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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 123/2017*,**

Communication submitted by:	J.M. (represented by the National Council of Single Mothers and their Children Incorporated)[1]
Alleged victim:	The author
State party:	Australia
Date of communication:	19 September 2017
References:	Transmitted to the State party on 17 January 2018 (not issued in document form)
Date of adoption of decision:	23 February 2023

1. The communication is submitted on behalf of the author, an Australian citizen, born in 1973. She claims that the State party has violated her rights under articles 2 (d) and (f), 11 (e) and 13 (a) of the Convention. The State party ratified the Convention on 28 July 1983 and the Optional Protocol thereto on 4 December 2008. The author is represented by counsel.

* Adopted by the Committee at its eighty-fourth session (6–24 February 2023).

** The following members of the Committee participated in the examination of the present communication: Brenda Akia, Hiroko Akizuki, Nicole Ameline, Marion Bethel, Leticia Bonifaz Alfonzo, Rangita de Silva de Alwis, Corinne Dettmeijer-Vermeulen, Esther Eghobamien-Mshelia, Hilary Gbedemah, Yamila González Ferrer, Daphna Hacker, Nahla Haidar, Dalia Leinarte, Marianne Mikko, Ana Pelaez Narvaez, Bandana Rana, Rhoda Reddock, Elgun Safarov and Genoveva Tisheva.

[1] The National Council of Single Mothers and their Children Incorporated is an organization supporting single mothers which began in the early 1970s. It provides information and support to empower single mothers to make informed decisions and to protect and support themselves and their children.

Facts as submitted by the author

2.1 The author is the mother of three children, born on 18 May 2004, 14 May 2006 and 28 March 2009. She worked full time when she was first separated from her partner, to provide financially for the family, but she was forced to stop as she was unable to balance the parenting needs of her children and their well-being against the requirements of her employment. The author decided to enter university to expand her employment opportunities in the long term so that, as soon as her children were in high school and thus more independent, she could re-enter the workforce with formal qualifications which would allow her to compete in the employment market.[2]

2.2 The author states that, in 2005, the year before her second child was born, the Government passed the Welfare to Work reforms, including the Employment and Workplace Relations Legislation (Welfare to Work and Other Measures) and, in 2006, consequential amendments thereto.[3] The amendments lowered the eligibility cut-off age for the children of parents eligible to receive the Parenting Payment – Single, which was reduced from 16 to 8 years of age for single parents, and to 6 years of age in the case of coupled parents, effective on 1 January 2013. Transitional provisions were included whereby those who were already in receipt of the payment on 1 July 2006 were exempt from the changes and would continue to receive the Parenting Payment – Single until their youngest child turned 16. On 31 May 2012, the Social Security Legislation Amendment (Fair Incentives to Work) bill 2012 was introduced to Parliament, which removed the "grandfathering" (i.e., exemption) provisions.

2.3 On 15 June 2012, a consortium, led by the Australian Council of Social Service and including the National Council of Single Mothers and their Children, sought an inquiry by the Parliamentary Joint Committee on Human Rights.[4] On 21 June 2012, the Parliamentary Joint Committee received written submissions and heard oral evidence and requested the assistance of the Special Rapporteur on extreme poverty and human rights, who sent a letter to the State party, regarding the reforms.[5]

2.4 The author notes that, in October 2012,[6] the Parliamentary Joint Committee on Human Rights[7] published an interim report in which it recommended delaying the introduction of the Social Security Legislation Amendment (Fair Incentives to Work) bill 2012, pending a Senate committee inquiry into the adequacy of the unemployment benefit known as the Newstart Allowance, which would replace the Parenting

[2] The author does not own a home. No further information was provided.

[3] Principal statute: Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005 No. 154, 2005, revised in accordance with the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) (Consequential Amendments) Act 2006.

[4] Acting pursuant to functions under section 7 of the Human Rights (Parliamentary Scrutiny) Act 2011 into the Social Security Legislation Amendment (Fair Incentives to Work) bill 2012.

