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Women's Rights to Social Security and Social Protection

Edited by
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*Testing Women's Right to
Social Security in Australia:
A Poor Score*

BETH GOLDBLATT

INTRODUCTION

THE RIGHT TO social security, when interpreted from a gender perspective, requires an appreciation of the impact of the sexual division of labour on the situation of women in relation to work of different kinds: unpaid subsistence work; work in the formal and informal sectors; and unpaid reproductive work in maintaining households and in providing care.¹ The right to social security has historically been linked to formal and, hence, male-biased conceptions of work that disadvantage women. In addition to rethinking the way work is conceived within the right to social security, the right should also be understood as a citizenship entitlement, delinked from work, which is available to address poverty and social exclusion. Such a right will respond, along with other rights, to the needs of the millions of women who face disproportionate poverty, lack of access to paid work or underemployment and numerous additional barriers to dignified inclusion in society.

A gendered right to social security is intimately tied to the right to equality given the principle of the interdependence of rights and the importance of substantive gender equality in realising women's rights. Sandra Fredman's multidimensional approach to equality, pursuing the four overlapping aims of recognition, redistribution, transformation and participation,² is the equality standard used here against which to measure compliance with the

¹ These ideas are discussed and developed in Goldblatt, B, 'Gender poverty and the development of the right to social security' (2014) *International Journal of Law in Context*, forthcoming.

² Fredman, in this collection. See also, Fredman, S, *Discrimination Law*, 2nd edn (Oxford, Oxford University Press, 2011).

social security right. Fredman explains the four aims entailed in substantive equality as follows:

First, it aims to break the cycle of disadvantage associated with status or out-groups. This reflects the redistributive dimension of equality. Secondly, it aims to promote respect for dignity and worth, thereby redressing stigma, stereotyping, humiliation, and violence because of membership of an identity group. This reflects a recognition dimension. Thirdly, it should not exact conformity as a price of equality. Instead, it should accommodate difference and aim to achieve structural change. This captures the transformative dimension. Finally, substantive equality should facilitate full participation in society, both socially and politically. This is the participative dimension.³

This approach offers a comprehensive formulation of substantive equality that is well suited to inform the equality right, from a gender perspective, in its relationship to the social security right.

The above ideas about work and equality are central to developing a set of principles for a substantively equal, gendered right to social security. These principles include: first, that women's household reproductive labour and care work (of children, the sick, elderly and disabled) is recognised and supported and that care is understood as a responsibility of the whole society; second, that women's other unpaid work such as occurs in subsistence production and family industries is recognised and supported for the purpose of social security; third, that women's work in the informal sector in the many forms this takes requires accompanying social security rights; fourth, that women's work within formal employment is valued and attracts sufficient and equal social security; fifth, that social security is provided to all men and women who need it, regardless of their relationship to work; sixth, that the design of social security systems promotes gender equality; and seventh, that women have full and equal access to social security.⁴

These principles should apply beyond national boundaries to address the circumstances of migrant workers and within states, at all levels of governance, to address internal labour migration; and they should inform international cooperation and assistance. They should also take account of the diversity of women's experience across age, race, disability, sexuality, caste, ethnicity and so on, in recognising intersectional disadvantage. The principles can be used to engender existing interpretations of the right to social security, most recently articulated in detailed form in the United Nations (UN) Committee for Economic, Social and Cultural Rights (CESCR) General Comment No 19 on the Right to Social Security.⁵

³ Fredman, *Discrimination Law*, above n 2, at 25.

⁴ Goldblatt, above n 1.

⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No 19: The Right to Social Security (art 9)*, 4 February 2008, UN Doc E/C.12/GC/19.

In this chapter, the above conceptual approach, including the principles for a substantively equal, gendered right to social security, is used to analyse the realisation of this right for women in Australia. The Australian social security system is found somewhat wanting when examined through this lens. The chapter briefly outlines the history and nature of the Australian social security system. It then discusses the position of women in Australia, including the gender considerations that informed welfare developments and some of the critiques of the social security system from a gender perspective. It considers Australia's human rights framework and the capacity for the realisation of the right to social security in the Australian context. It then selects for examination two recent issues that highlight the relationship between gender, social security and human rights: the cuts to Parenting Payments (a social assistance measure) that primarily affect poor, single mothers; and, the introduction of income management (controls placed on social assistance spending) and its impact on indigenous women. Analysis of these issues using a gender rights framework points to human rights violations by Australia in relation to access to and adequacy of social security and of equality and non-discrimination in the provision of the right.⁶

AUSTRALIA'S SOCIAL SECURITY SYSTEM

Australia, with a population of 23 million, is an advanced industrial country with a strong economy and a wealthy population.⁷ Despite this, poverty affects a sizeable portion of the population and is skewed against women.⁸

Australian social security takes the form of social assistance rather than social insurance as found in many European countries. The payments are funded through the tax system and paid at a flat rate on the basis of means-testing of targeted groups.⁹ The major grants are the aged pension, disability pension, parenting payments and unemployment payments (known as Newstart). Approximately 4.9 million people (about 20 per cent of the

⁶ Access, adequacy and non-discrimination are elements of the right to social security as set out in CESCR, *General Comment No 19*, above n 5.

⁷ Whiteford, P, 'Poverty in a Time of Prosperity' (2012) 21(2) *Human Rights Defender* 7, 7, citing a 2011 Credit Suisse Global Wealth Report estimating that Australia has the 'highest median household wealth in the world'.

⁸ Between 12.8% and 20.9% of Australians live below the poverty line depending on the measure used. Women are somewhat more likely to be poor than men while single parent families (usually women) are significantly over-represented amongst the poor. Australian Council of Social Service (ACOSS), 'Poverty in Australia' ('Poverty and Inequality in Australia' Reports, Strawberry Hills, ACOSS, 2012).

⁹ Mendes, P, *Australia's Welfare Wars Revisited: The Players, the Politics and the Ideologies* (Sydney, UNSW Press, 2008) 15.

population) receive income support.¹⁰ Esping-Andersen, famous for his welfare state typology, has placed Australia's welfare system within the 'liberal' or residual welfare state regime-type. He sees this regime as restrictive of social rights with stratification of the poor on welfare from others within the market.¹¹ This characterisation has been challenged by writers who argue that the Australian welfare system is supported by high wage rates through wage fixing and home ownership.¹² They argue that despite lower levels of social spending and lower taxes relative to other OECD countries, Australia is very effective in reaching the poorest people,¹³ including through its system of universal health insurance. The caveat to this is that in recent years, unemployment payments have fallen significantly in relation to wages and other pensions. This group of welfare recipients is falling deeper into poverty as are larger numbers of lone parents who are being moved onto Newstart.¹⁴

The conservative Howard government (1996–2007) adopted the ideology and policies of the US workfare approach in linking unemployment (and other) benefits to job seeking and work-for-the-dole and the introduction of a more punitive system including monitoring and harsh penalties for fraud and violation of welfare rules.¹⁵ Conservative welfare reform shifted public perceptions away from notions of welfare as a social right of citizenship to a more conditional idea based on mutual obligation.¹⁶ There was also a shift from sovereignty of the welfare consumer to state supervision and the removal of choice—'a denial of the equality of selfhood as the price of welfare assistance'.¹⁷ Under the Labor government (2007–13) many of these neo-liberal policy features and the accompanying ideology remained with low unemployment and parenting payments seen by government as incentives to find work. The new Liberal government (elected in 2013) is

unlikely to alter this approach, other than to further limit certain welfare payments both in terms of eligibility and amount.

