

Social (In)Security and Inequality in Australia: The Limited Role of Human Rights in the Policy Debate

Beth Goldblatt

Introduction

This chapter explores the place of human rights within policy and legislative debates on social security in Australia 40 years after the Sackville Report recommended that the government treat income support as a right. It examines recent consideration by the Federal Parliament of the right to social security and the response by non-governmental bodies to violations of the right by the Australian Government. The chapter concludes that the international right to social security, while gaining greater prominence and definition, has proved limited in its capacity to improve the lives of Australians facing poverty, insecurity and inequality in the current political and legal context. The chapter proposes that calls for a right to social security should be linked to a right to equality and reiterates the long-standing and widely-held view that enforceable human rights are overdue in Australia.

The Right to Social Security

Vulnerability to poverty can arise at any time during a person's life due to the exigencies of job loss, illness, temporary or permanent disability, old age or youth. Martha Fineman explains vulnerability as the 'primal human condition' since:

As embodied beings, we are universally and individually constantly susceptible to harm, whether caused by infancy and lack of capacity, disease and physical decline, or by natural or manufactured disasters. This form of dependency, although episodic, is universally experienced and could be thought of as the physical manifestation or realization of our shared vulnerability as human persons, which is constant throughout the life course.¹

Caring responsibilities may arise that prohibit people's entry into the workforce or compel them to abandon or limit their paid work. In addition, social, cultural and economic barriers may prevent access to the workforce. It is for all these

1 Martha Fineman, 'Equality and Difference – The Restrained State' (2015) 66(3) *Alabama Law Review* 609 at 614.

reasons that society is called upon for support in times of need. This support, the function of families and communities for millennia, has become the task of the welfare state (or 'responsive state' as Fineman calls it) in developed and, to some extent, in developing countries over the last century or so. The loss of household and community ties to land and the resources necessary for subsistence following industrialisation have created the need for states to provide safety nets for those who cannot support themselves within the system. The extent of the state's responsibility and indirectly, the responsibility of those with the means to sustain those without support, is the ongoing subject of political debate within every society that contains some form of a welfare system.

Almost 70 years ago, the international community weighed in on this debate in declaring that individuals have a right to state assistance when faced with need – a right to social security. Thus, in 1948, Art 22 of the Universal Declaration of Human Rights (UDHR) stated:

Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation 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 further stated:

- (1) Everyone 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.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

The *Declaration of Philadelphia* (1944), adopted by the International Labour Conference, listed as one of the obligations of the International Labour Organization (ILO) at III(f): the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care.

The right to social security has since been given binding force in a number of international human rights treaties. In particular, the International Covenant on Economic, Social and Cultural Rights (ICESCR)² enumerates the right while Conventions dealing with specific groups and issues such as race, women, children, migrants and people with disabilities, all make reference to the right

² The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the General Assembly on 16 December 1966 and entered into force on 3 January 1976. On 10 December 2008, the General Assembly adopted an Optional Protocol to the ICESCR (2009) allowing for individual complaints to the Committee. This came into force on 10 May 2013. While a party to ICESCR, Australia has not yet signed the Optional Protocol.

to social security.³ The ILO has also played a leading role in developing standards for the realisation of the right to social security.⁴ In 2009 the Committee on Economic, Social and Cultural Rights responsible for the implementation of the ICESCR, produced a General Comment on the right to social security that provides detailed interpretation of the meaning of the right.⁵ The right to social security is thus well recognised and clearly defined in international law. It also appears in many national constitutions.⁶

The Right to Social Security in Australia: The Sackville Report

An early signatory to the International Covenant on Economic, Social and Cultural Rights, Australia ratified the treaty in 1975, the same year in which the Sackville Report on *Law and Poverty in Australia*⁷ was published. In discussing social security without specific reference to the international right, the report noted that the evolution of federal responsibility for social security had led to government viewing entitlements to income maintenance payments as a matter of 'right' for those facing difficulties, rather than as 'a privilege which can be denied or withdrawn for sound reasons'.⁸ In support of this claim, the report referred to a parliamentary statement concerning the underlying principle of 1973 legislation on the portability of pensions outside of Australia, namely that:

[I]f a person in this country establishes a right to a social security pension then that is a right that cannot be taken away from that person merely because he goes overseas; he takes the right with him.⁹

The Sackville Report endorsed the view that 'entitlement to income maintenance should be seen as a right'¹⁰ and recommended this approach be adopted

3 The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979) 1249 UNTS 13, Arts 11, 12, 13, 14(2); Convention on the Rights of the Child (CRC) (1989) 1577 UNTS 3, Arts 18, 23, 26, 27; International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965) 660 UNTS 195, Arts 2(2), 5(e); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) (1990) 2220 UNTS 3, Arts 27, 28, 54; Convention on the Rights of Persons with Disabilities (CRPD) (2006) UN Doc A/61/106, Arts 25, 27, 28.

