum wage, which may not be enough income for many households and is shorter than the required six months to exclusively breastfeed children … it remains concerned that these are not equitably available to all families in need nor provided without distinction of place of residence or other discriminating factors.” At [69], the Committee recommended that the Paid Parental Leave scheme be “monitored closely to ensure that parents, especially mothers, are still able to earn an adequate living, while caring and breastfeeding their new born and that, after the 18-weeks payment period, appropriate facilities are made available to maintain high quality care of young children and continue breastfeeding until at least six months.”

# On 1 November 2019, the United Nations Committee on the Rights of the Child published its concluding observations on the combined fifth and sixth periodic reports of Australia. At [10], the Committee recommends Australia allocate adequate human, technical and financial resources, at all levels of government, for the implementation of all policies, plans, programs and legislative measures for children and implement a system for tracking and ensuring the efficient use of resources so allocated. The Committee also recommends that Australia “conduct regular assessments of the distributional impact of government investment in sectors supporting the realisation of children’s rights with a view to addressing the disparities in indicators related to children’s rights, with particular attention to Aboriginal and Torres Strait Islander children.”

# Finally, at [10] it is recommended to “establish appropriate mechanisms and inclusive processes through which civil society, the public at large and children specifically may participate in all stages of the budget process, including formulation, implementation and evaluation.”

# At para [32] the Committee recalled its previous recommendations on a family environment and urged Australia to provide the necessary human technical and financial resources for family support services to provide children and their families with the support needed to prevent violence, abuse and neglect. The Committee also urged Australia to extend paid maternity leave to six months to support the appropriate care of newborn children.

# **Access to social security – disabled persons**

# **Convention on the Rights of Persons with Disability**

# In addition to its provision for the right to social security generally for disabled persons, the Convention on the Rights of Persons with Disability provides at article 20 that “States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by: … (b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost.”

# On 21 October 2013, the United Nations Committee on the Rights of Persons with Disabilities published its Concluding Observations on the initial report of Australia.

# At [41], the Committee expressed concerns that “despite the policy to close large residential centres, new initiatives replicate institutional living arrangements, and many persons with disabilities are still obliged to live in residential institutions in order to receive disability support.” At [42], the Committee recommended that the government “develop and implement a national framework for the closure of residential institutions and to allocate the resources necessary for support services that would enable persons with disabilities to live in their communities … and take immediate action to ensure that persons with disabilities have a free choice as to where and with whom they want to live, and that they are eligible to receive the necessary support regardless of their place of residence. The State party should therefore map the various forms of living accommodation, based on the needs of various kinds of persons with disabilities.”

# On 15 October 2019, the United Nations Committee on the Rights of Persons with Disabilities published its Concluding Observations on the combined second and third periodic reports of Australia.

# At para [36] it is recommended that Australia remove the 10-year qualifying period for migrants to access the Age Support pension and the Disability Pension.

# At [51] the Committee expressed concerns about “(a) The fact that a significant proportion of persons with disabilities are living either near or below the poverty line; (b) The existence of eligibility restrictions to the Disability Support Pension and the inadequacy of income support payments such as the Newstart Allowance to persons with disabilities; (c) The limited consideration of persons with disabilities, particularly Aboriginal and Torres Strait Islander persons with disabilities, in poverty and homelessness reduction strategies, including the National Affordable Housing Agreement and the National Partnership Agreement on Homelessness.” At [52] the Committee recommended that the State party “(a) Develop a national poverty reduction plan that is inclusive and accessible to all persons with disabilities and prioritize the realization of the right to an adequate standard of living and social protection for Aboriginal and Torres Strait Islander persons with disabilities; (b) End the eligibility restrictions on the Disability Support Pension, increase the rate of Newstart Allowance unemployment payments and other income support payments to ensure that persons with disabilities have access to an adequate standard of living; (c) Ensure that persons with disabilities are included as a priority cohort in the implementation of poverty reduction and public housing programmes, including the National Affordable Housing Agreement and the National Partnership Agreement on Homelessness.”

# **Convention on the Rights of the Child**

# Article 23 provides that “[c]hildren who have any kind of disability should receive special care and support so that they can live a full and independent life.”

# On 28 August 2012, the United Nations Committee on the Rights of the Child published its Consideration of reports submitted by States parties under the Convention, including its Concluding Observations on Australia.

# At [57], the Committee expressed concerns that the current disability support system is “under-funded, unfair, fragmented and inefficient, and gives people with a disability little choice and no certainty of access to appropriate supports, with children with disabilities frequently failing to receive crucial and timely early intervention services, support for life transitions, and adequate support for the prevention of family or carer crisis and breakdown.”

# On 30 September 2019, the United Nations Committee on the Rights of the Child published its concluding observations on the combined fifth and sixth periodic reports of Australia.

# At [19], the committee recommends for Australia, in relation to non-discrimination, to address disparities in access to services by Aboriginal and Torres Strait Islander children, children with disabilities, children in alternative care, asylum seeking, refugee and migrant children, regularly evaluate the enjoyment by those children of their rights and prevent and combat discrimination.

# **Access to social security – Indigenous persons**

# **Convention on the Elimination of Racial Discrimination**

# On 26 December 2017, the United Nations Committee on the Elimination of Racial Discrimination published its Concluding Observations on the eighteenth to twentieth periodic reports of Australia.

# At [23], the Committee expressed concerns that “indigenous peoples continue to experience high levels of discrimination across all socioeconomic indicators, including education, health care, employment and housing … The Committee is also concerned that indigenous peoples, including those living in remote areas, face discrimination in access to social security benefits, notably through the mandatory income-management scheme and the community development programme.” At [24], the Committee recommended that the government “[r]econsider the mandatory income-management scheme, which in effect disproportionally affects indigenous peoples, maintain only an opt-in income-management scheme and remove discriminatory conditions in access to social security benefits by claimants living in remote areas, the vast majority of whom are indigenous.”

