

19 June 2020

By email: registry@ohchr.org

Dear Special Rapporteurs,

ECONOMIC JUSTICE AUSTRALIA RESPONSE TO JOINT QUESTIONNAIRE OF SPECIAL PROCEDURES

- 1 Economic Justice Australia (EJA) is the peak organisation for community legal centres providing free, specialist advice to people on their social security issues and rights. EJA's 15 member community legal centres operate in every state and territory around Australia and have provided people with free and independent information, advice, education and representation in the area of social security for over 30 years.
- 2 EJA provides expert advice to government on social security reform to make it more effective and accessible. EJA's law and policy reform work:
 - 2.1 strengthens the effectiveness and integrity of Australia's social security system
 - 2.2 educates the community; and
 - 2.3 improves people's lives by reducing poverty and inequality.
- 3 EJA welcomes the opportunity to provide this submission in response to the joint questionnaire of special procedures on the impact of the COVID-19 pandemic on the enjoyment of human rights.
- 4 This submission focuses on the economic impact of COVID-19 as it relates to the enjoyment of human rights, particularly the rights to an adequate standard of living, social security and equality and non-discrimination, and makes recommendations for social security law and policy reform to ensure the most vulnerable groups are not missing out on vital social security income support.

Social protection

- 5 The economic impacts of COVID-19 in Australia, as in the rest of the world, have been devastating. Nearly 600,000 people in Australia lost jobs in April alone. The

unemployment rate in May was 7.1% and the underemployment rate was 13.1%.¹ In this climate, the prospects of someone who has just lost their job being able to get a new one are next to impossible. This has heightened the need for equitable access to social security to ensure every person living in Australia can enjoy fundamental human rights.

- 6 The Australian Government introduced a range of new temporary economic support measures to assist people who have lost their jobs and are facing hardship due to COVID-19. These measures have provided vital support for many people in Australia to ensure that individuals who lost all or part of their income as a consequence of the pandemic have access to sufficient nutrition, housing, water and sanitation, health care, energy and other essential goods and services.
- 7 However, some people in particularly vulnerable groups have been excluded from these income support measures and are facing extreme hardship. Social security payments need to be accessible to all people living in poverty or experiencing poverty as a consequence of the crisis on an equal basis without unjustifiable discrimination.

Implemented and planned adjustments to the social safety net in response to the crisis

- 8 Since March 2020, the Australian Government has been delivering a \$249 billion economic support package that has provided support to affected workers, businesses and the broader community, and has kept many Australians employed.² The package, implemented through the *Coronavirus Economic Response Package Omnibus Act 2020* (Cth) (**Omnibus Act**), includes new payments, expanded eligibility for existing social security payments, and greater Ministerial power granted to the Minister for Social Services.³ Each of these temporary measures is in place for up to six months – to September/October 2020.
- 9 The main social security payment for people who have lost employment due to the pandemic is the JobSeeker Payment. JobSeeker Payment is currently paid to over 1.6 million people in Australia who are looking for work. JobSeeker Payment is subject to income and assets testing, which takes into account the income and assets of a person's partner. During COVID-19 the Government has expanded eligibility for this payment, via temporary changes to means testing and waiver of waiting periods that normally apply before payment can be made.
- 10 Through the Omnibus Act the Government also introduced the Coronavirus Supplement, a \$550 per fortnight supplementary payment for people already receiving certain income support payments.

¹ <https://www.abs.gov.au/ausstats/abs@.nsf/mf/6202.0>

² <https://treasury.gov.au/coronavirus>

³ <https://www.legislation.gov.au/Details/C2020C00139>

- 11 Adding the Coronavirus Supplement to JobSeeker Payment has in effect doubled the maximum rate previously payable.⁴
- 12 The doubling of the rate was in recognition that the existing rate of the Newstart Allowance (which JobSeeker Payment replaced) was too low, providing further evidence of the need to permanently increase it. The COVID-19 JobSeeker Payment was set at a rate that guards against poverty; before the outbreak of COVID-19, households relying on social security payments were five times more likely to live in poverty than those with breadwinners earning a wage.⁵
- 13 The Newstart Allowance rate has not materially increased since 1994. A survey undertaken by the Australian Council of Social Service last year found that people living on that rate faced serious hardship, with many showering just once a week to reduce bills and 90% regularly skipping meals.⁶ EJA members see first-hand the impact of the low rate of payment on the lives of many people in our community. It is impossible to budget household expenses on the 'normal' rate of \$550 per fortnight. After housing costs, households whose main income was Newstart Allowance were \$124 a week below the poverty line.⁷
- 14 The Coronavirus Supplement is set to end in September/October 2020. Unless legislation is introduced to provide an ongoing increase to the rate of JobSeeker Payment, the maximum rate of payment to JobSeeker Payment recipients will then drop by 50 percent, back to the pre-COVID Newstart Allowance rate – to approximately \$40 per day.
- 15 To provide additional support to households, the Omnibus Act provides for \$750 cash payments to be paid to eligible individuals – either one or two payments, depending on social security payment type. These payments are being provided to more than 7 million income support recipients including pensioners, carers, and veterans; family tax benefit recipients; and Commonwealth Seniors Health Card holders.⁸
- 16 In acknowledgement of the impact of COVID-19 public health restrictions, further Social Security measures in place for the six month period ending September/October 2020 include: waiver of waiting periods for social security payments (including newly arrived migrant residential waiting periods); relaxation of 'mutual obligations' (activity requirements and non-compliance penalties that would normally apply For JobSeeker Payment and Youth Allowance); and suspension of recovery of social security debts.
- 17 A key component of the COVID-19 package is the introduction of the JobKeeper wage subsidy, a \$1,500 per fortnight payment to businesses that is passed on to eligible