4 Social Security (Minimum Standards) Convention (1952) ILO (No 102) is the flagship social security Convention of the ILO. The ILO Recommendation Concerning National Floors of Social Protection, (2012) (No 202) addresses the need for a basic level of social protection in every country regardless of its stage of development.

5 Committee on Economic, Social and Cultural Rights (CESCR) *General Comment No 19: The Right to Social Security (Art 9)* (2008) 39th Session 2007, E/C.12/GC/19.

6 Courtney Jung and Evan Rosevear, *Economic and Social Rights in Developing Country Constitutions Preliminary Report on the TIESR Dataset* (2011) <www.tiesr.org/TIESR%20Report%20v%203.1.pdf>.

7 Australian Government Commission of Inquiry into Poverty, Second Main Report, *Law and Poverty in Australia* (AGPS, 1975) (the Sackville Report), Ch 6.

8 Ibid, 165-166.

9 Ibid, 166, citing Mr WG Hayden speaking in the House of Representatives on 11 April 1973.

10 Ibid.

by government.¹¹ This philosophical starting point led to the conclusion in the Sackville Report that lawyers have a role within the social security system to advise and represent clients in relation to their claims. Underlying this assertion was the fact that welfare benefits are as significant in the lives of poor people as tax deductions or subsidies are to those with greater means who have always relied on lawyers to argue in their interests. He also noted that lawyers have a broader role to play in challenging departmental policy and practice through the courts.¹² He observed that this role might be less extensive than in countries where constitutional arguments were possible but that nevertheless there was a need for judicial interpretation of social security legislation that might differ from the way it was being applied by government officials.

The Sackville Report went on to make a range of recommendations for the improvement of the administration of social security decision making and appeals. It also raised two specific policy concerns with the system at the time. Notably, both concerns related to the violation of the rights of women in their attempts to claim benefits. The first concerned the requirement that women were expected to exhaust options to obtain private maintenance from their former partners before being entitled to claim pensions. The report argued that this policy violated the 'dignity' of women claimants and went against the 'philosophy of social security as a right'.¹³ Frequently, women were forced to bring maintenance claims leading to confrontation with men where relationships were already conflictual and unpleasant. This resulted in discrimination against a category of women social security claimants who were placed in a different position from those women who had a choice as to whether to pursue maintenance claims. Professor Sackville recommended the removal of this requirement or, in the absence of this, greater legal support for claimants having to initiate maintenance proceedings.

The second policy concern identified in the report highlighted the difficulties arising from the operation of the 'cohabitation rule'.¹⁴ The rule, emanating in part from legislation and in part from departmental policy, was devised to prevent unmarried couples in '*bona fide* domestic relationships' from obtaining greater financial benefit from the social security payment system than married couples. This rule led to relatively intrusive inquiries by departmental officials into the household arrangements of women claiming widows' pensions and supporting mothers' benefits based on the (questionable) assumption that once a single woman moved in with a man, she would no longer require a pension or other benefit. The report critically enumerated a range of unequal and unfair implications of the rule as well as a number of unfavourable behavioural impacts it was possibly generating. Professor Sackville, finding the lack of a viable alternative, did not propose abandoning the rule but recommended a

11 Ibid, 193.

12 Ibid, 170.

13 Ibid, 188.

14 Ibid, 189-192.

set of measures to make the rule and its operation more transparent, administratively fair and less intrusive.

While aspects of the Sackville Report recommendations in regard to these two important policy concerns have been adopted over the past 40 years, some of the difficulties with both the requirement to claim maintenance and the cohabitation rule remain within our system and continue to create hardship for social security applicants and beneficiaries, particularly women.¹⁵ Despite the strong statement in the Sackville Report that social security should be viewed as a right, it remains unenforceable in Australia.

An enforceable equality right might also have been a partial solution to some of the concerns the report raised since the maintenance issue concerned the inequality between poor women and those women who were less disadvantaged; while the cohabitation issue concerned the sexist assumption that women who re-partnered would be supported by their new male partners and resulted in measures that discriminated unfairly between single women and women with partners. But the right to equality is similarly unavailable to lawyers wishing to challenge discriminatory social security policy in Australia.¹⁶ The Sackville Report, an exemplary demonstration of thoughtful rights-based argument combined with thorough and contextual socio-legal evidence, remains to be fully implemented in Australia 40 years later.