# **Convention on the Rights of the Child**

# Further, on 28 August 2012, the United Nations Committee on the Rights of the Child published its Consideration of reports submitted by States parties under the Convention, including its Concluding Observations on Australia.

# At [29], the Committee expressed concerns about racial discrimination, and particularly “(a) The serious and widespread discrimination faced by Aboriginal and Torres Strait Islander children, including in terms of provision of and accessibility to basic services and significant overrepresentation in the criminal justice system and in out-of-home care; … (c) The punitive nature of the State party’s Northern Territory Emergency Response Bill (2007), including the student enrolment and attendance measure which allows for punitive reductions to welfare payments for parents whose children are truant.” At [30], the Committee recommended that the government “(a) Take urgent measures to address disparities in access to services by Aboriginal and Torres Strait Islander children and their families … (c) Thoroughly evaluate the Northern Territory Emergency Response Bill (2007), particularly its student enrolment and attendance measure, with a view to ensuring that the NTERB measures are proportionate, and non-discriminatory in form as well as effect.”

# **International Covenant on Economic, Social and Cultural Rights**

# Further, and more recently, on 11 July 2017, the United Nations Committee on Economic, Social and Cultural Rights published its Concluding Observations on the fifth periodic report of Australia.

# At [31] the Committee indicated its concerns about the protection of the right to social security for Indigenous persons, including the: “(c) Mandatory income management schemes, disproportionately affecting indigenous peoples; (d) Stricter conditionalities and increased penalties applied under the Community Development Programme …, which has a disproportionate impact on indigenous peoples’ access to social security benefits.” At [32], the Committee recommended that the government: “(a) Reconsider the financial cuts to the social security system, with a view to ensuring that all beneficiaries, especially disadvantaged and marginalised individuals and groups … are able to enjoy an adequate standard of living …; (c) Consider maintaining only an opt-in income management scheme with appropriate oversight of decision-making and monitoring, and review existing and envisaged conditionalities for eligibility to social assistance and unemployment benefits and penalties for non-compliance, and ensure that all beneficiaries receive adequate benefits, without discrimination; (d) Consider the Committee’s general comment No. 19 (2007) on the right to social security.”

# The Committee’s General Comment noted above was published on 23 November 2007. At [35], the Committee stated that “States parties should take particular care that indigenous peoples and ethnic and linguistic minorities are not excluded from social security systems through direct or indirect discrimination, particularly through the imposition of unreasonable eligibility conditions or lack of adequate access to information.”

**Convention on the Elimination of All Forms of Discrimination against Women**

# On 20 July 2018, the United Nations Committee on the Elimination of Discrimination against Women published its Concluding Observations on the eighth periodic report of Australia

# At [51], the Committee noted its concerns that Indigenous women face a “disproportionately high risk of homelessness and of living in overcrowded and poor housing conditions.” At [52], the Committee recommended that the government “ensure long-term funding for safe, secure and affordable housing for indigenous women.”

**Access to social security – women**

# **Convention on the Elimination of All Forms of Discrimination against Women**

# The Convention on the Elimination of All Forms of Discrimination against Women specifically provides for the protection of women in rural areas at article 14, providing that “States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: … (c) To benefit directly from social security programmes … (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”

# On 20 July 2018, the United Nations Committee on the Elimination of Discrimination against Women published its Concluding Observations on the eighth periodic report of Australia.

# At [13], the Committee noted its concerns about “[b]udget cuts limiting women’s and girls’ access to legal aid for employment litigation, welfare benefit litigation, criminal and family law disputes.” At [14], the Committee recommended that the government “[i]mplement the recommendations of the 2014 Productivity Commission Inquiry into access to justice arrangements, including by ensuring adequate funding for legal aid commissions and community based legal services."

# At [29], the Committee further noted concerns about “[t]he gendered social and environmental impact of the State party’s extractive industry projects, which is due to displacement, loss of livelihoods and social services for local women, resulting in their discrimination, exclusion and marginalisation, and fuel conflict and related gender-based violence against women.” At [30], the Committee recommended that the government “ensure that all large scale development and extractive projects are implemented with the prior informed consent of locally affected women, reflect adequate benefit-sharing arrangements and is preceded by a thorough gender impact assessment involving rural and indigenous women.”

# At [33] the Committee noted specific concerns that “the lack of harmonisation of state and territory legislation on women in prostitution impedes their access to healthcare, support and legal services, and employment.” At [34], the Committee recommended that Australia “harmonise state and territory legislation to ensure that women in prostitution have non-discriminatory access to healthcare, support and legal services, and employment.”

# At [45], the Committee noted that it “considers that some of the State party’s recent cuts to social, health, education and justice budgets, reduction of taxes for high income groups and increase of the defence budget represent a setback in the implementation of the Convention and of the Sustainable Development Goals”, for example “[y]oung mothers having to pay back student loans with their low income, abandoning their studies, receiving Child Care Subsidies only if they are employed, risking long-term welfare dependency and to see their children removed due to poverty.” At [46], the Committee recommended that Australia “[s]trengthen the support provided to families and single headed households to ensure an adequate standard of living … [and] adopt targeted measures and programmes to economically empower single mothers … [and] enhance women’s access to affordable housing, both social and private.”

# **Affordable housing for women domestic violence victims**

# **Convention on the Elimination of All Forms of Discrimination against Women**

# On 20 July 2018, the United Nations Committee on the Elimination of Discrimination against Women published its Concluding Observations on the eighth periodic report of Australia.