Gender in the Australian Social Security System

Australia's welfare system began with a focus on wage fixing and the protection of the family through the male wage earner, alongside income support for those in need such as the aged. The assumption was that if men were paid adequately they could provide for their families.¹⁸ In 1907, the *Harvester* judgment set a minimum wage as the amount required for a male worker, his wife and three children to live in 'frugal comfort'.¹⁹ The model of a male breadwinner with a wife at home has been eroded over the past century to the point where about two-thirds of couple families involve two working parents. However, women are likely to work part-time and earn half the income of men,²⁰ while performing the major care functions. This 'modified-breadwinner model reinforces gender inequality, casting women as the primary carers and men as the primary earners'.²¹ Two-thirds of women participate in the labour market (compared with more than three-quarters of men) but almost half are in part-time work (as opposed to 16.5 per cent of men).²² These workers face income and job insecurity as well as limited access to benefits usually attached to work.²³ Women face job segregation and a persistent gender pay gap of 17.1 per cent.²⁴ As a result of lower pay over the life course and work interruptions, on retirement, men have 1.7 times the amount of superannuation (retirement savings) as women.²⁵ Women perform a significant majority of unpaid

¹⁰ As at June 2010: Australian Bureau of Statistics (ABS), '1301.0—Year Book Australia 2012' (ABS, 2012), available at: www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1301.0~2012~Main%20Features~Income%20and%20community%20support~194.

¹¹ Esping-Andersen, G, *The Three Worlds of Welfare Capitalism* (London, Polity Press, 1990) 167–68.

¹² Saunders, P and Deeming, C, 'The Impact of the Crisis on Australian Social Security Policy in Historical Perspective' (2011) 45(4) *Social Policy & Administration* 371, 376.

¹³ Whiteford, P, 'How Fair is Australia's Welfare State?' *Inside Story*(Sydney, 2011), available at: inside.org.au/how-fair-is-australia%E2%80%99s-welfare-state/.

¹⁴ Whiteford 'Poverty in a Time of Prosperity', above n 7, at 8.

¹⁵ Mendes, *Australia's Welfare Wars Revisited*, above n 9, at 33–34; Chenoweth, L, 'Redefining Welfare: Australian Social Policy and Practice' (2008) 2(1) *Asian Social Work and Policy Review* 53. See also Carney, T, 'Neoliberal Welfare Reform and "Rights" Compliance' (2006) 12(1) *Australian Journal of Human Rights* 223.

¹⁶ Shaver, S 'Australian Welfare Reform: From Citizenship to Supervision' (2002) 36(4) *Social Policy & Administration* 331. Also see Carney, T, *Social Security Law and Policy* (Leichhardt, The Federation Press, 2006).

¹⁷ Shaver, above n 16, at 342.

¹⁸ Chenoweth, above n 15, at 54.

¹⁹ Referred to in Leahy, M, 'Women and Work in Australia' (Australian Policy Online Topic Guide, 28 November 2011) 2, available at: apo.org.au/sites/default/files/Women_and_work_in_Australia_APO_guide_Mary_Leahy_0.pdf.

²⁰ *Ibid.*

²¹ *Ibid.*; Charlesworth, S, 'Law's Response to the Reconciliation of Work and Care: the Australian Case' in G James and N Busby (eds), *Families, Care-Giving and Paid Work: Challenging Labour Law in the 21st Century* (Cheltenham, Edward Elgar, 2011) 86.

²² Australian Human Rights Commission (AHRC), *Investing in Care: Recognising and Valuing Those Who Care* (Volume 1: Research Report, Sydney, AHRC, 2013) 5. See also Baird, M, Charlesworth, S, Cooper, R and Heron, A, 'Women, Work and the Global Economic Downturn' (Department of Social Services, Australian Government, 2011), available at: www.fahcsia.gov.au/our-responsibilities/women/publications-articles/general/women-work-and-the-global-economic-downturn?HTML#fn_13; and Smith, in this collection.

²³ Charlesworth, above n 21, at 89.

²⁴ Workplace Gender Equality Agency, 'Gender Pay Gap Statistics' (Australian Government, 2014), available at: www.wgea.gov.au/sites/default/files/2014-03-04-Gender_Pay_Gap_fact_sheet_website.pdf.

²⁵ Eastaer, P (ed), *Women and the Law in Australia* (Chatswood, LexisNexis Butterworths, 2010) 6.

reproductive and care work in Australia.²⁶ The employment rate of mothers with young children is lower than in many OECD countries.²⁷ It is in this context that women make up a higher portion of the poor than men in Australia²⁸ and are in greater need of income support. Single mothers are a particularly vulnerable group.

Australian social security policy has been implicated in creating and reinforcing gender inequalities in work and care in the particular form they take in this country.²⁹ During the 1940s, a range of transfers were provided to address the needs of children and spouses.³⁰ Some of the social security transfers were overtly gendered, such as widow's pensions and different pension ages for men and women. From the 1970s onwards, feminists, in alliance with the trade union movement and various Labor governments, removed most of the manifest inequality from the Australian social security system. Various child support and childcare policies were introduced to bring women into the labour force and support families. However, the Howard years (1996–2007) resulted in some inconsistent policies that both encouraged women to earn wages and play a caring role in the home.³¹ Howard refused to introduce paid maternity leave but instead introduced the 'Baby Bonus'—a one-off payment to new mothers whether in or outside the workforce. The ideology behind this measure was to encourage women to have children and to stay at home to care for them. Brennan suggests that Howard's deep conservatism included a 'commitment to full-time mothering'.³² Two further policies were introduced during the Howard years: family tax benefits that effectively encouraged women to become primary carers rather than joint earners and carers³³ and which reinforced women's dependent status; and, a policy requiring poor parents receiving parenting payments to seek or engage in certain hours of paid work in order to retain benefits.³⁴ Brennan notes the class divide in Howard's policies—the 'choice' to remain out of work for mothers in income-earning families as opposed to the compulsion to work for families (usually single mothers)

²⁶ *Ibid.*, at 3–4.