⁴ The Coronavirus Supplement was introduced by Schedule 11 of the Omnibus Act. People who are receiving JobSeeker Payment, Partner Allowance, Widow Allowance, Sickness Allowance, Youth Allowance, Austudy, ABSTUDY Living Allowance, Parenting Payment, Farm Household Allowance or Special Benefit will receive the Coronavirus Supplement.

⁵ https://www.acoss.org.au/wp-content/uploads/2018/10/ACOSS_Poverty-in-Australia-Report_Web-Final.pdf

⁶ https://www.acoss.org.au/media_release/acoss-warns-against-the-governments-planned-cuts-to-income-support/

⁷ <http://ejaustralia.org.au/wp/wp-content/uploads/2020/01/Newstart-Inquiry-Submission-NSSRN.pdf>

⁸ <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/speeches/ministerial-statement-economy-parliament-house-canberra>

employees. Whilst not a social security payment, it has been a lifeline for individuals who would otherwise have lost their job due to COVID-19 public health measures and economic downturn. The wage subsidy is currently set to end in September 2020, with earlier cessation for some sectors.

Vulnerable groups excluded from social security

- 18 There are key vulnerable groups of people living in poverty or experiencing poverty as a consequence of the crisis who have been excluded from the support provided by the adjustments to the social safety net.
- 19 This cohort includes long-stay temporary visa holders, asylum seekers on Bridging Visas, New Zealanders on Special Category Visas and students who have lost income due to COVID-19.⁹ These people may have been living in Australia for rolling periods of three to five years (or in the case of New Zealand citizens, for many years) and have worked, paid taxes and effectively settled here. Many people in these groups have lost employment or cannot work due to the COVID-19 public health restrictions and are facing severe financial hardship and the prospect of homelessness and extreme poverty. They are not covered by the social security measures introduced as part of the Omnibus Act and are not able to access any other social security payments, including the payment of last resort called "Special Benefit".
- 20 Special Benefit is a discretionary payment only paid in cases of financial hardship, and subject to a dollar-for-dollar income test. This payment is available to people on a number of categories of temporary visas, which makes it different to other payments as under the *Social Security Act 1991(Cth)* (**Social Security Act**), for which a person is generally required to be a permanent resident of Australia to qualify for Social Security income support.¹⁰
- 21 New Zealanders' eligibility for Social Security income support, including JobSeeker Payment and Special Benefit, depends on the date from which a person commenced residing in Australia. New Zealanders living in Australia who arrived after 26 February 2001 may qualify for JobSeeker Payment, time-limited to six months, but they do not qualify for Special Benefit. This means that there are New Zealanders who have lived in Australia for up to 19 years, working and many raising families, who have lost work and are in severe hardship without access to income support.
- 22 People living in Australia on skilled or seasonal employment visas have been living in Australia because they were encouraged to do so, applying for visas that are intended to address labour shortages. Most people in this cohort have necessarily been self-supporting until losing work or access to work due to COVID-19. They have contributed to the economy and Australia's tax system, some over many years. People on these visas who cannot access sufficient work due to COVID-19 are in extreme hardship, and

⁹https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2020/March/New_coronavirus_supplement

¹⁰ A person on a proscribed temporary visa can qualify for Special Benefit. Proscribed visas currently attracting Special Benefit are subclass 820 – Partner; subclass 309 – Partner (provisional); subclass 785 – Temporary Protection; subclass 786 – Temporary (Humanitarian Concern); subclass 790 – Safe Haven Enterprise; subclass 449 – Humanitarian Stay (Temporary); CJSV (9.2.14) – issued specifically for the purpose of assisting in the administration of criminal justice in relation to an offence of trafficking in persons, slavery or slavery like practices; subclass 060 – Bridging F; and subclass 070 – Bridging (Removal Pending).

unable to return to their home country for financial and practical reasons, including COVID-19 travel restrictions and closing of borders.