# At [27], the Committee noted its concerns that “[t]here out of ten women have suffered physical violence, one out of five sexual violence and one out of four violence by an intimate partner.” It also noted concerns that “[s]helters for homeless persons, including men, are used as shelters for women and girls victims of violence, and that the National Action Plan to Reduce Violence Against Women and Their Children insufficiently addresses the need for specialised victim support services.” At [28], the Committee recommended that the government “[a]llocate adequate resources for the implementation of outcome 4 of the National Action Plan to Reduce Violence Against Women and Their Children and enhance efforts to ensure the availability of women-only and women-led support services for victims of gender-based violence.”

# **Centrelink Robodebt programme**

# **Senate Community Affairs References Committee Inquiry**

# In June 2017, the Senate Community Affairs References Committee published its report into the design, scope, cost-benefit analysis, contracts awarded and implementation associated with the Better Management of the Social Welfare System initiative. The Report is 155 pages long and details extensive issues concerning the Robodebt programme, including in relation to overpayment data matching, error rates, power imbalances when communicating with Centrelink, communication barriers, and the process of debt recovery.

# At pages ix – xii, the Committee summarises its recommendations, which relevantly include (1) that the Online Compliance Intervention program be put on hold until all procedural fairness flaws are addressed; (2) that all debts determined through income averaging be immediately re-assessed; that the department update its privacy policy to ensure sensitive information about individuals is not publicly released; (3) that accessible information, including Easy English versions, be made available in all debt recovery programs; (4) that all Online Compliance Intervention participants be provided with the debt calculation data, to be assured debts are correct; (5) that an outstanding debt should not exclude a person from advance payments needed for essential goods and services; (6) that the department consider adopting the principles of the Victorian Judgement Debt Recovery Act which preclude debt collection to be made from Centrelink payments that are recognised minimum payments required for food, shelter and other life essentials; and (7) that the department ensure debt repayment amounts do not impact any individual’s ability to purchase life essentials.

# Given the controversy surrounding various automated debt collection processes, a further senate inquiry into Centrelink’s compliance program has been tabled. The terms of reference of this inquiry include but is not limited to; examining the ongoing impact of the Federal Government’s automated debt collection processes upon current and past income support recipients; data-matching techniques used by Centrelink; and the handling of the under-payment errors. This is likely to extend to consideration of Robodebt. This inquiry was initially intended to be reported by the 4 December 2019. However, on the 18 September 2019, the Senate granted an extension of time for reporting until March 2020.

# **Federal Court Decision on Robodebt**

# However, in November 2019 the Federal Government settled a landmark challenge against the Robodebt program in the Federal Court. The method of calculating the debt in question, income averaging, was challenged as not being a legal basis to claim a debt. Justice Jenifer Davies found that the court “could not have been satisfied that a debt was owed in the amount of the alleged debt”.

# In the week preceding the judgement Minister for Human Services Stuart Robert announced that the Department would no longer raise debts based solely on debt averaging and that people who had received a Robodebt based on debt averaging would have their debts reviewed. A spokesman for the Minister has said the Government will continue with a tweaked version of the existing Robodebt system.

# Welfare groups, community legal centres, Senate inquiries and a former administrative appeals tribunal senior member have all warned that income averaging is not a legal basis to raise a debt. The same principle is being pursued in a class action seeking damages for negligence based on the illegality of the entire program and the breach of duty of care to the income support recipients affected.

# **Report of the Special rapporteur on extreme poverty and human rights**

# In October 2019 Philip Alston submitted a report to the United Nations General Assembly on extreme poverty and human rights. The report outlines that systems of social protection and assistance are increasingly being driven by digital data and technologies that are used to automate the digital welfare state and is either already a reality or emerging in many countries across the globe. He states that in these states, systems of social protection and assistance are increasingly being driven by digital data and technologies that are used to automate, predict, identify, surveil, detect, target and punish. The report warns of the irresistible attractions for Governments to move in this direction and outlines the grave risk of stumbling, zombie-like, into a digital welfare dystopia. He argues in the report that big technology companies (frequently referred to as “big tech”) operate in an almost human rights-free zone, and that this is especially problematic when the private sector is taking a leading role in designing, constructing and even operating significant parts of the digital welfare state. It is recommended that, instead of obsessing about fraud, cost savings, sanctions, and market-driven definitions of efficiency, the starting point should be on how welfare budgets could be transformed through technology to ensure a higher standard of living for the vulnerable and disadvantaged.

# **Community Development Programme (work-for-the-dole)**

# **Senate Finance and Public Administration References Committee Inquiry**

# In December 2017, the Senate Finance and Public Administration References Committee published its report into the appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program. The Report is 172 pages long and details extensive issues concerning the Programme, including in relation to reduced pay and conditions, social dislocation, the nature of activities, misaligned incentives for providers, limited local decision-making, uncertainty about the future, and financial penalties.

# At pages xi – xv, the Committee summarises its recommendations, which relevantly include (1) that the government immediately replace the current CDP compliance and penalty regime with obligations that are no more onerous than those of other income support recipients; (2) that the department undertake an immediate audit of all existing CDP providers; (3) that Centrelink provide a dedicated telephone service for CDP participants; (4) that communities be given a greater say in how a CDP is delivered in their area; (5) that the government implement a payment scheme for remote jobseekers with income based on participation in agreed work-like activities at an hourly rate commensurate with the national minimum wage; and (6) that the department engage in genuine and comprehensive consultation with remote communities, Indigenous organisations, employment providers and other stakeholders.

# **International Covenant on Economic, Social and Cultural Rights**

# On 11 July 2017, the United Nations Committee on Economic, Social and Cultural Rights published its Concluding Observations on the fifth periodic report of Australia.