The Right to Social Security in Australia Since the Sackville Report

In 2006, 30 years after the Sackville Report, social security scholar Terry Carney again reflected on whether Australian social security laws were adequate as judged against the right to social security.¹⁷ He noted the significance of the introduction in 1975 of merits review of social security decisions to the Social Security Appeals Tribunal (subsequently renamed the Social Services and Child Support Division of the Administrative Appeals Tribunal) as a means of guaranteeing the (administrative) rights of social security recipients.¹⁸ Carney demonstrated the limited success of efforts to raise international human rights in social security cases (whether concerning the review of administrative discretion exercised by social security officials¹⁹ or statutory interpretation by the court of ambiguous social security laws²⁰) which were largely constrained

15 See Terry Carney, 'Women and Social Security/Transfer Payments Law' in Patricia Easteal (ed), *Women and the Law in Australia* (LexisNexis Butterworths, 2010), 424, 429, 433-435.

16 Social security legislation is excluded from the coverage of anti-discrimination law in Australia.

17 Terry Carney, 'Neoliberal Welfare Reform and 'Rights' Compliance' (2006) 12(1) *Australian Journal of Human Rights* 223. Also note the earlier discussion of human rights and welfare in Australia by Peter Bailey, 'Right to an Adequate Standard of Living: New Issues for Australian Law' (1997) 4(1) *Australian Journal of Human Rights* 25.

18 Carney, above n 17, 232.

19 Ibid, with the exception of some 'Special Benefits' decisions at 234-236.

20 Ibid, 237-238.

by increasingly tighter legislation and the Australian courts' reticence to draw on international law that had not been incorporated domestically.

Carney noted, and this has not changed, that despite ratifying many of the human rights treaties that include the right to social security,²¹ Australia had not legislated for the inclusion of such rights domestically.²² The exception to this trend is anti-discrimination legislation that covers sex, race, age and disability however social security legislation is specifically excluded from the reach of these laws. Australia has continued to resist the introduction of federal human rights legislation or constitutional inclusion of human rights. Even in those States and Territories where some human rights legislation has been introduced in recent years, social and economic rights are limited or absent.

Carney concluded that the lack of attention to social security rights within Australian judicial decisions is unsurprising given the lack of rights protections. He captured the predicament as follows:

Common law protections are weak reeds, which bend in the face of a clear expression of parliamentary will, irrespective of its justice or fairness: greater weight is given to the expression of the democratic will, as expressed through the political process, than to the protection of fundamental rights of the individual. That is problematic for social security clients, who are notoriously regarded around the world as being especially vulnerable to negation of their rights due to their impoverishment, relative powerlessness and liability to being made a political scapegoat.²³

At the same time, Carney acknowledged the limits of rights adjudication elsewhere in the world in constraining neoliberal welfare reform to ensure the adequacy of social provision for the poor. His conclusion was that the status of substantive welfare rights in Australia is 'bleak'.²⁴

This disheartening situation has not altered significantly today despite the introduction of new human rights mechanisms by the Federal Parliament. The Rudd Labor Government initiated a national consultation on Australia's human rights protection in 2008 that resulted in the Brennan Committee Report of 2009 recommending a federal human rights Act.²⁵ Although this recommendation was not adopted, the government established the Parliamentary Joint Committee on Human Rights which was tasked to scrutinise legislative compliance with international human rights treaties to which Australia is party.²⁶

21 Such as the ICESCR, CEDAW, the CRC and CRPD, above n 3.

22 Carney suggested that human rights claims were in any event inadequate in addressing injustice in the social security system, for example, in relation to punitive approaches to breaches by the unemployed and in the approach to disability support. He observed that it was advocacy by civil society bodies that achieved a measure of success in addressing some of the harsher features of government policy, above n 17, 243.

23 Ibid, 244.

24 Ibid.

25 National Human Rights Consultation Committee, *National Human Rights Consultation* (Commonwealth of Australia, 2009).

26 The Committee was established in terms of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) and produced its first reports in 2012.

While this Committee can find that new Bills and Acts are non-compliant with human rights, its reports are merely recommendatory and can be disregarded by parliament.²⁷ Thus, Australia remains one of the few countries in the world without some form of constitutional or legislative model of human rights protection and the right to social security, while recognised by Australia in terms of its international obligations, is not enforceable domestically.

The Parliamentary Joint Committee on Human Rights has nevertheless created a new forum, albeit restricted and with questionable influence, for the discussion of the right to social security in parliament. This has in turn enabled the public, generally via non-governmental advocacy bodies, to frame their difficulties with proposed social security legislation in human rights terms. These groups have also continued to appeal to the various United Nations human rights committees and experts regarding concerns with Australia's violation of the social security rights of its people. Through these two modest avenues, the right to social security remains on the agenda in a limited form in Australia, with a largely rhetorical impact.

