



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: HumanRights:JD:VK:661840

7 December 2012

The Hon. Bill Shorten MP  
Minister for Education, Employment  
and Workplace Relations  
PO Box 6022  
House of Representatives  
Parliament House  
Canberra ACT 2600

Dear Minister,

**Adequacy of the Newstart Allowance for jobseekers and others**

I am writing on behalf of the Human Rights Committee of the Law Society of NSW ('Committee') which is responsible for considering and monitoring Australia's obligations under international law in respect of human rights; considering reform proposals and draft legislation with respect to issues of human rights; and advising the Law Society accordingly.

The Committee notes that the Senate Education, Employment and Workplace Relations References Committee has reported on its Inquiry into the adequacy of the allowance payment system for jobseekers and others, with particular reference to the adequacy of the Newstart Allowance (NSA) payment as an income support payment for jobseekers.

The Committee did not make a submission to this Inquiry and it has asked me to write to you as the Minister of the Department with responsibility for NSA policy, and to the Minister for Human Services to express its views in anticipation of the Government's response to the Inquiry Report.

**1. Australia's obligations in international law in relation to the right of social security**

The Committee notes that Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)<sup>1</sup>, to which Australia is State party, provides:

*The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.*

The Committee also notes Article 2(1), ICESCR provides that:

*Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources with a view to achieving progressively the full realisation of the*

<sup>1</sup> Adopted 16 December 1966, entered into force 3 Jan 1976, 999 UNTS 3; [1976] ATS 5.

*rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*

In relation to the obligations placed on State Parties by Article 2(1), ICESCR the Committee refers to paragraph 10 of *General Comment 3*<sup>2</sup> of the UN Committee on Economic and Social Rights which remarks in relation to the obligations placed on States Parties by Article 2(1), ICESCR that:

*...the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party.*

The nature of those “minimum essential levels” in relation to the right to social security is set out in *General Comment No. 19*<sup>3</sup> on the rights to social security. Paragraph 22 of that General Comment provides:

*Benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care, as contained in articles 10, 11 and 12 of the Covenant.*

Article 11(1), ICESCR in relation to the right to an adequate standard of living provides:

*The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions...*

## **2. Key data**

### **2.1. Current and relative level of the Newstart Allowance**

The Committee notes that the current NSA for a single person is now approximately \$245 per week.

To place the NSA more clearly in context, the Committee notes that a study commissioned by FaHCSIA in 2008 found that:

*Newstart for singles equates to 18 per cent of average male earnings, and 40 per cent of the current minimum wage (\$606 per week). At 40 per cent of the minimum wage there is clearly a very strong incentive to move to paid employment.*<sup>4</sup>

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<sup>2</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), 14 December 1990, E/1991/23, available at: <http://www.unhcr.org/refworld/docid/4538838e10.html> (accessed 6 December 2012)

<sup>3</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 19: The right to social security (Art. 9 of the Covenant)*, 4 February 2008, E/C.12/GC/19, available online at: <http://www.unhcr.org/refworld/docid/47b17b5b39c.html> (accessed 6 December 2012)

<sup>4</sup> Ben Phillips and Binod Nepal, “Going Without: Financial Hardship in Australia” August 2012, *National Centre for Social and Economic Modelling, University of Canberra* at p.10 available online at [http://www.natsem.canberra.edu.au/storage/2-Going%20Without%20MCP%20Report\\_Aug%202012.pdf](http://www.natsem.canberra.edu.au/storage/2-Going%20Without%20MCP%20Report_Aug%202012.pdf) (accessed on 13 November 2012)

## 2.2. Who is affected?

The Committee understands that as of September 2012, 580,857 people in Australia were receiving the NSA. Of these, 353,622 were long-term recipients of the allowance (or, recipients for more than 12 months).<sup>5</sup> According to the Business Council of Australia:

*Even though aggregate unemployment rates have fallen over the past decade, the average length of time on benefits for people on Newstart has actually increased, with those on benefits for 12 months or more now almost 63 per cent of all. In a time of low overall unemployment, this suggests that a growing proportion of the group who are unemployed are very disadvantaged and this risks them facing longer periods of unemployment.*<sup>6</sup>

Further, according to the Combined Pensioners and Superannuants Association of NSW, there are over 90,000 long-term unemployed people who are aged over 50 years who are NSA recipients. This group of people spend an average of 70 weeks on the NSA, twice as long as their younger counterparts.<sup>7</sup> The inadequate level at which the NSA is set is particularly difficult for this group who have "little hope of finding adequate employment and these people often struggle to pay for essentials as well as the higher costs that can come with ageing."<sup>8</sup>

## 2.3. The Newstart Allowance: Deprivation and standard of living

From the Committee's perspective, even more concerning are the findings uncovered by the study carried out by the Social Policy Research Centre commissioned by the Department of Families, Housing, Community Services and Indigenous Issues (FaHCSIA). This study sought to explore the adequacy of the Age Pension and its findings were the subject of the *Deprivation and Other Indicators of the Living Standards of Older Australians*<sup>9</sup> (the "Deprivation Report").