[5] On 8 October 2012, an urgent correspondence was sent to the Rapporteur requesting the Special Rapporteur to contact the State party with a view to withdrawal of the proposed reforms in accordance with its international human rights obligations. On 12 October 2012, the Special Rapporteur and the Working Group of Independent Experts on the Issue of Discrimination against Women in Law and Practice wrote to the State party asking questions regarding the decision to transfer individuals from parenting payments to Newstart. The author is not aware of any response having been submitted by the State party.

[6] In paragraph 1.55 of its report, the Parliamentary Joint Committee on Human Rights noted that "it does not follow that the measures seeking to achieve equity are justified … an alternative and ostensibly fairer approach would be to give later recipients the same benefits as earlier recipients, rather than reducing the benefits of earlier recipients, it is not apparent to the Committee that the Government considered any alternative options in this regard".

[7] On 26 June 2012, the Senate referred the matters to the Senate Education, Employment and Workplace Relations References Committee for inquiry and report by 1 November 2012.

Payment for families affected by the removal of the transitional provisions.[8] The Government did not follow the Joint Committee's recommendation, and the legislation passed into law on 24 October 2012.

2.5 On 29 November 2012, the Senate Employment and Workplace Relations Legislation Committee published its report on the adequacy of the Newstart Allowance, concluding: "it is plain that the Newstart Allowance is too low, particularly for single recipients. For this reason, Newstart Allowance Single should be increased, taking into account other potential increases consequential to recommendations made in the committee's report".[9] However, the Government proceeded with the implementation of the Social Security Legislation Amendment (Fair Incentives to Work) bill, which came into effect on 1 January 2013.

2.6 In March 2013, the Parliamentary Joint Committee on Human Rights delivered its final report, finding that, in response to concerns that removing the grandfathered arrangements might indirectly discriminate against women because the vast majority of Parenting Payment – Single recipients (95 per cent) were women:[10] "the Government has not provided the necessary evidence to demonstrate that the total support package available to individuals who are subject to these measures is sufficient to satisfy minimum essential levels of social security as guaranteed in article 9 of the International Covenant on Economic, Social and Cultural Rights and the minimum requirements of the right to an adequate standard of living in Australia as guaranteed in article 11 of the Covenant. Nor has it indicated the basis on which it makes its assessment. In the absence of this information, the Committee is unable to conclude that these measures are compatible with human rights."[11] The author notes that this was conceded to by a member of the Government which introduced the legislation, after they left office.[12]

2.7 The author explains that further changes to the social security system were brought into effect by the Social Services Legislation Amendment Act of 2017, which came into force incrementally, 12 April to 1 July 2017. Those changes included the introduction of a one-week waiting period for receipt of the Parenting Payment – Single.

2.8 On 28 March 2017, the author became ineligible for the Parenting Payment – Single[13] because her youngest child turned 8 years old. She claims that she and her family immediately experienced financial hardship, increased stress and insecurity. She notes that, under the Parenting Payment – Single, the author could earn up to $A 2,088.85 per fortnight before her parenting payments were affected. However, under Newstart, she could earn only $A 1,576.00 per fortnight, in order not to lose her entitlement to income support. She states that she would still have been eligible

[8] Inquiry into Employment and Workplace Relations Legislation Amendment (Welfare to Work and other Measures) bill 2005 and Family and Community Services Legislation Amendment (Welfare to Work) bill 2005, Inquiry Report, Parliament House Canberra, Australia, 28 November 2005. Available at www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2004-07/welfare_to_work/index.

[9] Government Senators' additional comments, conclusion, para. 1.32. Available at www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_Employment_and_Workplace_Relations/Completed_inquiries/2010-13/newstartallowance/report/d01.

[10] Parliamentary Joint Committee on Human Rights report, para. 1.68.

[11] Ibid., para. 1.120.