In the following section, the chapter discusses attempts by the previous Labor Government and by subsequent Coalition Governments to introduce reforms to the social security system. These measures fall within the broad policy objective of encouraging certain groups claiming benefits into work while at the same time achieving budgetary savings. What Carney described as a 'neo-liberal' approach to social security reform under the Howard Government²⁸ has become the path for subsequent Labor and Coalition Governments. The Howard years saw the introduction of coercive 'activation' policies modelled on the United States 'workfare' system that linked benefits to job seeking and evidence of employment.²⁹ As noted above, harsh penalties for breaches were introduced,³⁰ coupled with an overtly ideological campaign aimed at shifting the notion of welfare as a citizenship right to a conditional entitlement based on 'mutual obligation'.³¹ The first reforms examined here, legislated by Labor under Julia Gillard, were the cuts to parenting payments that saw single parents losing a significant portion of their welfare income. The second reforms, considered here, were the unsuccessful attempts by Tony Abbott's Coalition Government to introduce a package of reforms to social security that included cuts to the total benefits for single parents on welfare. A modified version of these reforms under the new Coalition leadership of Malcolm Turnbull has, at the time of writing, been put to parliament. All these

27 Discussed in George Williams and Lisa Burton, 'Australia's Exclusive Parliamentary Model of Rights Protection' (2013) 34(1) *Statute Law Review* 58.

28 Carney, above n 17.

29 Philip Mendes, *Australia's Welfare Wars Revisited: The Players, the Politics and the Ideologies* (UNSW Press, 2008); Lesley Chenoweth, 'Redefining Welfare: Australian Social Policy and Practice' (2008) 2(1) *Asian Social Work and Policy Review* 53.

30 For a discussion of this approach framed in terms of the right to social security, see Tamara Walsh, 'Breaching the Right to Social Security' (2003) 12(1) *Griffith Law Review* 4.

31 Sheila Shaver, 'Australian Welfare Reform: From Citizenship to Supervision' (2002) 36(4) *Social Policy and Administration* 331.

measures target a vulnerable group – single parents, most of whom are women – in removing social security payments to which they were previously entitled and have a profound impact on child poverty in Australia.

Recent Measures to Reduce the Social Security Entitlements of Single Parents and Their Children

Parenting Payment Cuts Under the Labor Government (2012)

In contrast to positive measures, such as an increase in the aged pension amount in 2009, the Labor Government refused to increase the low unemployment payment (known as Newstart) despite growing poverty. One of the most controversial measures of that government under the leadership of Julia Gillard, was the cuts to the benefits of a group of single parents in 2012. This group had been promised they could stay on parenting benefits (a higher amount than Newstart) if they had made claims before July 2006. The 2012 changes removed this entitlement and with the lower income test for Newstart, many parents lost their benefits entirely or lost a sizeable part of their income. The changes, which took effect in January 2013, saw 63,000 single parents immediately affected with a longer-term impact on 147,000 parents.³² The vast majority of single parents affected (95 per cent) are women.

An interesting feature of the outcry against these measures was the effort by those opposing the cuts to hold the government to account in terms of its human rights obligations, particularly the right to social security. Civil society groups sought the assistance of the United Nations Special Rapporteur for extreme poverty and human rights, an independent mandate holder appointed in terms of the special procedures of the Human Rights Council. In addition to this claim to international oversight, these groups looked to the newly established Parliamentary Joint Committee on Human Rights to assess the compatibility of the proposed legislative changes to introduce the cuts as against Australia's human rights commitments.³³

Advocacy groups argued that the proposed cuts were a violation of the right to social security and the right to equality of women and children.³⁴ They

32 Parliamentary Joint Committee on Human Rights, 'Examination of Legislation in Accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011 – Social Security Legislation Amendment (Fair Incentives to Work) Act 2012: Final Report*' (Commonwealth of Australia, 2013), 4 <www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Completed_inquiries/2013/2013/52013/index>.

33 For a more detailed documentation of this response, see Beth Goldblatt, 'Testing Women's Right to Social Security in Australia: A Poor Score' in Beth Goldblatt and Lucie Lamarche (eds), *Women's Rights to Social Security and Social Protection* (Hart, 2014), 263-285.