The Deprivation Report notes that the deprivation approach is a method used by researchers to identify poverty in a way that relates to the living standards actually experienced.<sup>10</sup> While this study was not focused specifically on the living standards of NSA recipients, it found that "the adequacy case for increasing the Age Pension applies with even greater force to these other payments."<sup>11</sup>

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<sup>5</sup> Department of Education, Employment and Workplace Relations, "Labour Market and Related Payments: A monthly profile", September 2012, available online at <http://www.deewr.gov.au/Employment/LMI/Documents/LabourMarketandRelatedPaymentsSept2012.pdf> (accessed on 14 November 2012) at p.3

<sup>6</sup> Business Council of Australia, "Submission to the Senate Education, Employment and Workplace Relations References Committee on the Inquiry into the Adequacy of the Allowance Payment System for Jobseekers and Others" August 2012, at p 3 available online at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=eet\\_ctte/newstart\\_allowance/submissions.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=eet_ctte/newstart_allowance/submissions.htm) (accessed on 14 November 2012). The Committee notes that since the Business Council of Australia made its submission, the September 2012 figures suggest that those who are long-term recipients of the Newstart Allowance make up approximately 61% of those recipients; however, the principle continues to apply.

<sup>7</sup> Combined Pensioners and Superannuants Association of NSW, "Age Pension up \$8.55 a week – Newstart up \$1.45 a week", 7 September 2012, Media Release available online at [http://cpsa.org.au/index.php?option=com\\_content&view=article&id=593:age-pension-up-855-a-week-newstart-up-145-a-week&catid=10:income&Itemid=37](http://cpsa.org.au/index.php?option=com_content&view=article&id=593:age-pension-up-855-a-week-newstart-up-145-a-week&catid=10:income&Itemid=37) (accessed on 13 November 2012)

<sup>8</sup> Dan Harrison, "Pension, dole payments drifting further apart" 8 September 2012, *The Age* available online at <http://www.theage.com.au/opinion/political-news/pension-dole-payments-drifting-further-apart-20120907-25k1j.html#ixzz2C4g40Xk> (accessed on 13 November 2012)

<sup>9</sup> Peter Saunders and Melissa Wong, *Deprivation and Other Indicators of the Living Standards of Older Australians*, Draft Report commissioned by the Department of Families, Housing, Community Services and Indigenous Affairs, November 2008, Social Policy Research Centre (referred to as the "Deprivation Report").

<sup>10</sup> Note 9, Deprivation Report at p.vi

<sup>11</sup> Note 9, Deprivation Report at p.ix

The Deprivation Report groups 19 necessities into five broad areas of need (basic subsistence needs; health needs; accommodation needs; social functioning needs; and risk protection needs), and the findings show that significant proportions of NSA recipients are not able to afford many of these necessities. For example, for NSA recipients:<sup>12</sup>

- 22% cannot afford medical treatment if needed.
- 10.3% cannot afford a substantial meal at least once a day.
- 53.8% do not have up to \$500 in emergency savings.
- 23.1% are not able to afford a decent and secure home.
- 20.6% are not able to afford regular social contact with others.
- 18.9% are not able to afford computer skills.
- 13.2% are not able to afford a telephone.
- 10.5% are not able to afford a washing machine.

The full table of deprivation indicators is extracted from the Deprivation Report and attached for your information.

In addition, the Committee notes that the NSA is the second lowest in the OECD countries<sup>13</sup> and that empirical evidence indicates that for a significant number of NSA recipients, access to essential health care and basic shelter and housing is not ensured.<sup>14</sup>

### **3. The Committee's view**

In the Committee's view it is likely on the basis of the above data that Australia is not currently in compliance with what is required by Article 9 of the ICESCR. That is, the current level of the NSA appears likely to amount to a human rights violation under international standards.

The Committee is of the view that the very basic levels of deprivation outlined at 2.3 above are likely to amount to a failure by Australia to uphold its minimum core obligation to ensure the "minimum essential level" of the right to social security "to the maximum of its available resources". The Committee notes that Australia is a relatively wealthy country with significant resources available to address any shortfalls in the level of social security.

The Committee is aware that it is the Government's view that the NSA is intended to be a transitional payment that is set at a low level to provide incentives for the recipient to return to work.<sup>15</sup> However, the Committee respectfully submits that the evidence strongly indicates that the level of the NSA may itself be a barrier to the job search process. Put slightly differently, the Committee's view is that entrenching NSA recipients into social exclusion and poverty may effectively close off the path back to work.