²⁷ Baxter, J, Australian Institute of Family Studies, 'Timing of Mothers' Return to Work After Childbearing: Variations by Job Characteristics and Leave Use' (Research Paper No 42, Canberra, Commonwealth of Australia, July 2008) 1.

²⁸ ACOSS, 'Poverty in Australia', above n 8, at 14–15.

²⁹ Cass, B, 'Citizenship, Work, and Welfare: The Dilemma for Australian Women' (1994) 1(1) *Social Politics* 106.

³⁰ Hodgson, H and Boden, R, 'Not-so-Distant Cousins: Family Benefits in the United Kingdom and Australia' (2008) 61(3) *International Social Security Review* 29, 30.

³¹ Brennan, D, 'Babies, Budgets, and Birthrates: Work/Family Policy in Australia 1996–2006' (2007) 14(1) *Social Politics: International Studies in Gender, State, and Society* 31.

³² *Ibid.*, at 37.

³³ *Ibid.*, at 38–39.

³⁴ *Ibid.* See also Cortis, N and Meagher, G, 'Women, Work and Welfare in the Activation State: An Agenda for Australian Research' (2009) 35(4) *Australian Bulletin of Labour* 629.

relying on social assistance.³⁵ Childcare benefits to pay for approved childcare, like family tax benefits, have been criticised for failing to provide strong incentives to encourage women into full-time work.³⁶

There were some efforts by the Labor government (2007–13) to introduce reforms aimed at assisting working women (such as Paid Parental Leave)³⁷ but problematic features of the social security system such as low unemployment and parenting payments as well as conditionalities attached to social assistance for single parents and indigenous women were retained or started under this government.³⁸

Recent proposals to improve women's retirement savings by recognising the impact of care on their working lives have been advanced by the Australian Human Rights Commission within a broader set of recommendations to better structure the role of care in the society, but it remains to be seen whether these will be adopted.³⁹ The chances of improved social security policies for women under the new Liberal government (since 2013) are slim. The Government has already indicated that it wishes to look for budget savings through an 'overhaul' of the welfare system—such changes are likely to further harm already disadvantaged women.

Australia's Human Rights Framework and the Right to Social Security

Australia is a party to the International Covenant on Civil and Political Rights (ICCPR)⁴⁰ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴¹ as well as many of the major human rights conventions including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁴² Australia has also ratified seven of the eight fundamental ILO Conventions and a reasonable number of governance and technical conventions. It has not however, ratified ILO Convention No 102 on Social Security (Minimum Standards)⁴³ or any of

³⁵ Brennan, above n 31, at 38–39.

³⁶ Carney, T, 'Women and Social Security/Transfer Payments Law' in P Eastal (ed), *Women and the Law in Australia* (Chatswood, LexisNexis Butterworths, 2010) 430.

³⁷ This was introduced in January 2011 whereby government provides 18 weeks' pay at the minimum wage.

³⁸ Discussed in further detail below.

³⁹ AHRC, *Investing in Care*, above n 22.

⁴⁰ International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

⁴¹ International Covenant on Economic, Social and Cultural Rights (ICESCR) (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

⁴² Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 5(b).

⁴³ ILO Convention C102: Social Security (Minimum Standards) Convention (Convention Concerning Minimum Standards of Social Security) (adopted 28 June 1952, entered into force 27 April 1955).

the related conventions dealing with social risks or contingencies such as unemployment, sickness, old age, maternity and so on. While it attempts to fulfil its international human rights obligations through certain domestic mechanisms including anti-discrimination legislation,⁴⁴ human rights commissions and more recently, parliamentary oversight mechanisms, it does not have general human rights legislation (at the federal level) or a bill of rights. Australia has been widely criticised for this gap and encouraged to improve its human rights protections.⁴⁵ Human rights, as found in government discourse and public consciousness, is generally understood to include civil and political rights rather than social and economic rights. There is a very limited understanding across Australian society of social security as a human right,⁴⁶ let alone the gender dimensions of this right.

Treaty bodies, in particular the CESCR, and various UN special rapporteurs have commented on and made recommendations regarding Australia's social security system. In 2009, the CESCR recommended measures to address the gender wage gap and the level of unemployment affecting indigenous people, asylum-seekers, migrants and people with disabilities.⁴⁷ These recommendations related to the Committee's concern that Australia's social security benefits were not adequate as an 'effective income support system'.⁴⁸ The Committee also expressed concern at the rate of poverty in Australia, especially amongst disadvantaged and marginalised groups.⁴⁹ The CEDAW Committee, in its 2010 report on Australia, called on Australia to improve the newly introduced Paid Parental Leave Scheme and the system of childcare.⁵⁰

Additional strong criticism of Australia has come from the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya. In his 2010 report, Anaya found that in particular, aspects of the Northern Territory Emergency Response (NTER or 'the Intervention') violated Australia's human rights obligations and

⁴⁴ Social security legislation is broadly exempted from anti-discrimination legislation. See Carney, 'Neoliberal Welfare Reform', above n 15, at 231.

⁴⁵ See the Conclusions and Recommendations of the Universal Periodic Review of Australia: Human Rights Council, *Report of the Working Group on the Universal Periodic Review (Australia)*, 24 March 2011, UN Doc A/HRC/17/10, para 86.22; and Australia's Response (Attorney General's Department, Australian Government, 8 June 2011), available at: www.ag.gov.au/RightsAndProtections/HumanRights/UniversalPeriodicReview/Documents/AustraliasformalresponsetotheUPRrecommendations.pdf.

⁴⁶ Carney, 'Neoliberal Welfare Reform', above n 15, at 238.

⁴⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), *Concluding Observations of CESCR: Australia*, 22 May 2009, UN Doc E/C.12/AUS/CO/4, paras 17–18.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*, at para 24.

⁵⁰ UN Committee on the Elimination of Discrimination against Women (CEDAW), *Concluding Observations of CEDAW: Australia*, 30 July 2010, UN Doc CEDAW/C/AUS/CO/7, para 39.

were racially discriminatory.⁵¹ This included the introduction of income management of social security payments.⁵² In 2012, the UN Special Rapporteur on extreme poverty and human rights and the Working Group on the issue of discrimination against women in law and in practice wrote to the Australian government to ask them to respond to allegations that the cuts to Parenting Payments were a violation of human rights.⁵³ The issues of income management and cuts to Parenting Payments as (gendered) violations of human rights are now discussed in more detail.