34 Australian Council of Social Service (ACOSS), together with 14 individuals representing welfare and human rights organisations across Australia wrote to the Parliamentary Committee: 'Request for Inquiry by the Parliamentary Joint Committee on Human Rights into the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012' (15 June 2012) <www.aph.gov.au/Parliamentary_Business/Committees/

said that the measures violated the right to social security and the right to an adequate standard of living of single parents. In addition, they claimed that the proposed measures were retrogressive since they would erode existing provision of social security without adequate justification, consultation with affected groups, and the consideration of alternatives. In addition, they were discriminatory since they targeted a group largely made up of poor, single women and their children.

Parliament's Joint Committee on Human Rights (PJCHR) recommended the delay of the bill that was to introduce the cuts pending a Senate Committee inquiry into the adequacy of Newstart. The Committee also raised serious human rights concerns with the retrogressive nature of the measures.³⁵ Following the Senate report on Newstart the PJCHR concluded that:

[T]he government has not provided the necessary evidence to demonstrate that the total support package available to individuals who are subject to these measures is sufficient to satisfy minimum essential levels of social security as guaranteed in Art 9 of the *ICESCR* and the minimum requirements of the right to an adequate standard of living in Australia as guaranteed in Art 11 of the *ICESCR*. Nor has it indicated the basis on which it makes that assessment. In the absence of this information, the committee is unable to conclude that these measures are compatible with human rights.³⁶

The PJCHR called on the government to review the impact of the measures after one year and to make 'reasonable adjustments' if the impacts were 'disproportionately detrimental to single parent families'.³⁷ Despite the clear concern with the proposed reforms set out in the interim and final reports of the PJCHR from a human rights perspective, parliament passed the legislation with effect from 1 January 2013.³⁸ In September 2013, a new government came into power and such a review has not been undertaken.

The 2013 legislation, which resulted in a budget saving of \$728 million, had a severe impact on thousands of single parents and their families. Single parents on Newstart are now between \$80 and \$140 per week worse off as a result of these changes.³⁹ A high proportion of single parents (nearly 43 per cent) are in paid employment but the harsher rules under Newstart mean that their

Joint/Human_Rights/Committee_Activity/socialsecurity/correspondence/~/media/Committees/Senate/committee/humanrights_ctte/activity/social_security/correspondence/letter_inquiry_joint_committee_human_rights.ashx>. The author of this chapter was one of the signatories to this letter.

35 Parliamentary Joint Committee on Human Rights, 'Examination of Legislation in Accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*: Interim Report – Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012, Fourth Report of 2012 (Commonwealth of Australia, 2012) (Interim Report) <www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Completed_inquiries/2012/42012/index>.

36 Parliamentary Joint Committee on Human Rights, above n 32, 30.

37 Ibid.

38 *Social Security Legislation Amendment (Fair Incentives to Work) Act 2012* (Cth).

39 'National Welfare Rights Network' (Media Release, 7 February 2014). The analysis is based on Senate estimates data.

benefits reduce at a higher rate than they did under Parenting Payment Single. Many of these parents are struggling to meet rental payments and the other costs of supporting children. Single mothers have pointed to a range of negative impacts of the changes, including growing financial insecurity and hardship, stigmatisation of their children, inability to enrol their children in sport and other community activities or pay for school excursions, psychological stress impacting on their own health and their capacity to work and study, shame in having to ask for help from others and a range of other economic, social and cultural impacts.⁴⁰

Proposed Cuts to Single Parent Benefits Under the Abbott Coalition Government (2014-15)

In the 2014 budget,⁴¹ the Coalition Government (elected in September 2013) signalled its intention to introduce further cuts to the benefits of single parents (amongst other welfare reforms).⁴² The 2014-15 budget proposed the following:⁴³

1. to index Parenting Payment Single to the Consumer Price Index instead of to wages (with new arrangements to start earlier than other pensions);
2. to restrict Family Tax Benefit Part B⁴⁴ to families with children over 6 years of age and replace this with a Sole Parent Supplement.

The indexation changes would erode the value of the Parenting Payments over time relative to community living standards, while the new supplement would leave sole parents with school aged children significantly worse off.

The PJCHR considered these proposed measures and asked the Minister for Social Services to provide information justifying their compatibility with Australia's human rights obligations.⁴⁵ The minister responded by saying

40 Some of these impacts are documented in '10 Stories of Single Mothers' <www.10storiesofsinglemothers.org.au>.

41 Australian Government, *Federal Budget 2014-15* <www.budget.gov.au/2014-15/index.htm>. The relevant legislation is Social Services and Other Legislation Amendment (2014 Budget Measures No 1) Bill 2014 (Cth) and Social Services and Other Legislation Amendment (2014 Budget Measures No 2) Bill 2014 (Cth).