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<sup>12</sup> "Table 9: Essential Item Deprivation Rates Among Main Income Source Categories (percentages)", Note 9, Deprivation Report at p.31

<sup>13</sup> OECD 2011 Benefits and Wages: OECD Indicators Report

<sup>14</sup> Note 9.

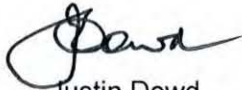
<sup>15</sup> Joint interagency submission from the Department of Education, Employment and Workplace Relations, Department of Families, Housing, Community Services and Indigenous Affairs, Department of Human Services and the Department of Industry, Innovation, Science, Research and Tertiary Education, "Submission to the Senate inquiry on the adequacy of the allowance payment system for job seekers and others", available online at:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Committees?url=eet\\_ctte/newstart\\_allowance/submissions.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=eet_ctte/newstart_allowance/submissions.htm) (accessed on 15 November 2012) (referred to as the "Government submission").

Given the above, the Committee calls upon the Commonwealth to increase the level of the NSA so that the deprivations in 2.3 above are alleviated and Australia is brought into compliance with its international human rights obligations.

If your office has any questions, please contact Vicky Kuek, policy lawyer for the Committee on [victoria.kuek@lawsociety.com.au](mailto:victoria.kuek@lawsociety.com.au) or (02) 9926 0354.

Yours sincerely



Justin Dowd  
**President**

not meet what the community regards as acceptable. The ranking of deprivation rates across the essential items for the other income groups is similar to that for age pensioners and is not discussed further.

**Table 9: Essential Item Deprivation Rates Among Main Income Source Categories (percentages) <sup>(a)</sup>**

Item	Low-wage Worker	Self-funded Retiree	Age Pensioner <sup>(b)</sup>	Income Category:			
				Veteran's Affairs Pensioner	Disability Support Pensioner	Parenting Payment Recipient	Newstart Allowance Recipient
Medical treatment, if needed	4.0	1.1	<b>1.4 (3)</b>	0.0	2.9	10.2	22.0
Warm clothes and bedding if it's cold	0.5	0.0	<b>0.0 (1=)</b>	0.0	0.0	2.0	2.6
A substantial meal at least once a day	2.6	0.0	<b>0.7 (3)</b>	0.0	11.3	3.9	10.3
Able to buy prescribed medicines	11.7	1.0	<b>2.1 (3)</b>	0.0	11.6	12.8	16.7
Dental treatment, if needed	27.5	2.1	<b>13.1 (3)</b>	2.4	31.9	54.0	44.7
A decent and secure home	10.4	1.0	<b>6.5 (2)</b>	7.3	20.3	44.0	23.1
Regular social contact with others	11.2	0.0	<b>6.0 (3)</b>	5.0	17.4	15.2	20.6
Secure locks on doors & windows	10.2	1.1	<b>6.6 (3)</b>	10.0	13.2	15.7	7.7
A roof and gutters that do not leak	8.7	0.0	<b>4.1 (3)</b>	2.5	7.3	20.8	10.3
Furniture in reasonable condition	4.7	0.0	<b>1.4 (3)</b>	0.0	13.1	21.6	5.3
Heating in at least one room	5.6	0.0	<b>1.4 (2)</b>	2.5	6.3	12.0	5.1
A telephone	2.5	0.0	<b>0.4 (3)</b>	0.0	3.2	15.7	13.2
Up to \$500 in emergency savings	32.1	0.0	<b>10.2 (2)</b>	17.5	42.6	56.9	53.8
A washing machine	2.1	0.0	<b>0.4 (3)</b>	0.0	1.6	3.9	10.5
Home contents insurance	19.2	0.0	<b>8.3 (3)</b>	2.6	29.8	52.9	55.6
Presents for family or friends	12.1	0.0	<b>7.4 (3)</b>	4.6	24.6	28.3	29.7
Computer skills	7.6	1.1	<b>11.2 (3)</b>	16.2	19.4	16.0	18.9
Comprehensive MV insurance	9.8	0.0	<b>8.5 (3)</b>	7.9	31.7	36.7	36.8
A week's holiday away from home	40.2	2.2	<b>23.6 (3)</b>	21.9	52.2	64.6	69.4

Notes: (a) Percentages are expressed after omitting missing values; (b) Figures in brackets show ranking.

Source: CUPSE survey.

## 5.2 Objective Indicators

The objective indicators shown in Table 10 have been separated into the four main areas described earlier. The first represents the *level of access* to economic resources other than income, the second reflects the *consequences* of trying to manage on an inadequate level of resources (income and other elements), and the third and fourth seek to capture more directly the *outcomes* associated with not having enough – in terms of hardship and reduced or restricted social participation. The results show the mean value of each indicator across each of the seven main income source categories and the ranking of the age pensioner category within the seven categories (where a