# At [35], the Committee stated that “States parties should take particular care that indigenous peoples and ethnic and linguistic minorities are not excluded from social security systems through direct or indirect discrimination, particularly through the imposition of unreasonable eligibility conditions or lack of adequate access to information.”

# At [50], the Committee commented that “States parties are also obliged to provide the right to social security when individuals or a group are unable, on grounds reasonably considered to be beyond their control, to realise that right themselves, within the existing social security system with the means at their disposal. States parties will need to establish non-contributory schemes or other social assistance measures to provide support to those individuals and groups who are unable to make sufficient contributions for their own protection.”

# **Disability support**

# **Convention on the Rights of Persons with Disability**

# On 21 October 2013, the United Nations Committee on the Rights of Persons with Disabilities published its Concluding Observations on the initial report of Australia.

# At [41], the Committee expressed concerns that “despite the policy to close large residential centres, new initiatives replicate institutional living arrangements, and many persons with disabilities are still obliged to live in residential institutions in order to receive disability support.” At [42], the Committee recommended that the government “develop and implement a national framework for the closure of residential institutions and to allocate the resources necessary for support services that would enable persons with disabilities to live in their communities … and take immediate action to ensure that persons with disabilities have a free choice as to where and with whom they want to live, and that they are eligible to receive the necessary support regardless of their place of residence. The State party should therefore map the various forms of living accommodation, based on the needs of various kinds of persons with disabilities.”

# On 15 October 2019, the United Nations Committee on the Rights of Persons with Disabilities published its Concluding Observations on the combined second and third periodic reports of Australia.

# At para [13] the Committee recommends that Australia amends all legislation to guarantee that children with disabilities are provided with age appropriate support and accommodations to express their views in all matters that affect their rights or interests. It is also recommended to fund and resource culturally suitable support for Aboriginal and Torres Strait Islander children with disabilities and their families, in the local community and to urgently remove all refugee and asylum seeking children, particularly children with disabilities and their families, from detention facilities, ensure the provision of individualized support and recognize the denial of reasonable accommodation as a form of discrimination.

# At para [17] it is recommended to establish and enact a national framework for reporting compliance with the Disability Standards for Accessible Public Transport 2002, the Disability (Access to premises-Buildings Standards) 2010 and the National Standards for Disability Services and to amend the federal law by including mandatory rules on access for all new and extensively modified housing. It is further recommended under this point to take the necessary legislative and policy measures to implement the full range of accessibility obligations under the Convention including regarding information and communications technologies and systems, and ensure effective sanctions for non-compliance.

# At [39], the Committee expressed concerns about “the lack of locally available solutions to address, enhance and promote the use of mobility aids and equipment among persons with disabilities, especially within Aboriginal and Torres Strait Islander communities and in remote areas.” At [40] the Committee recommended that the State party, in partnership with Aboriginal and Torres Strait Islander persons with disabilities, through their representative organizations and in their communities, “develop locally relevant solutions to address the underlying structural obstacles that can preclude the use of aids and equipment within Aboriginal and Torres Strait Islander communities and in remote areas.”

# At para [40] it is recommended that Australia develop locally relevant solutions to address the underlying structural obstacles that can preclude the use of aids and equipment within Aboriginal and Torres Strait Islander communities and in remote areas.

# At para [44] Australia is recommended to adopt comprehensive and gender and culturally specific parenting and family support measures for parents with disabilities.

# In relation to education at para [46] it is recommended to address the increasing rate of segregation, seclusion and isolation and the lack of age appropriate settings for students with disabilities at all levels, in particular Aboriginal and Torres Strait Islander students, and redirect adequate resources to a nationwide inclusive education system for all students.

# At para [48] it is recommended all persons with disabilities have access to information on an equal basis with others and to affordable, accessible, quality, and culturally sensitive medical equipment and health services, including sexual, reproductive and mental health services.

# At para [50] the Committee recommends a comprehensive review of Australian Disability Enterprises to ensure they adhere to article 2 of the Convention and provide services to enable persons with disabilities to transition from sheltered employment into open inclusive and accessible employment ensuring equal remuneration for work of equal value. It is also recommended to implement measures to address systemic and structural barriers experiences by persons with disabilities.

# On 30 September 2019, the United Nations Committee on the Rights of the Child published its concluding observations on the combined fifth and sixth periodic reports of Australia.

# At para [30] the Committee urges Australia to invest more in improving education at the early childhood, primary and secondary levels, paying particular attention to among others, children with disabilities. The Committee also urges to ensure that all children with disabilities have access to inclusive education in mainstream schools and are provided with the support they need and to address the use of restraints and seclusion.

# **International Covenant on Economic, Social and Cultural Rights**

# On 11 July 2017, the United Nations Committee on Economic, Social and Cultural Rights published its Concluding Observations on the fifth periodic report of Australia.

# At [19], the Committee indicated its concerns about the slow implementation of the National Disability Strategy (2010-2020). At [20], the Committee recommended that the government ensure full implementation of the Strategy and allocate the necessary resources.

# **Drug-testing programmes**

# **UN Special Rapporteur on Extreme Poverty and Human Rights**

# On 31 January 2018, the UN Special Rapporteur on Extreme Poverty and Human Rights raised concerns about the drug-testing programmes being trialled and expanded in a letter to the Australian government.

# **International Covenant on Economic, Social and Cultural Rights**

# Further, on 11 July 2017, the United Nations Committee on Economic, Social and Cultural Rights published its Concluding Observations on the fifth periodic report of Australia.

# At [43], the Committee expressed concerns that “the proposed programme of conditioning welfare benefits on the results of drug testing lacks a credible evidence base, may deepen stigma and drive drug users away from treatment”, and recommended that the government “repeal the envisioned drug-testing programme.”