42 The government also declared its intention to cut youth unemployment benefits, increase the retirement age, introduce a consumer fee for certain health care services previously covered under the national health system, and reduce university fee support while uncapping university fees.

43 For detailed analysis of these measures see ACOSS Budget Analysis <www.acoss.org.au/images/uploads/ACOSS_2014-15_Budget_analysis_-_WEB.pdf> and ACOSS Budget Bills briefs <www.acoss.org.au/take_action/federal_budget_2014-15>.

44 Family Tax Benefit B, as a supplement to Family Tax Benefit A which assists with the costs of raising children, provides additional support to single parents and families with a carer not in work.

45 Examination of legislation in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, Bills introduced 23-26 June 2014, Legislative Instruments received 7-20 June 2014, Ninth Report of the 44th Parliament, 15 July 2014:

Social Services and Other Legislation Amendment (2014 Budget Measures No 1) Bill 2014 <www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Completed_inquiries/2014/944/c01p>;

that such measures were necessary for the sustainability of the social security system and would encourage parents to reenter the workforce. On receipt of such justification, the Committee found that the measures were not violations of the right to social security. It did however find that the measures had a 'disproportionate impact on women' and may therefore be 'indirectly discriminatory'.⁴⁶ It therefore considered 'that the measure may be incompatible with the right to equality and non-discrimination'.⁴⁷

Given the Senate's refusal to approve them, the measures were not passed. However, the 2015 Budget again included similar proposals to cut Family Tax Benefit Part B to single income families with children over the age of six, with estimated income losses of \$49 per week for single parent families and more for those with older children.⁴⁸ It also retained proposals to freeze family payment rates for two years and other measures that would lead to lower benefits for poor families.⁴⁹ Again, these measures were not passed.

Proposed Cuts to Single Parent Benefits Under the Turnbull Coalition Government (2015-16)

Following the defeat of Tony Abbott within the Liberal Party and the installation of Malcolm Turnbull as the new Coalition Prime Minister in 2015, a slightly less harsh version of the Abbott reforms to social security were introduced into parliament.⁵⁰ The Bill proposed various measures, including:

1. the reduction in the rate of Family Tax Benefit B for single parent families with a youngest child aged between 13 and 16 years to \$1,000.10 per year (currently \$2,737.50); and,
2. removal of the same benefit for couple families (other than grandparents) with a youngest child aged 13 years or over.

Social Services and Other Legislation Amendment (2014 Budget Measures No 2) Bill 2014 <www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Completed_inquiries/2014/944/c01q>.

46 Examination of legislation in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, Bills introduced 1-4 September 2014, Legislative Instruments received 2 August-5 September 2014, Twelfth Report of the 44th Parliament, 24 September 2014, Social Services and Other Legislation Amendment (2014 Budget Measures No 1) Bill 2014, 55-64; Social Services and Other Legislation Amendment (2014 Budget Measures No 2) Bill 2014, 67-83 <www.aph.gov.au/~media/Committees/Senate/committee/humanrights_ctte/reports/2014/12_44/Twelfth%20Report.pdf>.

47 Examination of legislation in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011* Bills introduced 24-27 November 2014, Legislative Instruments received 24-30 October 2014, Seventeenth Report of the 44th Parliament, 2 December 2014, 13. Note the dissenting report of two committee members, 15-16 www.aph.gov.au/~media/Committees/Senate/committee/humanrights_ctte/reports/2014/17_44/17th%20Report.pdf.

48 ACOSS, *Budget Analysis 2015-16* (ACOSS, Sydney), 21.

49 Ibid, 23.

50 Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill 2015, introduced on 21 October 2015.

In considering these proposed reforms, the PJCHR queried whether the measures, assessed against the right to social security and the right to livelihood in international law, were ‘a justifiable limitation’ on these rights,⁵¹ calling on the Minister for Social Services to provide justificatory evidence or reasoning for this apparent limitation on human rights.

Following public outcry and resistance in the Senate the Bill was passed in December 2015 in an amended form.⁵² It removed Family Tax Benefit Part B (from 1 July 2016) for couple families (other than grandparents) with a youngest child aged 13 or over but did not reduce the rate for single parent families.

The government remains committed to reintroducing cuts to single parents’ benefits in 2016.⁵³ Advocacy groups have pointed to the likely impacts of these cuts in increasing child poverty which is already sizeable – some 600,000 children currently live below the poverty line in Australia.⁵⁴

Discussion

The measures to reduce single parent benefits, described above, have been recognised by the PJCHR as a violation of the right to social security in one case, as a violation of the right to equality for women in another, and have led to questions about the violation of the rights to social security and livelihood in a third. In addition, the consideration of the legislation by the Committee has resulted in exchanges between the minister and other parliamentarians on the interpretation of the right to social security and equality, and human rights law concepts such as non-retrogression. These developments arguably demonstrate, at the very least, growing human rights literacy in parliament in relation to social security.