Parenting Payments Cuts

Removal of Benefits

As discussed above, historically Australia supported wives/widows and single mothers on the basis that they were needy recipients without male breadwinners to rely on. In 1973, the Commonwealth Supporting Mother's Benefit was introduced as an entitlement without conditions attached. From 2002, compulsory interviews were introduced as well as a minimal activity requirement for parents of older children. A major shift occurred in 2006 when parents with school age children were brought under the job-search requirements applied to the unemployed.⁵⁴ Single parents are now defined by their employment status rather than their caring status as they are moved onto Newstart when their children start school.⁵⁵

Newstart is paid at a lower rate and with 'tighter income and activity tests and a more punitive compliance regime'.⁵⁶ This policy change was seen as a 'significant' shift 'in the structure of the Australian welfare state' from a 'male-breadwinner' to an 'adult worker family model'.⁵⁷ For new claimants after 1 July 2006 job-search requirements and the Newstart rate apply for single parents with children over the age of six. The rules mean that parents must be in paid work for a minimum of 15 hours a week or jobseeking for 15 to 25 hours per week. Jobseekers may also be required to

⁵¹ Anaya, J, Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, *Situation of Indigenous People in Australia*, 4 March 2010, UN Doc A/HRC/15/37/Add.4, Appendix B, para 37.

⁵² *Ibid.* See below for a more detailed discussion of income management.

⁵³ This is discussed in greater detail below.

⁵⁴ Grahame, T and Marston, G, 'Welfare-to-Work Policies and the Experience of Employed Single Mothers on Income Support in Australia: Where are the Benefits?' (2012) 65(1) *Australian Social Work* 73, 74.

⁵⁵ Cortis and Meagher, above n 34, at 632.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*, at 631.

participate in activities aimed at improving their chances of work.⁵⁸ Those who had already made claims before this date would receive Parenting Payments for children born prior to 1 July 2011 and still under the age of 16⁵⁹ and would be expected to meet participation requirements once their youngest child turns seven.⁶⁰ This latter group is known as 'grandfathered' or 'saved' beneficiaries. In 2012, the Labor government took a decision to remove the benefits previously provided to the 'grandfathered' group of parents with effect from 1 January 2013 and to move them onto Newstart, at a lower rate of pay.⁶¹ Not all people would be eligible for Newstart as the income threshold is lower.⁶² The government described this as a measure to introduce consistency between groups of parents in receipt of Parenting Payments and a measure to encourage parents of school age children to 're-engage with the workforce and provide strong working role models for their children'.⁶³

This change was clearly also a cost-saving measure to reduce spending by \$728 million over four years.⁶⁴ Welfare advocates said the cuts affected more than 100,000 sole parents with income reductions of more than \$100 per week.⁶⁵ They noted that 95 per cent of Parenting Payment (single) recipients were female in August 2011 (304,589 women).⁶⁶ An analysis of government data showed that despite government rhetoric about getting parents back to work, 60 per cent of the affected group were already

⁵⁸ There were some minor changes made in 2009 to include study and volunteering. Grahame and Marston, above n 54, at 74.

⁵⁹ This age was changed to 12 or 13 for applicable groups in May 2012.

⁶⁰ O'Halloran, M (ed), *The Independent Social Security Handbook*, 7th edn (Sydney, Welfare Rights Centre, 2012) 300.

⁶¹ Eligibility for all Parenting Payments (including the grandfathered group) would cease when the youngest child turns 6 (partnered) or 8 (single). Participation requirements for grandfathered parents would kick in when the youngest child turned 6 instead of the previous 7. Explanatory Memorandum, Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012 (Cth) 9.

⁶² It was estimated that almost a third (30%) of Parenting Payment recipients would not be eligible for Newstart and with a lower income free area they would thus face earlier reductions in payments than they had previously experienced. Parliamentary Joint Committee on Human Rights, *Examination of Legislation in Accordance with Human Rights (Parliamentary Scrutiny Act) 2011: Social Security Legislation Amendment (Fair Incentives to Work) Act 2012: Final Report* (Canberra, Commonwealth of Australia, 2013) 5.

⁶³ *Ibid.*

⁶⁴ Karvelas, P, 'Single-Mother Cuts to Hit Hardest in PM's Seat' *The Australian* (Sydney, 22 September 2012).

⁶⁵ Around 63,000 people were affected by the change on the commencement date of the legislation, 1 January 2013. Eventually, the changes will affect 147,000 grandfathered recipients. Parliamentary Joint Committee on Human Rights, *Examination of Legislation: Final Report*, above n 62, at 4.

⁶⁶ Based on government figures, Australian Council of Social Service (ACOSS), 'Inquiry by the Parliamentary Joint Committee on Human Rights into the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012 (Supplementary Submissions)' (Strawberry Hills, ACOSS, 2012) 9.

in work.⁶⁷ Testimony from single mothers showed that they would have to give up studying, move states and cancel their children's participation in certain activities following the cuts. Many talked about the hardships relating to inadequate family support, the need to escape violence, children with special needs and the lack of childcare and its impact on their job situations and how reduced income would compound these difficulties.⁶⁸ The implications of moving single mothers, an already vulnerable and disadvantaged group,⁶⁹ onto Newstart, criticised by the government's own tax review as inadequate, appeared harsh, unfair and even counterproductive.⁷⁰ It was seen as a breach of a promise made by the government to support this cohort of parents who had counted on the higher income for a longer period of time.

Human Rights Responses to the Removal of Benefits

The cut to single mothers' benefits, even by a Labor government, was not entirely surprising in the context of international austerity measures following the global financial crisis that began in 2008. Australia was looking for ways to bring the budget out of deficit and grandfathered sole parents might have seemed one possible revenue source. What was significant, however, was the new role for human rights in efforts to oppose the measure. Welfare and human rights advocates attempted to challenge the Bill introducing the changes by calling for an inquiry into the proposed legislation by the Parliamentary Joint Committee on Human Rights. The Committee is a new body set up under the Human Rights (Parliamentary Scrutiny) Act 2011.⁷¹ The Act was introduced following a national human rights consultation in 2008 that called for human rights legislation along the lines of the English model. This was rejected, but a more limited scrutiny function was given to Parliament requiring new Bills to be accompanied by statements of compatibility with international human rights.⁷² The Act also created the Parliamentary Committee to examine and inquire into Bills in terms of Australia's international human rights obligations.

⁶⁷ O'Halloran, M, 'Working Single Parents Kicked' *The Australian* (Sydney, 6 March 2013).

⁶⁸ Verbatim testimony provided by the National Council for Single Mothers and their Children. ACOSS, 'Supplementary Submissions', above n 66, at 11–12.

⁶⁹ Saunders, P and Wong, M, *Promoting Inclusion and Combating Deprivation: Recent Changes in Social Disadvantage in Australia* (Social Policy Research Centre (SPRC) Report Series, Sydney, SPRC, University of New South Wales, December 2012) 54.

⁷⁰ Cox, E, 'What the Government Wants to Ignore About Sole Parents and Jobseeking' (*The Conversation*, 17 January 2013), available at: theconversation.edu.au/what-the-government-wants-to-ignore-about-sole-parents-and-jobseeking-11582.

⁷¹ Human Rights (Parliamentary Scrutiny) Act 2011 (Cth).