[12] In March 2014, a former minister, Jenny Macklin, stated that government, under which she had served when it introduced the reforms "got it wrong" on cuts to single parent payments, acknowledging that it had mishandled the issue, referring to data from Senate hearings which showed that 95 per cent of single parenting payment recipients were women and they were struggling to meet essential living costs. [pay wall to access article].

[13] The author does not provide information on when she began receiving the payment.

for the Parenting Payment – Single in terms of her income, had the age requirement not changed under the reforms and she had thereby lost access to the benefit.

2.9 The author states that she has had no means of challenging the effects of these changes as the implementing legislation under the Convention, the Sex Discrimination Act, 1984, specifically excludes claims of discrimination in social security legislation. She states that, as there is no bill of rights in Australia, there is no effective means of challenging discriminatory social security legislation or laws that violate women's rights under the Convention. She notes that, even though the Parliamentary Joint Committee on Human Rights did not find the social security legislation to be consistent with the State party's international human rights obligations, the reforms went ahead without revision.

Complaint

3.1 The author submits that the State party is in violation of the following articles of the Convention.

3.2 She claims that, under article 2, the State party has failed to fulfil its obligations under article 2 (d) and (f) by failing to condemn or eliminate discrimination and failing to take steps to modify discriminatory laws. She claims that, by removing parenting payments from single parents when their youngest child turns 8 years old, thereby replacing the previous upper age limit of 16 years old, and further by removing the transitional provisions aimed at cushioning existing recipients of the Parenting Payment – Single from the effects of those reforms, the State party implemented a policy which was expected to have an indirectly discriminatory effect and failed to modify the policy in accordance with its continuing obligations to eliminate discrimination after the effects of indirect discrimination became manifest.

3.3 Under article 13 (a), the author claims that the State party failed through these reforms and in an ongoing manner to take appropriate steps to eliminate discrimination in other areas of economic and social life to ensure that women enjoyed the same rights in relation to family benefits as men.

3.4 Under article 11 (1) (d) and (e), the author claims that the State party failed in its obligation to ensure substantive equality between men and women in relation to the right to social security, in particular in removing transitional provisions which protected existing recipients from the worst effects of the reforms. The State party therefore failed to recognize and address the barriers faced by single parents in returning to work and balancing family and work responsibilities, and the enhanced effect on mothers, who comprise the overwhelming majority of the affected group, owing to existing structural inequalities.

State party's observations on admissibility and the merits

4.1 The State party provided its comments on admissibility and merits on 11 December 2018.

4.2 The State party emphasizes its ongoing efforts to eliminate discrimination against women and notes three priority areas aimed at achieving gender equality, these

being: strengthening women's economic security;[14] supporting more women to enter leadership positions;[15] and ensuring protection from domestic violence.[16]

4.3 The State party notes that the comprehensive package of legislative reforms adopted in parliament on 7 December 2005 was directed at increasing the workforce participation rates among persons of working age. It affirms that these reforms included changes to the participation requirements for eligibility to receive the Parenting Payment – Single to reflect those applicable to most other income support payments.

4.4 The State party claims that, since the author was at all relevant times employed and earning in excess of the maximum income threshold to be eligible for this unemployment benefit, her claims regarding the insufficiency of the Newstart Allowance, as well as the effects of the one-week waiting period for the benefit, are inadmissible, as they concern measures of which the author is not a "victim" within the meaning of article 2 of the Optional Protocol to the Convention.

4.5 As to the merit of the author's claims, the State party notes that the author does not claim that the changes to the eligibility requirements for the Parenting Payment – Single amount to direct discrimination against women. However, with reference to her claims that the changes amount to indirect discrimination against women, in violation of article 2 (d) and (f), it argues that the legislation which removed the transitional arrangements, rendering the author subject to the revised eligibility requirements, in fact restored equity across the parenting payment population by treating all families subject to the same circumstances in the same way.