Community groups saw the establishment of the PJCHR as an opportunity to frame their concerns with proposed law reforms in human rights terms. However, their interest in continuing to do so for the later rounds of proposed reforms seemed to wane, probably due to the lack of response by parliament to the Committee’s earlier recommendations.

The Committee reports, though often hesitantly phrased, do provide a written record of human rights violations at the domestic level where previously such statements were found only at the more arm’s-length international level (for example, in observations by treaty committees). But essentially, the

51 Parliamentary Joint Committee on Human Rights, *Human Rights Scrutiny Report*, Thirtieth report of the 44th Parliament, 10 November 2015, 53-60.

52 *Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Act 2015* (Cth).

53 *Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill (No 2) 2015* (Cth).

54 ACOSS letter to the Committee Secretary, Senate Standing Committee on Community Affairs regarding the Inquiry into the Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill 2015, dated 18 November 2015 <www.acoss.org.au/wp-content/uploads/2015/11/Submission-to-inquiry-into-family-payments-changes.pdf>.

workings of the PJCHR seem to take the lack of enforceable rights no further. Interestingly, in the first example of reforms under the Labor Government, changes went ahead despite the adverse report of the Committee and extensive public outcry. The more recent reforms have been resisted within the parliament by opposition parties in the Senate, accompanied by public disapproval. This perhaps indicates that politics are playing out through traditional forms of representative democratic contestation with rights having a very limited role in the ultimate conclusion. Nevertheless, the absence of an actionable right to social security remains a noticeable gap in the Australian context.

Poverty, Inequality and Rights

The reduction in welfare benefits available for single parents points to a worrying trend towards greater poverty and inequality for this group.⁵⁵ Single parents are at a much higher risk of poverty compared with other family categories, with a third (33 per cent) of single parent families living below the poverty line.⁵⁶ The higher risk of poverty amongst these families is due partly to lower levels of employment among sole parents, especially those caring for young children on their own, and partly to the level of social security payments for these families.⁵⁷ At 25 per cent, Australia has the fifth highest rate of poverty among sole parent families in the OECD while half of all children living in poverty are in sole parent households (286,000 children).⁵⁸ While government has a responsibility to keep budgetary spending at manageable levels, reductions in expenditure should not target the most vulnerable groups in society or introduce measures that exacerbate their disadvantage. The measures taken by successive governments to ‘activate’ single parents by reducing their benefits have had limited success, particularly given the inadequacy of affordable childcare. A recent report by the National Centre for Social and Economic Modelling (NATSEM) suggests that such policies have had a small impact on the employment participation of these parents while cuts to their benefits have seen their incomes grow at the smallest rate of all groups in society. This has resulted in growing inequality between single parent and other families in Australia.⁵⁹

55 ACOSS, *Inequality in Australia: A Nation Divided* (2015). This report finds that between 2004 and 2012 the wealth of the top 20 per cent increased by 28 per cent compared to the bottom 20 per cent which increased by 3 per cent.

56 ACOSS, *Poverty in Australia 2014* (2014), 20-21 <www.acoss.org.au/images/uploads/ACOSS_Poverty_in_Australia_2014.pdf>.

57 Ibid.

58 ACOSS Budget Bills Brief: *Changes to Family Tax Benefit*, 1 <www.acoss.org.au/wp-content/uploads/2015/08/ACOSS_Budget_Bills_changes_to_family_tax_benefit.pdf>.

59 Ben Phillips, *Living Standard Trends in Australia: Report for Anglicare Australia* (NATSEM, University of Canberra, September 2015). Also note the report by Rachel Carbonell, ‘The Welfare to Work Trap’ (Background Briefing, ABC Radio, 27 September 2015) <www.abc.net.au/radionational/programs/backgroundbriefing/the-welfare-to-work-trap/6795072>.