# **The Senate – Community Affairs Legislation Committee – Social Services Legislation Amendment (Drug Testing Trial) Bill [Provisions]**

# The Social Services Legislation Amendment (Drug Testing Trial) Bill 2019 (bill) establishes a mandatory drug testing trial of 5000 recipients of Newstart Allowance and Youth Allowance (Other) in three locations: Canterbury-Bankstown, New South Wales; Logan, Queensland; and Mandurah, Western Australia.

# In October 2019 the Senate Community Affairs Legislation Committee recommended that the Bill be passed and a report was submitted. Several submitters told the committee that there is a lack of academic evidence to support the view that drug testing welfare recipients and restricting their income would assist them to address their substance abuse issues.

# At [2.37], some submitters also “questioned whether the compulsory drug treatment and income management aspects of the trial will have the desired outcome of reducing substance abuse.”

# At [2.45], several witnesses and submitters also raised concerns “that both income management and drug treatment may be seen by jobseekers as a punishment for their substance abuse, rather than a positive step towards treatment and rehabilitation.”

# At [1.26] the Royal Australian College of Physicians noted “that imposing income management on a vulnerable group struggling with substance dependency and co-morbid mental health problems, who very often have little or no support themselves, without good social or community supports being put into place, may cause increased levels of anxiety and push vulnerable people over the edge.”

# **Family assistance**

# **Convention on the Rights of the Child**

# Article 27 provides that “[c]hildren have the right to a standard of living that is good enough to meet their physical and mental needs. The government should help families who cannot afford to provide this.”

# On 28 August 2012, the United Nations Committee on the Rights of the Child published its Consideration of reports submitted by States parties under the Convention, including its Concluding Observations on Australia.

# At [50] the Committee recommended that the government “implement … appropriate measures to strengthen the current programmes of family support, including ensuring the availability and affordability of quality childcare facilities, the adequacy of family assistance payments and of the recently approved paid parental leave entitlement.”

# At [68] the Committee expressed concerns that the Paid Parental Leave scheme “is fixed at the national minimum wage, which may not be enough income for many households and is shorter than the required six months to exclusively breastfeed children. Given that the percentage of persons living under the poverty line in the State party is at approximately 12 per cent, especially among the aboriginal population, migrants and asylum seekers, and people with disabilities, the Committee notes with appreciation that there is a range of measures including various types of subsidies, tax reductions and returns and other support for lower income families. Nevertheless, it remains concerned that these are not equitably available to all families in need nor provided without distinction of place of residence or other discriminating factors.” At [69] the Committee recommended that the Paid Parental Leave scheme be “monitored closely to ensure that parents, especially mothers, are still able to earn an adequate living, while caring and breastfeeding their new born and that, after the 18-weeks payment period, appropriate facilities are made available to maintain high quality care of young children and continue breastfeeding until at least six months.”

# **International Covenant on Economic, Social and Cultural Rights**

# On 11 July 2017, the United Nations Committee on Economic, Social and Cultural Rights published its Concluding Observations on the fifth periodic report of Australia.

# At [31], the Committee indicated its concerns about the protection of the right to social security, including the: “(a) Inadequacy of income support benefits and the measures to further reduce social security entitlements in the 2017 Budget, such as the Family Tax Benefit freeze.” At [32], the Committee recommended that the government: “(a) Reconsider the financial cuts to the social security system, with a view to ensuring that all beneficiaries, especially disadvantaged and marginalised individuals and groups … are able to enjoy an adequate standard of living.”

# **Income-management schemes**

# **UN Special Rapporteur on Extreme Poverty and Human Rights**

# On 31 January 2018, the UN Special Rapporteur on Extreme Poverty and Human Rights raised concerns about the rollout of income-management schemes, and particularly their disproportionate impact on Indigenous persons.

# **Convention on the Elimination of Racial Discrimination**

# On 26 December 2017, the United Nations Committee on the Elimination of Racial Discrimination published its Concluding Observations on the eighteenth to twentieth periodic reports of Australia.

# At [23], the Committee expressed concerns that “indigenous peoples continue to experience high levels of discrimination across all socioeconomic indicators, including education, health care, employment and housing … The Committee is also concerned that indigenous peoples, including those living in remote areas, face discrimination in access to social security benefits, notably through the mandatory income-management scheme and the community development programme.” At [24], the Committee recommended that the government “[r]econsider the mandatory income-management scheme, which in effect disproportionally affects indigenous peoples, maintain only an opt-in income-management scheme and remove discriminatory conditions in access to social security benefits by claimants living in remote areas, the vast majority of whom are indigenous.”

# **International Covenant on Economic, Social and Cultural Rights**

# On 11 July 2017, the United Nations Committee on Economic, Social and Cultural Rights published its Concluding Observations on the fifth periodic report of Australia.

# At [31], the Committee indicated its concerns about the protection of the right to social security, including the: “(c) Mandatory income management schemes, disproportionately affecting indigenous peoples.” At [32], the Committee recommended that the government: “(c) Consider maintaining only an opt-in income management scheme with appropriate oversight of decision-making and monitoring, and review existing and envisaged conditionalities for eligibility to social assistance and unemployment benefits and penalties for non-compliance, and ensure that all beneficiaries receive adequate benefits, without discrimination.”

# On 1 April 2019, the Committee responded to information provided by Australia as to the steps undertaken to implement the Committee’s recommendations in the July 2017 Concluding Observations. As to the Committee recommendation regarding Australia’s income management scheme, the Committee determined that Australia had made insufficient progress. The Committee stated that “The State Party’s follow-up report indicates that compulsory income management schemes and welfare conditionality policies remain key features of Australia’s social security system. The report does not indicate that significant action has been taken in response to the Committee’s recommendations, and requests the State Party to provide additional information on progress made in implementing this recommendation in the context of its next periodic report. The Committee looks forward to continuing its constructive dialogue with the Government of the Australia, with a view to providing it with assistance in its efforts to ensure the effective implementation of the Covenant”.