⁷² See Williams, G and Burton, L, 'Australia's Exclusive Parliamentary Model of Rights Protection' (2013) 34(1) *Statute Law Review* 58.

The Parenting Payment cuts were the subject of the first inquiry by the new Committee and thus an important test of Australia's somewhat minimalist new human rights framework. The Australian Council of Social Service (ACOSS), together with 14 other individuals representing welfare and human rights organisations⁷³ across Australia, requested an inquiry by the Parliamentary Committee on 15 June 2012 into the Bill which contained the cuts.⁷⁴ The letter of request described the proposed removal of Parenting Payments to the grandfathered recipients as a human rights violation.⁷⁵ It said that the Bill violated rights under ICESCR and CEDAW as it impinged on the social security rights of sole parents, most of whom are women. It also argued that the measure violated the principle of non-retrogression by removing an existing benefit and went against the obligation of progressive realisation of rights. The letter said that the minister's statement of compatibility which accompanied the Bill was manifestly inadequate and called for a public inquiry by the Committee.

The Committee agreed to hold an inquiry and invited oral evidence by the government and the letters' authors on 21 June 2012.⁷⁶ It also allowed further written submissions after the hearing. It produced an interim report in September 2012 recommending that the Bill be deferred until the outcome of a Senate Committee into the adequacy of Newstart,⁷⁷ since it said that if Newstart could not provide an adequate standard of living for beneficiaries then the proposed Bill would 'risk being incompatible with the obligation in article 9 of ICESCR to ensure minimum essential levels of

⁷³ The author was a signatory of the letter in her capacity as Visiting Fellow, Australian Human Rights Centre, Faculty of Law, University of New South Wales. She also provided oral evidence at the inquiry and contributed to the supplementary written submissions provided to the Committee following the inquiry.

⁷⁴ The Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012.

⁷⁵ Letter from the Australian Council of Social Service (ACOSS) to Harry Jenkins MP, Committee Chair, Parliamentary Joint Committee on Human Rights, '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), available at www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Committee_Activity/social_security/correspondence/~/media/Committees/Senate/committee/humanrights_ctte/activity/social_security/correspondence/letter_inquiry_joint_committee_human_rights.ashx.

⁷⁶ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *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* (Canberra, Commonwealth of Australia, September 2012) 6.

⁷⁷ An inquiry by the Senate Education, Employment and Workplace Relations References Committee which was due to report by 29 November 2012. For the Committee's report see The Senate Education, Employment and Workplace Relations References Committee, *The Adequacy of the Allowance Payment System for Jobseekers and Others, the Appropriateness of the Allowance Payment System as a Support into Work and the Impact of the Changing Nature of the Labour Market* (November 2012).

social security'.⁷⁸ Despite this recommendation, the Bill was passed by both Houses of Parliament on 9 October 2012. The Senate inquiry into Newstart did in fact find that the payment was not providing for an acceptable standard of living for anyone but the short-term unemployed, with different parties proposing different solutions to this.⁷⁹ The Parliamentary Human Rights Committee produced a final report in March 2013.

The Parliamentary Human Rights Committee's reports demonstrated a real engagement with the meaning of the right to social security and the right to non-discrimination. The Committee also carefully considered issues of justification in relation to limitations of rights under the ICESCR as well as issues of non-retrogression. It developed a framework for analysis looking at the legitimate objective of the measure, the rational connection between the measure and the objective and whether the measure is proportionate to the objective.⁸⁰ Its final report raised concerns that the cuts to Parenting Payments would create additional financial stress for single parent families without improving their employment prospects.⁸¹ It also questioned the unwillingness of government to establish an official poverty measure.⁸² It found that the government had failed to adequately incorporate its human rights obligations in developing the new laws. In particular, it found that the government had failed to consult properly or consider alternatives measures; failed to explore the likely impact of the measures on the human rights of affected people; and had not put in place impact assessment mechanisms for the future.⁸³ On this last point, the Committee proposed a review after 12 months to consider the impact of the legislation and whether reasonable adjustments would be needed. Overall, it found that the government had not demonstrated that the right to social security of affected individuals was being met. It was thus unable to conclude that the 'measures are compatible with human rights'.⁸⁴ The Committee's report is a welcome first consideration by the Australian Parliament of social security measures in terms of Australia's international human rights obligations.

At an earlier point, the ACOSS network that had initiated the inquiry, fearing that Parliament would ignore the Committee's recommendations and pass the Bill, wrote to the United Nations Special Rapporteur on Extreme Poverty and Human Rights on 5 October 2012. The letter called

⁷⁸ Parliamentary Joint Committee on Human Rights, *Examination of Legislation: Interim Report*, above n 76, at 19.

⁷⁹ See Senate Education, Employment and Workplace Relations References Committee, above n 77.

⁸⁰ Parliamentary Joint Committee on Human Rights, *Examination of Legislation: Final Report*, above n 62, at 14–15.

⁸¹ *Ibid*, at 28.

⁸² *Ibid*.

⁸³ *Ibid*, at 29.

⁸⁴ *Ibid*, at 30.

on the Special Rapporteur to send an 'urgent appeal' to the government to delay the Bill pending the Senate Newstart inquiry.⁸⁵ The UN Special Rapporteur together with the Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice wrote to the Australian government on 19 October 2012.⁸⁶ In this letter they said they did not want to prejudge the issue but wished to draw the government's attention to the applicable human rights norms and standards. These included, *inter alia*, article 9 of ICESCR and CESCR General Comment No 19 dealing with the right to social security and its adequacy. They also raised issues of non-discrimination and the rights of children and women. The authors set out the ICESCR and CESCR requirements regarding limitations of rights and non-retrogression. Finally, they asked for the Australian government's cooperation and observations on a set of questions that they said would inform their report to the UN Human Rights Council. The questions concerned the alternative measures considered; an assessment of the impact of the Act on the groups affected; what consultations had occurred; what measures were put in place to avoid indirect discrimination of women and children; monitoring and redress mechanisms; and why the Act was not seen as violating human rights.

The questions are significant in that they emphasise consultation with affected groups, principles of non-discrimination and impact assessment in testing the reasonableness of the law and its compliance with the right to social security. The Special Rapporteur's letter appears to have had some impact on the approach taken by the Parliamentary Human Rights Committee in its Final Report, particularly with reference to the issues of consultation, impact assessment and monitoring. To date the government has not responded to the Special Rapporteur's letter. The legislation took effect on 1 January 2013.

Discussion

Despite Australia's stated commitment to international human rights, the above narrative of events surrounding Parenting Payment cuts highlights a failure to properly engage with calls for it to respect its obligations. Nevertheless, the efforts to bring human rights arguments into the debate

⁸⁵ Letter from Australian Council of Social Service, (ACOSS) 'Urgent appeal to the United Nations Special Rapporteur on Extreme Poverty and Human Rights on the proposed introduction of the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012 in Australia' (5 October 2012), on file with the author.