The current government efforts to delay welfare benefits to unemployed youth and to roll out further cashless welfare in Indigenous communities⁶⁰ illustrate an undermining of the rights to social security and equality of these marginalised groups. The growing gap between rich and poor in Australia has led to concern and an outcry by community bodies. Kasy Chambers of Anglicare has suggested that ‘the economic costs alone of having people live in poverty in a rich community is not only economically nonsensical, it’s actually immoral’.⁶¹ This chapter argues that it is not only ‘immoral’ but is also a violation of the human rights of Australians facing economic disadvantage. While Australia has made an international commitment to these rights it has avoided ensuring their domestic enforceability: this means that rights to social security and equality are largely rhetorical for Australians facing disadvantage. The lack of enforceable rights allows the government to continue to take the knife to the social security benefits of the poor in the interests of budget cuts. Measures aimed at forcing women with young children and inadequate care options into work or controlling Indigenous welfare spending through income management policies,⁶² reflect the use of social security as a punitive mechanism to control the behaviours of marginal groups, rather than viewing it as an entitlement of citizenship.

The close relationship between poverty and inequality is evident in the growing income gap between rich and poor in Australia. It is also notable that certain groups that have historically been subject to discrimination, such as Indigenous people, single mothers, the elderly and people with disabilities are becoming further disadvantaged in our society. Removing, reducing or controlling their welfare benefits violates their capacity to access their social security entitlements. The links between disadvantage and poverty reinforce the critical relationship between the right to social security and the right to non-discrimination.⁶³ If social vulnerability and need is to be properly addressed it must be attentive to the contours of marginalisation in our society.

The relationship between poverty, inequality and rights has been discussed in a recent report to the United Nations Human Rights Council by Philip Alston, the current United Nations Special Rapporteur on extreme poverty and human rights.⁶⁴ He documents the growing research on inequality which has shown an increase in most parts of the world. Alston notes the distinction between vertical and horizontal inequalities. Vertical inequalities arise where

60 While this is not a reduction of welfare it is a measure to control the spending choices of Indigenous welfare recipients, the majority of whom are women. For a discussion of the rights implications of this policy from a right to social security and equality perspective, see Goldblatt, above n 33.

61 Quoted in Carbonell, above n 59.

62 Eva Cox, ‘Evidence-Free Policy Making? The Case of Income Management’ (2011) 12 *Journal of Indigenous Policy* 1; Goldblatt, above n 33.

63 Beth Goldblatt, *Developing the Right to Social Security – A Gender Perspective* (Routledge, 2016).

64 A/HRC/29/31, 27 May 2015.

there is an unequal distribution of income and wealth (economic inequality) and an unequal distribution of social resources (social inequality), such as access to health or education. Inequalities in political power are also vertical inequalities. Horizontal inequalities are group-based differences such as those based on race, gender and (dis)ability.⁶⁵ The overlap between horizontal and vertical inequalities indicates that discrimination is an 'important cause of inequality'.⁶⁶ He cites the average global gap between male and female income of 24 per cent as a stark example.⁶⁷ Alston argues that extreme inequality has a negative impact on democracy, social stability and the enjoyment of human rights. He notes that:

[T]he regressive or progressive nature of a state's tax structure, and the groups and purposes for which it gives exemptions and deductions, shapes the allocation of income and assets across the population, and thereby affects levels of inequality and human rights enjoyment.⁶⁸

In response to this Alston urges governments to use redistributive measures to address inequality and respect for the human rights of all in society. He proposes the 'revitalization' of the equality 'norm' following the lack of an adequate response by human rights treaty bodies to link equality to the distribution of resources and calls for a greater focus on the right to equality and to prohibitions against discrimination, based on social origin, property or birth.⁶⁹

This understanding of poverty, inequality and rights highlights the importance of the right to equality in addressing material, structural and deep-rooted discrimination and disadvantage. This substantive notion of equality is necessary if the equality right is to be used to challenge systemic and multi-dimensional inequality.⁷⁰ Combining this right with an enforceable right to social security ensures that social provision for vulnerable members of society is available, adequate, accessible, comprehensive and fair.⁷¹

Conclusion

The need to link struggles over social security to challenges against discrimination facing a range of increasingly disadvantaged groups appears critical in Australia today. Enforceable human rights, while clearly not a panacea, would be a valuable addition to the set of tools available to fight hardship and unfairness. Framing such challenges in terms of the right to social security and the right to equality would ensure that government welfare policy becomes

65 Ibid 5, paras 6-7.

66 Ibid 11, para 24.

67 Ibid 11, para 25.

68 Ibid 18, para 53.

69 Ibid 19, paras 54-55.

70 Sandra Fredman and Beth Goldblatt, 'Gender Equality and Human Rights', Discussion Paper for UN Women's Progress of the World's Women 2015.

71 As discussed in CESCR General Comment No 19, above n 5.

more principled and compassionate, but also more rational in its response to people facing poverty. It is worth reiterating the recommendation made by the Sackville Report 40 years ago that income support for those facing poverty should be recognised by government as a right. This right should go hand in hand with a strong and effective right to equality.