# **The Senate – Community Affairs Legislation Committee – Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019**

# The Social Security (Administration) Amendment (Income Management and Cashless Welfare) Bill 2019 (bill) was introduced into the House of Representatives on 13 February 2019.

# The bill seeks to extend the trial area to establish the Cape York area and the whole of the Northern Territory as cashless debit card trial areas and to extend the trail end date to the 30 June 2021 for all areas other than Cape York which will have an end date of 31 December 2021.

# The stated primary purpose of the cashless debit card trial is to address the social harms that result from the misuse of alcohol, drugs and gambling. Evidence from submitters and witnesses indicated broad recognition of the need to address antisocial behaviour and crime, while at the same time supporting improvements in social and financial wellbeing.

# At [2.31] submitters were supportive of ongoing evaluation of the CDC trial but noted at [2.36] that the restriction to cash limited participants opportunities for purchasing second-hand goods or produce at community markets. At [2.40] submitters raised concerns that participants were able to access goods in spite of the restriction on participants access to cash. It was also submitted at [2.53] that the extent to which the bill engages, and limits certain human rights may not be reasonable and proportionate to the aims of the bill.

# The legislation was opposed in its current form by the dissenting Labour senators and in particular the establishment of the entirety of the Northern Territory as a trial site. At [1.40] it is outlined that after 12 years there is no evidence that broad based compulsory income management has worked in the Northern Territory to improve outcomes and at [1.41] that there is a lack of local consultation and an absence of consent for this proposed policy in the Northern Territory.

# The Labour senators do not believe the trials should be extended or expanded unless the card is made voluntary, is only applied in specific circumstances and the community genuinely gives their informed consent to trial the card.

# The Greens, also in dissent, do not support the bill citing issues such as lack of evidence to support the programme, hardship and perverse outcomes under the programme, inadequate consultation with First Nations communities and ministerial discretion to change the amount of income quarantined as reasons to oppose.

# **Insufficiency of Newstart allowance**

# **International Covenant on Economic, Social and Cultural Rights**

# On 11 July 2017, the United Nations Committee on Economic, Social and Cultural Rights published its Concluding Observations on the fifth periodic report of Australia.

# At [31], the Committee indicated its concerns about the protection of the right to social security, including the: “(a) Inadequacy of income support benefits and the measures to further reduce social security entitlements in the 2017 Budget.” At [32], the Committee recommended that the government: “(a) Reconsider the financial cuts to the social security system, with a view to ensuring that all beneficiaries, especially disadvantaged and marginalised individuals and groups … are able to enjoy an adequate standard of living.”

# **Adequacy of Newstart and related payments and alternative mechanisms to determine the level of income support payments in Australia Senate Inquiry Report**

# On 25 July 2019, the Senate referred an inquiry into the adequacy of Newstart and related payments and alternative mechanisms to determine the level of income support payments in Australia to the Senate Community Affairs References Committee for inquiry and report by 27 March 2020. The terms of reference include but are not limited to; consideration of what constitutes an acceptable standard of living in Australia; the appropriateness of current arrangements for supporting those experiencing insecure employment; and the current approach to setting income support payments in Australia.

# **Paid parental leave**

# **Universal Declaration of Human Rights**

# Article 25 provides that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control … Motherhood and childhood are entitled to special care and assistance.”

# **International Covenant on Economic, Social and Cultural Rights**

# Article 10 provides that “[s]pecial protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.”

# **Convention on the Rights of the Child**

# On 28 August 2012, the United Nations Committee on the Rights of the Child published its Consideration of reports submitted by States parties under the Convention, including its Concluding Observations on Australia.

# At [50], the Committee recommended that the government “implement … appropriate measures to strengthen the current programmes of family support, including ensuring the availability and affordability of quality childcare facilities, the adequacy of family assistance payments and of the recently approved paid parental leave entitlement.”

# At [68], the Committee expressed concerns that the Paid Parental Leave scheme “is fixed at the national minimum wage, which may not be enough income for many households and is shorter than the required six months to exclusively breastfeed children. Given that the percentage of persons living under the poverty line in the State party is at approximately 12 per cent, especially among the aboriginal population, migrants and asylum seekers, and people with disabilities, the Committee notes with appreciation that there is a range of measures including various types of subsidies, tax reductions and returns and other support for lower income families. Nevertheless, it remains concerned that these are not equitably available to all families in need nor provided without distinction of place of residence or other discriminating factors.” At [69] the Committee recommended that the Paid Parental Leave scheme be “monitored closely to ensure that parents, especially mothers, are still able to earn an adequate living, while caring and breastfeeding their new born and that, after the 18-weeks payment period, appropriate facilities are made available to maintain high quality care of young children and continue breastfeeding until at least six months.”

# On 30 September 2019, the United Nations Committee on the Rights of the Child published its concluding observations on the combined fifth and sixth periodic reports of Australia.

# At [32], the Committee recommends that Australia should extend paid maternity leave to six months to support appropriate care of newborn children.

# **Convention on the Elimination of All Forms of Discrimination against Women**

# Article 11 provides that “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.”

# On 20 July 2018, the United Nations Committee on the Elimination of Discrimination against Women published its Concluding Observations on the eighth periodic report of Australia.

# At [43], the Committee noted its concern that “parental leave is paid at the minimum wage and only for 18 weeks, and that it is not counted towards superannuation benefits.” At [44], the Committee recommended that Australia “[g]uarantee a minimum of 26 weeks paid maternal leave, which should be remunerated at the actual revenue of the mother, introduce an additional minimal four week paid leave to be taken by the supporting parent, and count the entire period in superannuation benefits.”