4.6 The State party rejects the author's contention that the removal of the grandfathering provisions amounts to differential treatment of women on the basis of their status as women. It refers to the definition of discrimination against women under article 2 (d) and (f), noting that indirect discrimination arises where laws, policies and practices, although neutral on their face, are discriminatory in their effect on women. It states that to reach such a finding in this context would require, first, that there be differential treatment and, second, that such differential treatment is unjustified, as established by treaty body jurisprudence.[17]

4.7 The State party notes the author's claim that the removal of the transitional arrangements constitutes indirect discrimination against single women because single parents are more likely to be women. The State party claims that implicit in this line of reasoning is the allegation that the removal of the transitional arrangements has had a disproportionate impact on single parents, as compared with coupled parents. The State party thereby deduces that the relevant comparator would be coupled persons who, before the 2013 repeal of the transitional arrangements, would have benefited. It reasons that the withdrawal of these provisions can therefore not be

[14] The State party aims to strengthen women's economic security through, for example, its strategy aimed at increasing women's workforce participation: Towards 2025: an Australian Government Strategy to Boost Women's Workforce Participation. Notably, the overall workforce participation rate for Australian women reached its highest-ever level of 60.5 per cent (in April 2018), up from 58.6 per cent in 2008.

[15] Measures addressing women's leadership include the Women's Leadership and Development Program, which funds a range of women's leadership projects, and the BoardLinks programme, which uses a database to connect Australian women with opportunities to be considered for State party board appointments.

[16] The National Plan to Reduce Violence against Women and their Children 2010–2022 is the framework document for leading national action on the women's safety agenda. The aim is to: respond better to and support women and children who have experienced (or are at risk of experiencing) violence, hold perpetrators to account for their actions and prevent violence from occurring in the first place.

[17] Human Rights Committee, general comment No. 18 (1989) on non-discrimination.

found to discriminate against single parents as the change affects all persons equally regardless of their marital status. Indeed, to the extent that the scheme distinguishes between single and coupled parents, it does so in favour of single parents as they will meet the eligibility requirements for an additional two years. Moreover, it asserts that former recipients of the Parenting Payment – Single who transition to the Newstart Allowance will receive a higher rate of payment than partnered persons making that same transition.

4.8 For these reasons, the State party argues that the removal of the transitional arrangements cannot be said to discriminate against single parents (and, therefore, not against women), either in form or in effect. It therefore claims that the State party has not breached its obligations under article 2 (d) or (f) of the Convention.

4.9 The State party further submits that, to the extent that the removal of the transitional arrangements could be said to amount to a differential treatment of women, which it denies, any such differentiation would be justifiable where it is applied to achieve a legitimate aim, is based on reasonable and objective criteria and is proportionate to the aim to be achieved. The State party submits that the removal of the relevant transitional arrangements in the Social Security Act is directed at the legitimate aim of increasing the workforce participation rates of parents of school-age children, is based on reasonable and objective criteria related to participatory requirements and is proportionate to that aim as any deficits are largely mitigated by other benefits.

4.10 The State party claims that eligibility for the Parenting Payment will continue until a recipient's youngest child reaches school age (or, in the case of single parents, 8 years of age). Once the youngest child turns 6 or 8, respectively, principal carer parents who wish to continue to receive income support are required (with certain exemptions) to meet part-time participation requirements including by looking for, or undertaking, 30 paid hours of part-time employment, study or voluntary work (in limited circumstances) or a combination of these per fortnight. It claims that this recognizes that, as children get older, most parents find that they can increase their level of employment and reduce their need to rely on income support.

4.11 The State party refers to the explanatory memorandum [18] to the amending legislation, which confirms that the objectives of the reforms were to increase workforce participation by those receiving income support and to reduce the adverse consequences of welfare dependence.

4.12 Furthermore, the State party notes the benefits of workforce participation, including improved individual physical and mental health outcomes for the individual, family and community over time. It argues that increasing workforce participation is particularly important for single parents in Australia, who, as a class, have particularly low rates of workforce participation by international standards. It notes that, in the State party, primary school education is compulsory from 6 years of age, which is the cut-off age for children of coupled parents for the parents to receive the Parenting Payment and therefore aligns with the increased ability to work.