⁸⁶ Letter from Maria Magdalena Sepúlveda Carmona, Special Rapporteur on Extreme Poverty and Human Rights and Kamala Chandrakirana, Chair of the Working Group on the Issue of Discrimination Against Women in Law and Practice (19 October 2012), Reference: UA Poverty AUS 2/2012, available at: [spdb.ohchr.org/hrdb/22nd/public_-_UA_Australie_19.10.12_\(2.2012\).pdf](http://spdb.ohchr.org/hrdb/22nd/public_-_UA_Australie_19.10.12_(2.2012).pdf).

around welfare reform were important in the Australian context as they offered welfare rights advocates an additional set of strategic tools and a discourse for framing the Parenting Payment issue.

The legislation which is now in place has had a harsh impact on thousands of families. It violates the right to social security of affected sole parents in terms of adequacy as it provides too little for an adequate standard of living and a dignified life. It is also unreasonably retrogressive in removing existing benefits from a group that had expected to continue receiving these. The cuts are also indirectly discriminatory against women which is the group overwhelmingly affected. By expecting these mothers to seek work, retrain or work and look after children without the necessary supports to do so, and on very limited incomes, effectively marginalises this group even further. This measure fails to provide recognition of single mothers' care responsibilities in assuming that single mothers are equally well placed with dual parent families and childless individuals to find their way out of unemployment or to manage work and childcare. Ironically, almost two-thirds of the parents affected by the new law were already working and it was these parents who lost the most from the cuts.⁸⁷ Removing some of their social assistance simply made life more difficult for this group.

The government's response shows a lack of understanding of the challenges of caring, alone, for school age children who need care in school holidays, when they are ill and before and after school hours, while also balancing these demands against employer expectations that are not always sensitive to these realities.⁸⁸ The caring work that these women are providing is also not valued as socially necessary and beneficial labour. The removal of Parenting Payments tested against the conceptual approach, including the principles for a substantively equal, gendered right to social security, set out at the start of this chapter, illustrates infringements of the right in the following respects.

First, the failure to consider the context in which the cuts would operate reflects a lack of acknowledgment of the gendered realities faced by this group of parents. Their access to the labour market is shaped by their unremunerated childcare work and the impact that sole responsibility for children has on their life circumstances. Failure to take account of this context leads to violations of their rights to social security. In terms of the principles set out at the start of the chapter, removal of Parenting Payments shows disregard for principle one relating to the recognition of care work; principle five relating to social security as an entitlement regardless of the

⁸⁷ O'Halloran, 'Working Single Parents Kicked', above n 67.

⁸⁸ Cox, E and Priest, T, 'Welfare to Work: At What Cost to Parenting?' (2008), available at: pandora.nla.gov.au/pan/95161/20090223-1020/www.women.nsw.gov.au/PDF/Welfare_to_Work_At_what_cost_to_parenting.pdf.

person's relationship to work; principle six relating to the design of social security to promote gender equality; and principle seven regarding full and equal access to social security.

Second, a substantive equality approach using the dimensions of recognition, redistribution, participation and transformation points to gendered rights violations. On the level of recognition there was a failure to acknowledge single parents' care responsibilities and the challenges they face as well as the contributions they make while burdening them with conditions and stigma. With regard to redistribution, parents were further impoverished rather than being provided with greater resources to place them on a more equal footing with others in society. In relation to participation, there was a failure to involve single parents in formulating approaches to address their specific circumstances while imposing new conditions on them contrary to past promises. Further, with respect to transformation there was a failure to develop policies that consider ways of changing the conditions that lead to a significant group of vulnerable single mothers being unable to compete in the labour market, care for themselves and their children and contribute fully to society. Transformative responses that assist single mothers are likely to be linked to broader social policies that address gendered divisions of labour and inadequate provision of care.⁸⁹

The principles for a substantively equal, gendered social security right have been overlooked in the limiting of women's access to adequate social security. Rather than progressively realising the rights of this disadvantaged group, their existing provision has been diminished. Tested in this way, the Australian government has failed to meet its human rights obligations for this group of single parents.

Income Management

The chapter now considers another legislative development, the introduction of income management, in testing Australia's compliance with the right to social security, viewed through a gender lens.

Background

In June 2007, the conservative Howard government introduced the Northern Territory Emergency Response (NTER, also known as 'the Intervention') in response to shocking reports of child abuse and violence

⁸⁹ Cortis and Meagher, above n 34, at 643, point to comparative research by Lambert that links higher labour market participation and income by working mothers to supportive policies such as childcare and paid leave. Australia does not do well in this regard in comparison with other rich democracies.

against women in Aboriginal communities in the Northern Territory.⁹⁰ The most significant report, prepared by the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse entitled 'Little Children are Sacred', called for a wide range of measures and services along with extensive consultation with the communities affected.⁹¹ The government used the rhetoric of crisis to speedily introduce a raft of measures without any consultation with local people. Measures included bans on alcohol, pornography, reforms to the justice system and employment projects, compulsory acquisition of Aboriginal land and significantly, the introduction of compulsory income management.⁹² The idea behind income management was 'the belief that undesirable behaviour can be modified by the regulation of personal income'.⁹³ Quarantined income was to be used for goods needed for the care of children. Women were also to be protected from 'humbugging' whereby they are forced, sometimes violently, to share their income support payments with relatives. The Racial Discrimination Act was suspended so that the measures could be applied only to indigenous residents of listed communities.⁹⁴ This aspect led to severe criticism by domestic human rights groups and international human rights bodies.⁹⁵ When Labour came to power late in 2007 it continued supporting the NTER, only reinstating the Racial Discrimination Act in 2010 when it extended the measures to non-indigenous members of the Northern Territory.⁹⁶ In June 2012, the government enacted the 'Stronger Futures' legislation which extended income management for a trial period

⁹⁰ Australia is made up of states and territories with the federal government having certain additional powers in relation to territories. The Northern Territory, while sparsely populated, has a disproportionately large indigenous population compared with other states and territories.

⁹¹ Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Ampe Akelyernemane Meke Mekarle: 'Little Children are Sacred'* (Northern Territory Government, 2007), available at: www.inquirysaac.nt.gov.au/pdf/bipacsa_final_report.pdf. Discussed in Watson, N, 'The Northern Territory Emergency Response—Has it Really Improved the Lives of Aboriginal Women and Children?' (2011) 35 *Australian Feminist Law Journal* 147, 148–49.

⁹² Mendes, P, 'Compulsory Income Management: A Critical Examination of the Emergence of Conditional Welfare in Australia' (2012) *Australian Social Work* 1, 4; Watson, above n 91, at 149–50 and 161–63.

⁹³ Watson, above n 91, at 150.