# **Public housing**

# **Convention on the Rights of the Child**

# On 28 August 2012, the United Nations Committee on the Rights of the Child published its Consideration of reports submitted by States parties under the Convention, including its Concluding Observations on Australia.

# At [70], the Committee stated that “[w]hile welcoming additional funding of housing reforms for Aboriginal Australians, as well as the Closing the Gap strategy aiming at the improvement of socio-economic conditions of Aboriginal Australians, the Committee is deeply concerned at the extent of child and youth homelessness in the State party, with State-provided social accommodation facing severe capacity constraints. Furthermore, the Committee is concerned that the State party has been unable to provide culturally appropriate housing services to reflect the specific needs of different groups.” At [71], the Committee recommended that the government “improve its social services, including education, income support, the health system, the disability service system and employment systems and the coordination amongst these, to strengthen their responsiveness to the needs of children and youth who are at risk of homelessness.”

# On 1 November 2019, the United Nations Committee on the Rights of the Child published its concluding observations on the combined fifth and sixth periodic reports of Australia.

# At [42], the Committee urges Australia to address the high rates of homelessness among children, particularly focusing on children leaving alternative care, and to include children under 12 years in the Reconnect program.

# **Convention on the Rights of Persons with Disability**

# On 21 October 2013, the United Nations Committee on the Rights of Persons with Disabilities published its Concluding Observations on the initial report of Australia.

# At [41], the Committee expressed concerns that “despite the policy to close large residential centres, new initiatives replicate institutional living arrangements, and many persons with disabilities are still obliged to live in residential institutions in order to receive disability support.” At [42], the Committee recommended that the government “develop and implement a national framework for the closure of residential institutions and to allocate the resources necessary for support services that would enable persons with disabilities to live in their communities … and take immediate action to ensure that persons with disabilities have a free choice as to where and with whom they want to live, and that they are eligible to receive the necessary support regardless of their place of residence. The State party should therefore map the various forms of living accommodation, based on the needs of various kinds of persons with disabilities.”

# On 15 October 2019, the United Nations Committee on the Rights of Persons with Disabilities published its Concluding Observations on the combined second and third periodic reports of Australia.

# At [37], the Committee expressed concerns about “(a) the fact that the Specialist Disability Accommodation framework facilitates and encourages the establishment of residential institutions and will result in persons with disabilities having to live in particular living arrangements in order to access National Disability Insurance Scheme support; (b) the lack of appropriate, affordable and accessible social housing, which severely limits the capacity of persons with disabilities to choose their place of residence; (c) the fact that the Younger People in Residential Aged Care action plan only outlines ways to reduce the number of persons under 65 years of age, including persons with disabilities, living in aged care facilities, but does not end the practice.” At [38], the Committee recommended that the State party “(a) develop a national framework aimed at closing all disability-specific residential institutions and preventing transinstitutionalization, including by addressing how persons with disabilities not eligible for the National Disability Insurance Scheme can be supported to transition from living in an institution to living independently in the community; CRPD/C/AUS/CO/2-3 11 (b) Increase the range, affordability and accessibility of public and social housing for persons with disabilities, including by implementing a quota for accessible social housing and by developing regulations and standards to guarantee the progressive application of universal design principles in accessible housing; (c) Revise the Younger People in Residential Aged Care action plan to ensure that by 2025 no person under 65 years of age enters or lives in residential aged care.”

# At para [38] it is recommended to develop a national framework aimed at closing all disability-specific residential institutions and preventing transinstitutionalization, including by addressing how persons with disabilities not eligible for the National Disability Insurance Scheme can be supported to transition from living in an institution to living independently in the community. It is also recommended to increase the range, affordability and accessibility of public and social housing for persons with disabilities, including by implementing a quota for accessible social housing and by developing regulations and standards to guarantee the progressive application of universal design principles in accessible housing.

# **Retirement**

# **Convention on the Elimination of All Forms of Discrimination against Women**

# Article 11 provides that “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.”

# **Convention on the Rights of Persons with Disability**

# On 15 October 2019, the United Nations Committee on the Rights of Persons with Disabilities published its Concluding Observations on the combined second and third periodic reports of Australia.

# At [35] the Committee expressed concerns about “(c) The 10-year qualifying period for migrants with a non-permanent visa to access the Age Support Pension and the Disability Support Pension;”. At [36] the Committee recommended that the State party “(b) remove the 10-year qualifying period for migrants to access the Age Support Pension and the Disability Support Pension.”

# **Self-determination**

# **Convention on the Elimination of Racial Discrimination**

# On 26 December 2017, the United Nations Committee on the Elimination of Racial Discrimination published its Concluding Observations on the eighteenth to twentieth periodic reports of Australia.

# At [17], the Committee expressed concerns about “the persisting challenges and discrimination faced by indigenous peoples in all aspects of their life. It notes the adoption of the ‘Closing the gap’ strategy in 2008, but regrets the under-resourcing and low level of its implementation with only one of the seven targets being on track. While noting the figures provided during the dialogue on government expenditures on issues relating to indigenous peoples, the Committee regrets the lack of information on the impact of such allocations and in particular on whether such allocations are sufficient to fulfil the rights and meet the needs of indigenous peoples.” At [18], the Committee recommended that the government “ensure that the strategy and other institutional measures with an impact on indigenous peoples are adequately funded to meet their objectives.”

# **Declaration on the Rights of Indigenous Peoples**

# Article 23 provides that “Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.”

# **Rights Impact Statement – Template**

# *Use this section to brainstorm and inform your approach to drafting your submission.*

# Summarise the changes in a few sentences.

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# When are the changes expected to be introduced, and when are the human rights of those affected likely to be impacted?