4.13 The State party therefore asserts that the eligibility requirements for the Parenting Payment, as amended by the Social Security Legislation Amendment (Fair Incentives to Work) Act 2012, are objective and reasonable, well supported by evidence, and are less stringent than the workforce participation requirements that attach to income support payments in a range of comparable economies.

[18] House of Representatives, *Explanatory Memorandum to the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Bill 2005*, p. 2.

4.14 Finally, it notes that the eligibility requirements for the Parenting Payment are a proportionate means of giving effect to their intended objective, in particular in the light of the support provided by the social security system as a whole, of which income support payments are one component, which it claims takes full account of the particular circumstances of parents of school-age children. For example, it notes that the rate of the Newstart Allowance paid to a principal carer is higher than the rate paid to both coupled parents and persons without children. Further, parents with more than three children receive a higher rate of payment than other single parents and, in turn, than other income support recipients on the Newstart Allowance. Other exemptions cover circumstances where a person has a temporary incapacity or finds themselves in special circumstances such as a major personal crisis or homelessness, and flexible participation requirements exist for principal carer parents, for instance, they are not required to accept a job if it involves working outside school hours or during school holidays, or if they cannot find suitable childcare. Flexibility is also offered in a range of circumstances, such as where there may be excess travel time, the offer of work is for only a short period or if accepting the job would leave the parent financially worse off. Furthermore, income support payments coexist with initiatives to help provide recipients with the support and skills required to participate in the workforce and to assist them in meeting the costs of having children in care while they are training or working. Therefore, the State party asserts that it would be inaccurate and misleading to consider the adequacy of income support payments, such as Newstart, in isolation.

4.15 For the above reasons, the State party submits that the removal of the transitional arrangements is a proportionate, objective means of pursuing the legitimate aim of boosting the workforce participation of parents of school-age children, in keeping with the margin of discretion afforded to States parties in determining the policies by which they pursue legitimate and important national objectives. Accordingly, the removal of the transitional arrangements does not amount to "discrimination against women" within the meaning of paragraphs (d) and (f) of article 2.

4.16 In relation to the author's claims under article 11 (1), the State party notes that article 11 requires States parties to take appropriate measures to "eliminate discrimination against women in the field of employment, in order to ensure, on a basis of equality of men and women, the same rights", and goes on to enumerate a number of rights that fall within the scope of that obligation, including "the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work", which should be enjoyed by women on an equal footing with men, both in form and substance. The State party notes that, to the extent that single parents are, under the amended scheme, placed in a different position from that of coupled parents or persons without children, this difference amounts to a higher rate of payment and more flexible eligibility requirements. In addition, the State party emphasizes that the specific measures fall within the margin of discretion afforded to States parties in meeting their obligations under article 11.

4.17 The State party further submits that article 1 also affords a margin of discretion in determining the form that social security payments will take. In particular, it does not confer a right to a particular form of social security payment, such as a right to receive the Parenting Payment instead of the Newstart Allowance. It is open to States Parties to deliver social security through a combination of measures such as income support, payments to families, childcare and out-of-school-hours care, rental assistance and other measures of social support, rather than through a single income support payment targeted at parents. Further, it notes that article 1 does not prevent States from attaching conditions, such as participation requirements, to income support payments paid to parents of working age who are capable of working. Such

conditions are consistent with the legitimate objective of increasing the workforce participation rates of parents with school-age children.

4.18 In sum, the State party submits that the removal of the transitional arrangements does not affect women's ability to enjoy the right to social security on an equal footing with men, especially when understood in the context of the State party's comprehensive social support system. Therefore, it submits that the removal of the transitional arrangements falls outside the scope of article 11 (l) (e) of the Convention.