⁹⁴ In terms of s 132(1) and (2) of the Northern Territory Emergency Response Act 2007 (Cth) and ss 4(1), (2) and (4) and 6(2) and (3) of the Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007 (Cth).

⁹⁵ Such as the Australian Human Rights Commission and the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, James Anaya.

⁹⁶ Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010 (Cth). The Act all...

of five years to five areas outside the Northern Territory.⁹⁷ It also extended the School Enrolment and Attendance through Welfare Reform Measure (SEAM), designed to suspend or cancel income support where a person fails to ensure school enrolment and attendance, to further sites in the Northern Territory.⁹⁸

Income management applies to certain categories of people such as 'long-term welfare recipients' or 'disengaged youth' and can also be required for people identified as vulnerable. In addition to compulsory income management there is provision for voluntary income management. A portion of income support is withheld and placed in a managed account which can be accessed only for use on certain items of expenditure with a 'basics card' that can only be used at approved stores.⁹⁹

Responses to the NTER

General Criticisms

The NTER and Stronger Futures have been met with angry criticism from many quarters. A general complaint has been the lack of consultation. This was patently problematic in the top-down way in which the Howard government introduced the legislation, but even subsequent consultation efforts by the Labour government were the subject of scathing condemnation. The National Congress of Australia's First Peoples said the consultations were flawed and did not involve sufficient opportunity for indigenous people to come up with their own solutions to the problems based on requirements of international human rights.¹⁰⁰ The Intervention has also been divisive within the indigenous community both within and beyond the Northern Territory.¹⁰¹ Despite the government's claim that the Stronger Futures

⁹⁷ Stronger Futures in the Northern Territory Act 2012 (Cth). The additional areas contain high numbers of culturally and linguistically diverse communities of recent migrants and refugees. Australian Human Rights Commission (AHRC), 'Stronger Futures in the Northern Territory Bill 2011 and Two Related Bills: Australian Human Rights Commission—Submission to the Senate Community Affairs Legislation Committee' (Sydney, AHRC, 6 February 2012) 29.

⁹⁸ Social Security Legislation Amendment Act 2012 (Cth).

⁹⁹ O'Halloran, *The Independent Social Security Handbook*, above n 60, at 108.

¹⁰⁰ National Congress of Australia's First Peoples (NCAFP), 'Statement to the Parliamentary Joint Committee on Human Rights on the Parliamentary Scrutiny of Human Rights as applied to the Stronger Futures in the Northern Territory Bills (2011)' (Redfern, NCAFP, June 2012) 6. See also Partridge, E, Maddison, S and Nicholson, A, 'Human Rights Imperatives and the Failings of the Stronger Futures Consultation Process' (2013) 18(2) *Australian Journal of Human Rights* 21.

¹⁰¹ See Watson, above n 91, for a discussion of some of the differences between Aboriginal women around the Intervention. Also see Mendes, 'Compulsory Income Management', above n 92, at 8–9 on some of the reasons for the different perspectives.

legislation promotes rather than violates human rights,¹⁰² the measures arguably constitute indirect race discrimination since they apply primarily to indigenous people. Government's claim that they are 'special measures' to advance the interests of a disadvantaged group has not been well justified or demonstrated. On the contrary, they appear to violate social security beneficiaries' autonomy and choice, create stigma and reinforce existing inequalities and stereotypes experienced by Indigenous Australians.

Another concern, particularly relating to the income management provisions, is that the Intervention has been used to mask a significant policy change from welfare entitlement to control, using the NTER as a 'pilot' for further roll out to the broader non-indigenous population and particularly to those marginalised individuals and groups who are regarded as dysfunctional.¹⁰³ In a similar vein, Mendes suggests that compulsory income management reflects a shift from structural to individualistic explanations of social disadvantage and is a continuation of the increasing conditions being imposed on social security recipients.¹⁰⁴ There is also a strong argument about the failure of the government to support its assertion that the measures are beneficial with adequate evidence.¹⁰⁵ In addition, the situation facing children and others that were meant to be assisted by the Intervention has only worsened.¹⁰⁶

Gender Related Criticisms

What has not always been evident in the wide-ranging public debate on the Intervention is the gendered impact of the measures. In pure numerical terms, the income management provisions affect women disproportionately since three-fifths (61 per cent) of income managed people in October 2011 were women.¹⁰⁷ It is generally women who do the shopping for families. A study of women's experience of income management showed a majority were feeling demeaned by having to use the basics card and most did not

¹⁰² Letter from Jenny Macklin MP to the Honourable Harry Jenkins MP, 'Assessment of Policy Objectives with Human Rights—Stronger Futures in the Northern Territory Bill 2012; Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011' (letter and attached submission to the Parliamentary Joint Committee on Human Rights, 27 June 2012), available at: www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Committee_Activity/strongerfutures/background/~media/Committees/Senate/committee/humanrights_cte/activity/stronger_futures/correspondence/mfcsia_chair_280612.ashx.

¹⁰³ Cox, E, 'Evidence-Free Policy Making? The Case of Income Management' (2011) (12) *Journal of Indigenous Policy* 1.

¹⁰⁴ Mendes, 'Compulsory Income Management', above n 92.

¹⁰⁵ Cox, 'Evidence-Free Policy Making?', above n 103.

¹⁰⁶ Cox, 'Evidence-Free Policy Making?', above n 103, at 85, says this is evidenced by government's own statistics.

¹⁰⁷ Bray, JR et al, 'Evaluating New Income Management in the Northern Territory: First Evaluation Report' (Sydney, Social Policy Research Centre, July 2012) 57–58.

feel any safer since its introduction.¹⁰⁸ Many interviewees found the basics card confusing and limiting of their choices such as to shop at smaller non-approved stores or to buy medicine from a pharmacy that was closer but did not take the card. Interviewees expressed feelings of shame at being identified as basics card holders and for the assumption that they could not manage their finances responsibly on their own.

Family violence (often directed at women) is one of the triggers for the categorisation of a person requiring income management. The Australian Law Reform Commission has examined the link between family violence and income management and has found that compulsory income management can be dangerous and inappropriate in the context of family violence.¹⁰⁹ It recommends that it should not be used in such cases. Ironically, the prevention of family violence is one of the stated objectives for the introduction of income management. The Commission suggests that people experiencing family violence are often denied agency and control over themselves and their households so government measures that further remove control are likely to be harmful and deepen their sense of disempowerment.¹¹⁰

Watson argues for the need to locate an understanding of the Intervention within the historical context of control over Aboriginal women coupled with their invisibility as holders of rights.¹¹¹ Protectionist legislation was used to control Aboriginal women's sexuality, relationships and families. As wards of protectors, Aboriginal women had to surrender their wages which were administered on their behalf, a practice which continued late into the twentieth century. Similarly, welfare payments were controlled or recipients were subject to surveillance until their trustworthiness was established.