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# Are there related pieces of legislation which should also be considered?

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# Which groups will be affected by the changes? (e.g., individuals living in regional areas)

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# Have any sanctions (criminal or civil) been created, or amended, as part of the changes?

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# Do the changes affect the legal rights of any affected individuals?

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# Will affected individuals likely require legal advice, and if so, are there any barriers to receiving that legal advice? (e.g. are individuals likely to need to apply for legal aid?)

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# How will the changes likely affect access to relevant services? (e.g. Centrelink, public health care, public housing)

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# **Rights Impact Statement Example 1 – Drug Testing Programmes**

# Summarise the changes in a few sentences.

# The *Social Services Legislation Amendment (Drug Testing Trial) Bill 2018* proposes to introduce a two year trial of mandatory illicit drug testing of new claimants of Newstart Allowance and Youth Allowance in specified regions. If an individual fails a drug test, they become subject to income management.

# When are the changes expected to be introduced, and when are the human rights of those affected likely to be impacted?

# The Bill was debated by the House of Representatives on its second reading in May 2018 and there have been no substantive amendments to date. If the Bill is passed in the near future, it will immediately impact the human rights of those subject to the trial as they are disproportionately targeted and affected by its testing requirements and punitive consequences.

# Are there related pieces of legislation or policies which should also be considered?

# These changes were previously proposed, but ultimately dropped, in the *Social Services Legislation Amendment (Welfare Reform) Bill 2017*. The changes also relate to the income management regime currently operating.

# Which groups will be affected by the changes? (e.g., individuals living in regional areas)

# The Bill specifically targets welfare recipients in the comparatively disadvantaged areas of Canterbury-Bankstown, Logan and Mandurah.

# Have any sanctions (criminal or civil) been created, or amended, as part of the changes?

# No, however for each positive drug test in relation to an individual, they become subject to a drug test repayment deduction from their social security payments.

# Do the changes affect the legal rights of any affected individuals?

# No.

# Will affected individuals likely require legal advice, and if so, are there any barriers to receiving that legal advice? (e.g. are individuals likely to need to apply for legal aid?)

# Affected individuals may require legal advice if they are suffering from severe financial hardship and seek for the Secretary to reduce their drug test repayment deduction, or if they want to challenge the drug test or period of income management. In the specific areas in which the Bill proposes the trial will take place, there may be limited access to such services and affected individuals may not know the services are in fact available.

# How will the changes likely affect access to relevant services? (e.g. Centrelink, public health care, public housing)

# The Bill expands the group of Centrelink recipients potentially subject to income management.

# **What would a submission on the human rights impacts of drug testing programmes look like?**

# *Now, add Australia’s international obligations to the issues raised in your human rights statement, and use the structure of your statement as a guide.*

# The *Social Services Legislation Amendment (Drug Testing Trial) Bill 2018* (‘the Bill’) proposes to introduce a two year trial of mandatory illicit drug testing of new claimants of Newstart Allowance and Youth Allowance in specified regions. If an individual fails a drug test, they become subject to income management. The Bill was debated by the House of Representatives on its second reading in May 2018 and there have been no substantive amendments to date. If the Bill is passed in the near future, it will necessarily immediately impact the human rights of those subject to the trial as they are disproportionately targeted and affected by its testing requirements and punitive consequences. As the Bill specifies the three proposed trial locations, it is clear that the trial will be targeting social security recipients in disadvantaged areas, including Indigenous peoples. The Bill runs contrary to a number of recognised international human rights, including the rights to health and control one’s body (as the scheme compels individuals to consent to medical treatment), especially in subjecting children aged between 16-18 years to drug testing without adequate provisions for consent. It also undermines the rights to privacy and non-discrimination.

# These fundamental human rights concerns have been supported by the United Nations. On 31 January 2018, the UN Special Rapporteur on Extreme Poverty and Human Rights raised concerns about the drug-testing programmes being trialled in a letter to the Australian government. Further, on 11 July 2017, the United Nations Committee on Economic, Social and Cultural Rights published its Concluding Observations on the fifth periodic report of Australia’s compliance with the International Covenant on Economic, Social and Cultural Rights. At [43], the Committee expressed concerns that “the proposed programme of conditioning welfare benefits on the results of drug testing lacks a credible evidence base, may deepen stigma and drive drug users away from treatment”, and recommended its repeal.

# We also raise the concern that the drug testing trial has been combined with income management schemes, which have also been criticised on the basis that they undermine the right to social security. The UN Special Rapporteur on Extreme Poverty and Human Rights, as noted above, has raised concerns about income-management schemes, and particularly their disproportionate impact on Indigenous persons. The United Nations Committee on the Elimination of Racial Discrimination also raised concerns at [23] in its 18th-20th periodic reports of Australia on 26 December 2017, that Indigenous peoples “face discrimination in access to social security benefits, notably through the mandatory income-management scheme.”

# Both the United Nations Committee on the Elimination of Racial Discrimination and the United Nations Committee on Economic, Social and Cultural Rights have recommended that the government instead consider maintaining only an opt-in income management scheme with appropriate oversight.

# The rights to social security and an adequate standard of living are protected by a number of international agreements to which Australia is a party, for example articles 22 and 25 of the Universal Declaration of Human Rights, articles 9 and 11 of the International Covenant on Economic, Social and Cultural Rights and article 11 of the Bali Declaration. The Bill proposes to limit the circumstances in which an individual has complete access to social security, to which they would otherwise be entitled. Attempts to do this are repugnant to Australia’s international human rights obligations. Overall, the trial represents an intrusive and punitive scheme for those who experience daily and, in many cases, cyclical financial hardship and disadvantage throughout Australia.