4.19 With reference to the author's claims under article 13, the State party notes the requirement to take appropriate measures to "eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights", including the right to family benefits. It states that, like article 11, article 13 is directed at ensuring that women enjoy the rights enumerated on an equal footing with men, both in form and in substance. The State party asserts that the author has presented no evidence that women are discriminated against, either directly or indirectly, in relation to their eligibility for family benefits. Accordingly, the removal of the transitional arrangements is outside the scope of article 13.

4.20 The State party reiterates that there is a wide range of benefits payable to families under its social security system, noting that the State party's expenditure on family benefits, as a percentage of gross domestic product, is above the OECD average.[19] The State party argues that it is committed to assisting families with the costs of raising children through, in addition to income support, initiatives such as the Family Tax Benefit, the Child Care Subsidy and Parental Leave Pay, as well as a range of other payments, depending on individual circumstances.

4.21 The State party concludes that there is nothing on which to base a finding that the Welfare to work reforms are discriminatory against women.

Author's comments on the State party's observations on admissibility and the merits

5.1. The author submitted comments on the State party's observations on 8 April 2019.

5.2 The author notes that she was a recipient of the Parenting Payment – Single in 2006 and therefore was part of the group which was covered by transitional provisions provided under the reform legislation passed in 2006. She argues that, as those arrangements, which would have allowed her to continue to receive the Parenting Payment – Single until 2025, when her youngest child turned 16, were removed in 2013 she became ineligible in 2017. Therefore, she reasserts that she is a victim of the changes effected by the legislation and therefore all claims related thereto are admissible.

5.3 Furthermore, in relation to the State party's claim that, upon losing access to the Parenting Payment – Single, she would have been eligible for Newstart had her income fallen below the cut-off point for the Newstart payment. She notes that the Newstart income ceiling was well below that of the Parenting Payment – Single, which she had been given to believe she could rely on receiving until 2025, when her youngest child turned 16. On this understanding she had entered education and part-time employment to supplement her income, as part of her long-term plan to upskill in advance of her planned return to full-time employment. So, when the transitional provisions were repealed, she was deprived of the Parenting Payment – Single, while

[19] OECD, "Public spending on family benefits". Available at https://www.oecd.org/els/soc/PF1_1_Public_spending_on_family_benefits.pdf. Based on 2013 figures.

not being eligible for Newstart because of the lower income ceiling, and therefore found herself without either benefit. For all of these reasons the author asserts that she is properly a victim under the Optional Protocol, as the reforms impeded her access to social security on an equal basis with men, since, being a single mother, the reforms were particularly and disproportionately damaging owing to existing structural disadvantage.

5.4 The author notes that, having been forced to apply for the Newstart allowance after having lost her job, she receives a lower amount than that to which she was entitled under the Parenting Payment – Single system.

5.5 The author states that, when her part-time employment ended, she applied to receive Newstart Allowance on 15 November 2018. Her first payment was received on 24 December 2018. She and her family experienced significant hardship during the five-week processing and mandatory one-week waiting period. Her experience since applying for Newstart has been of being subjected to onerous and poorly administered compliance requirements. The author and her family live below the poverty line, and despite her contribution to society as the sole parent of three children, the family are not provided with the means to achieve an adequate livelihood to allow them to meaningfully participate with dignity, equality and security as members of society.

5.6 On the Newstart Allowance, the author claims that she and her family are financially worse off than they would have been had they remained in receipt of the Parenting Payment – Single until her youngest child turned 16. The changes to the law have thus impacted negatively on her family's lives and violated her rights under the Convention.