Discussion

The women's rights dimensions of income management have also been missing from human rights objections to the measures. Yet the measures, in impacting harshly on indigenous women, constitute indirect discrimination on the basis of race and gender. This results in both multiple and intersectional forms of discrimination for the group of women involved. Because of their race and their gender, women in the income-managed communities are facing daily indignities and a loss of autonomy. Their vulnerability as a marginalised group in Australia is being intensified—indigenous women in the Northern Territory have very low visibility in the wider society and

¹⁰⁸ Equality Rights Alliance, 'Women's Experience of Income Management in the Northern Territory' (Canberra, Equality Rights Alliance, 2011).

¹⁰⁹ Australian Law Reform Commission (ALRC), *Family Violence and Commonwealth Laws—Improving Legal Frameworks: Final Report* (ALRC Report 117, Sydney, ALRC, November 2011) 247–83.

¹¹⁰ *Ibid.*, at 260.

¹¹¹ Watson, above n 91, at 156–58.

are seen as 'other' or different from the 'rest of Australia'. This location allows for legislated indignities to go largely unnoticed and unchallenged. Violations of the right to social security have been identified in human rights objections to the Intervention as involving issues of discrimination based on race, but these have not considered the specific gender dimension of the right to social security in relation to women who are the subjects of the laws.

Women's care responsibilities and unpaid work in household reproduction contribute to their disproportionate representation as welfare recipients. Indigenous women face discrimination in their access to the right to social security, which serves to deepen their already considerable disadvantage. Using the conceptual approach and principles set out at the start of this chapter, the violations of women's right to social security become apparent in the context of income management in the Northern Territory and the further sites where it is being introduced. The NTER measures fail in relation to the first principle on the recognition and support for care work; the fifth principle concerning the provision of social security to all who need it regardless of their relationship to work; the sixth principle relating to the design of social security systems that promote equality; and the seventh principle of full and equal access by women to social security.

Bringing a substantive equality lens into an examination of the right to social security focuses attention on issues of recognition, redistribution, participation and transformation. Women who are subject to the income management provisions face 'misrecognition'¹¹² in the way in which they are targeted, demeaned and stigmatised by the laws.¹¹³ From a distributive point of view they are prevented from making choices about expenditure, sometimes leading to financial disadvantage.¹¹⁴ With regard to participation, they have been inadequately consulted and have not been able to shape measures to address the difficulties they face—instead, they feel imposed upon and confused by the changes.¹¹⁵ Rather than seeking transformative means of empowering indigenous communities to find ways of tackling violence against women and children, income management has reinforced an historical pattern of colonial paternalism and control, particularly over women.

Worryingly, these measures are being extended to other vulnerable communities containing recent migrants and refugees, where women face additional forms of discrimination on the basis of sex, race, ethnicity, religion, language and culture alongside their migrant status. The introduction of

¹¹² To use Nancy Fraser's term: Fraser, N, *Scales of Justice* (Cambridge, Polity Press, 2008) 16.

¹¹³ Equality Rights Alliance, above n 108, at 29–32.

¹¹⁴ For examples see *ibid.* at 21–25.

compulsory income management goes further down the path of conditionality and control within the Australian social security system. This shift from social security as a right to something that requires ongoing proof of a person's deservingness is a dangerous trend. Greater conditionality is accompanied by increased monitoring and punitive controls that undermine the right to social security.¹¹⁶ Income management imposes hardships on women recipients of social security who are carrying care burdens of the society and who should be entitled to welfare support, without limitations, despite their lack of paid work. This support should be fully accessible without harsh, discriminatory and inappropriate conditions attached to it, within a social security system that is designed to improve the position of women rather than stigmatise and burden them. Tested against the principles for a substantively equal, gendered right to social security, the income management measures fail in that they hamper women's access to the right and, rather than promoting gender equality, the design of the measures reinforces women's disproportionate household responsibilities while imposing new and additional hardships.

CONCLUSION

The Australian social security system, while sufficient in parts, is not adequately meeting the needs of a significant section of the poor. This failing has important gender dimensions as women comprise the majority of the poor and of those providing care in society and an overwhelming majority of single parents. Social security, once seen as an entitlement, is increasingly dependent on the fulfilment of conditions, many of which are difficult for women with care responsibilities. Single mothers are being moved onto social assistance that does not provide for an adequate standard of living, particularly in a country with such wealth. The Northern Territory measures added a race dimension to social security provision that has impacted harshly on indigenous women and is being rolled out to other vulnerable groups. Both issues relate in part to the structuring role of care in the gendered division of labour and its adverse impact on women across the life course in Australia. They also highlight the failure of government to address this structural inequality. On the contrary, the current policies reinforce the marginalisation of the most disadvantaged groups of women and leave existing divisions intact.

Tested against the conceptual approach and the principles for a substantively equal, gendered social security right discussed at the start of this chapter, Australia scores poorly in relation to the two issues discussed here.

Parenting Payment cuts are pushing a large group of single women and their children into poverty in the guise of efforts to encourage their further employment. This is somewhat cynical given that many of the mothers are already in work, will struggle to balance further work and care without adequate social provision of affordable child care and will face difficulties in finding appropriate work in the current employment context. Poor single mothers are facing violations of their rights to social security since the current measures are inadequate, substantively unequal and fail to address principles of the inclusion of care and unpaid work. Similarly, indigenous women and other marginalised women have encountered violations of their rights to social security with the introduction of income management. Their full and equal access to social security has been circumscribed as a result of their race, their physical location as well as their gender location, which is in turn related to their caring responsibilities in society. The principles advanced in this chapter relating to recognition of care and unpaid work, and access to and design of social security, are not being followed. The stigma and stereotyping that accompanies these measures results in indirect, intersectional race and gender discrimination in violation of their equality and social security rights.

The lack of comprehensive human rights laws within the domestic context means that options to challenge these deficiencies using human rights are restricted. International bodies are being resorted to but these clearly have limited persuasive power in the Australian setting. Nevertheless, there appears to be a new, albeit small, space for engagement around human rights with the establishment of the Parliamentary Joint Committee on Human Rights. The recent advocacy around both the Parenting Payment Cuts and the Northern Territory laws has introduced some human rights discourse on social security into public debate. The gender dimensions of this debate have, however, been more limited. The use of a gender analysis within a human rights approach enables an understanding of the specific violations of the right to social security that affect certain groups of disadvantaged women in Australia. This understanding can be used to address such violations and deficiencies in the social security system to ensure that these groups of women are substantively included and that the system advances rather than impedes the realisation of gender equality in society. This deeper understanding of the right to social security from a gender perspective is needed to inform improvements to social security in Australia.

¹¹⁶ Walsh, T, 'Breaching the Right to Social Security' (2003) (12) *Griffith Law Review* 43.