



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: HumanRightsREvk:884790

28 August 2014

The Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Committee Secretary,

Inquiry into the extent of income inequality in Australia

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 refers to paragraphs e. and f. of the Inquiry's Terms of Reference and makes the following submissions in response to those paragraphs:

1. Paragraph e.

The "principles that should underpin the provision of social security payments in Australia" should be based initially on Australia's international human rights obligations in, and affecting, the area of social security.

The *International Covenant on Economic, Social and Cultural Rights* ("ICESCR")¹, the human rights treaty which was formed with the objective of allowing UN member states to implement the economic, social and cultural rights contained in the Universal Declaration of Human Rights, was ratified by Australia in 1976. By doing so, our country accepted an obligation under international law to implement the terms of that treaty into Australian domestic laws.

Several Articles of the ICESCR affect the provision of social security payments.

Article 9 requires States Parties to the Covenant to recognise "the right of everyone to social security..." The particular emphasis of this Article is that social security be provided universally to all people.

¹ G.A. res 2200A (XXI), 21 UN GAOR Supp (No.16) at 49, UN Doc A/6316 (1966), 993 UNTS 3, entered into force Jan 3, 1976.

The importance of the right of social security to the alleviation of income inequality was recognised by the United Nations Committee on Economic, Social and Cultural Rights (“CESCR”) in its *General Comment No. 19*² where it remarked in paragraph 3 that:

Social Security, through its redistributive character, plays an important role in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion.

Article 10(1) requires States Parties to recognise that the “widest possible protection and assistance should be accorded to the family...” In relation to the financial aspect of that assistance the CESCR remarked in its *General Comment 19* that:

Family and child benefits, including cash benefits and social services, should be provided to families, without discrimination on prohibited grounds, and would ordinarily cover food, clothing, housing, water and sanitation, or other rights as appropriate.

Article 11 of the ICESCR recognises “the right of everyone to an adequate standard of living for himself and his family...” and goes on to require States Parties to take “appropriate steps to ensure the realization of this right...”

Although a very broad right, Article 11 has been important in elaborating the more specific human rights to food, water, housing and clothing.³

The Committee submits that the implementation of these Article 10 and 11 rights is a key element in the achievement of social security for all and would help to minimise the need for the provision of social security payments.

2. Paragraph f.

The “practical measures that could be implemented by governments to address inequality, particularly appropriate and adequate income support payments” should also be based initially on Australia’s international human rights obligations arising from the ICESCR.

The Committee recognises that appropriate and adequate income support payments are necessary but there are ICESCR human rights that if enjoyed by all, would address inequality and minimise the need for such income support payments.

In particular, Article 6 recognises “the right to work” and requires States Parties to “take appropriate steps to safeguard this right”.⁴ The Committee submits that the full realisation of this right would address inequality and help to minimise the need for income support payments.

Article 7 of the ICESCR recognises the rights of everyone to the “enjoyment of just and favourable conditions at work...” including “fair wages and equal remuneration for work of equal value”, a “decent living for themselves and their families,” and “equal opportunity for everyone to be promoted in his employment to an appropriate higher level...” The Committee further submits that the full realisation of such rights would also address inequality and help to minimise the need for income support payments.

² 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 at: <http://www.refworld.org/docid/47b17b5b39c.html> [accessed 5 August 2014]

³ See CESCR General Comments No.4, 7, 12 and 15.

⁴ See CESCR General Comment No.19.

Article 8 requires States Parties to the ICESCR to ensure both the “right of everyone to form trade unions and join the trade union of his choice” and the right of such trade unions to “function freely” subject to “no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others...” The Committee submits that the full realisation of trade union rights would likely result in enhanced employee incomes with a consequent lesser need for income support payments.⁵

Further, Article 10(2) requires States Parties to accord to “mothers during a reasonable period before and after childbirth...paid leave or leave with adequate social security benefits”. The level of such benefits has generally been influenced by various International Labour Organisation (“ILO”) conventions on the subject.⁶ The Committee submits the full implementation of such rights would also lessen the need for income support payments.

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

Yours sincerely,

A handwritten signature in black ink that reads "Ros Everett". The signature is written in a cursive, flowing style.

Ros Everett
President

⁵ See Saul, Kinley & Mowbray *The International Covenant on Economic Social and Cultural Rights: Commentary, Cases and Materials* (Oxford University Press, Oxford, 2014) at 490.

⁶ See ILO Conventions No. 3 and 102.