- 23 Although Safe Have Enterprise Visa (SHEV) holders can attract Special Benefit, under section 731(1) of the Social Security Act, Special Benefit is not payable to a person who is enrolled in a full-time course of education or vocational training. This places students on SHEVs who have lost work and means of support in an invidious position: either continue full-time study, with no access to Special Benefit; or discontinue study so as to attract Special Benefit. Many students are choosing to stay in study, fearing that ceasing study and claiming Special Benefit will mean that they will be denied a further five-year SHEV or Temporary Protection Visa.
- 24 The plight of overseas students remaining in Australia is similarly dire, with some universities providing limited support to overseas students without means of support. Whatever the merits of arguments that they should have returned home before international borders closed, many overseas students who are still here and unable to return home are in extreme hardship.
- 25 Whilst some Australian state and territory governments have announced economic relief packages with measures specifically aimed at supporting vulnerable groups such as asylum seekers, equal access to federal Government social security payments is still needed to ensure the basic needs and human rights of these groups are met.
- 26 Relief provided by the states and territories is welcome, as is support provided by the Red Cross and some universities, but these measures constitute ad hoc charitable relief rather than income support entitlements adequate for meeting the cost of housing, food, utilities etc. until resumption of work is possible.

Human rights issues

- 27 EJA has long advocated for the level of income support provided in Australia to be consistent with the right to social security and provide an adequate standard of living, in compliance with Australia's obligations under Articles 9 and 11 of the International Covenant on Social, Economic and Cultural Rights.
- 28 EJA commends the provision of additional financial assistance to many Australians financially impacted by COVID-19 via the Omnibus Act, which promotes the rights to an adequate standard of living and social security for those eligible to receive the Coronavirus Supplement. These payments have provided welcome relief to many people who would otherwise have had little to no income during this time. However, the Coronavirus Supplement does not apply to all social security payments, and EJA is concerned that excluding some income support payment recipients from the Coronavirus Supplement constitutes unjustifiable discrimination.
- 29 Disability Support Pension, Carer Payment and Age Pension do not attract the Coronavirus Supplement, with the result that people receiving JobSeeker Payment currently receive a higher fortnightly maximum rate of payment than people receiving these pensions.
- 30 EJA acknowledges that the rights to an adequate standard of living, social security and equality and non-discrimination may be subject to permissible limitations if they are shown to be reasonable, necessary and proportionate; however, the groups which have

been excluded from social security support or additional payments under the Omnibus Act are among those most vulnerable and desperately in need. It is difficult to see how this exclusion can be assessed as reasonable, necessary and proportionate.

- 31 Further, Australia's international human rights obligations, particularly in the context of COVID19, impose a duty on the Government to respect, protect and fulfil the rights to life and health of every person in the community without discrimination. Excluding extremely vulnerable groups from vital income support is inconsistent with this obligation.
- 32 EJA notes that the Parliamentary Joint Committee on Human Rights in its 29 April 2020 report¹¹ has sought the Treasurer's advice as to the compatibility of these measures with the rights to an adequate standard of living, social security and equality and non-discrimination. In the meantime, EJA makes the below urgent recommendations to address the humanitarian and human rights concerns arising from the exclusion of the most vulnerable groups affected by COVID-19 from the coronavirus income support measures. Without support, these people are at risk of extreme poverty. Due to the pandemic and their precarious financial and living situations, their health and safety is also at risk.

Recommendations

- 33 Amendments made under the Omnibus Act empower the Minister for Families and Social Services to change social security settings via legislative instrument. EJA recommends that the Minister exercise this power to expand access to Special Benefit as payment of last resort for those most vulnerable, as follows:
- 33.1 **Recommendation 1:** Provide all New Zealand citizens living in Australia with access to Special Benefit.
- 33.2 **Recommendation 2:** Extend the list of visa sub-classes which attract Special Benefit, with extended coverage including:
- 33.2.1 Bridging Visas (all sub-classes);
- 33.2.2 Student Visa;
- 33.2.3 Temporary Resident (Skilled Employment) Visa;
- 33.2.4 Pacific and Seasonal Worker Visa; and
- 33.2.5 Temporary Graduate Visa.
- 33.3 **Recommendation 3:** Amend s737(1) of the Social Security Act to enable full-time students to access Special Benefit. In the alternative, EJA proposes that policy guidelines regarding administration of section 729 of the Social Security Act be amended by the Secretary of the Department of Social

¹¹ Parliamentary Joint Committee on Human Rights, Coronavirus Economic Response Package Omnibus Bill 2020, Report 5 of 2020; [2020] AUPJCHR 74, 1.102

Services to enable full-time students holding a Safe Haven Enterprise Visa access to Special Benefit.

- 34 **Recommendation 4:** Amend the Social Security Act to increase the rate of JobSeeker Payment permanently, so that people receiving JobSeeker Payment are not forced to live below the poverty line once the Coronavirus Supplement ceases to be paid in September/October 2020.

Contact for this submission

EJA would welcome the opportunity to provide further feedback on this submission.

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