5.7 Regarding the State party's interpretation of its obligations under article 2, the author asserts that it clearly misunderstands the meaning of gender-based discrimination, as defined by the Committee in its general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, in which it explains that gender-based discrimination is discrimination regardless of whether or not the discriminatory effect was intended. Therefore, seemingly neutral treatment that has the effect of denying women rights by failing to recognize their pre-existing disadvantage can constitute discrimination. The author reiterates that removing parenting payments had a disproportionately negative impact on single parents, the vast majority of whom are women already struggling with the existing structural inequalities that they face in providing for their children. The author notes the Committee's jurisprudence, which makes it clear that States parties have an obligation to respect, protect and fulfil the right to non-discrimination of women and to implement their right to substantive equality with men. She notes that this includes addressing intersecting forms of discrimination such as family status, parental responsibilities, sex and gender and hence acknowledging the particular forms of discrimination experienced by single mothers, who are required to perform important social reproductive work in society, often without adequate support. As a result of the State party's failure to fulfil its obligations, this group of women, to which the author belongs, continues to experience disproportionate disadvantage, together with and exacerbated by other forms of hardship that impact on the enjoyment of their rights.

5.8 The author notes the State party's assertions that the removal of the grandfathering provisions of the Parenting Payment does not amount to differential treatment of women on the basis of their status as women. She asserts that this fails to recognize that the effect of the removal of the provisions was the loss of social security income upon which this group of parents had been relying, leading to their immediate and ongoing financial disadvantage.

5.9 The author notes the State party's suggestion that the group of single parents affected by the changes to the Parenting Payment – Single are not disadvantaged in comparison with coupled parents and that single parents are in fact better off than couples because they have a further two years' eligibility for parenting payments and a higher rate of Newstart. The author contests the assertion that the comparator for the purpose of assessing discrimination against women is couples. Both single and coupled parents had been disadvantaged when the transitional arrangements were removed, even if single parents were disadvantaged slightly later than coupled parents. However, its impact on single parents, mainly mothers, despite their having a further two years of eligibility, is nonetheless of greater detriment because of the entrenched challenges of bringing up children alone and without a partner's contribution in terms of financial, emotional and other resources, and amounts to gender-based discrimination because of the clearly female predominance of the group.

5.10 The author submits that single parents have been discriminated against through this policy owing to the disadvantaged position that they already occupied before the policy change in 2006 and the subsequent removal of transitional provisions, as compared with the rest of the population. A key aspect of their disadvantage relates to their gender and family status. They face disadvantages that the social security system, as currently structured, does not address. Thus, although they can receive the Newstart Allowance unemployment payment, at a slightly higher rate than people without children or partnered parents, this still fails to provide them with adequate assistance to overcome their disadvantage, created by structural inequality and worsened by the reforms. The total amount of State support that they receive from government is still less than they were receiving under the Parenting Payment, and this means that, instead of taking steps to eliminate discrimination, the State party is perpetuating the disadvantage experienced by this group, mainly women, meaning that the policy is indirectly discriminatory under the Convention. The fact that other groups are also worse off under the reforms does not negate the discriminatory effects as to the enjoyment of rights on an equal basis with men under the Covenant.

5.11 In relation to the State party's argument that any differential treatment of sole parents is not discriminatory, since the policy changes are justified, the author states that many parents were already in the workforce and subject to participation requirements. However, removing the Parenting Payment – Single merely made it harder for women in particular to balance their work, study and family responsibilities and added to their stress and the financial insecurity of their families, and that, rather than improving the outcomes for single parents and their families, it has deepened into poverty and disadvantage. Lastly, the author claims that the disproportionate effects on single mothers of cutting social security payments to "encourage" job seeking and employment without additional measures to support working single parents in the face of the decreasing income and insufficient provision of childcare, was clearly foreseeable and had led to a dramatic increase in the rate of relative poverty among unemployed single parents with dependent children, which went from 14.3 per cent in 2003 to 17.2 per cent in 2015–2016,[20] while relative poverty among single, childless, unemployed people went from 26.4 per cent in 2009–2010 to 11.9 per cent.[21] The author cites research finding that, while the poverty rate among sole parent families that were not affected by the policy rose only marginally (57 per cent in 2011 to 58 per cent in 2013), poverty rates for sole parent families affected by

[20] P. Davidson, P. Saunders, B. Bradbury and M. Wong, *Poverty in Australia 2018*, Poverty and Inequality Partnership report No. 2 (Sydney, Australia, Australian Council of Social Service, 2018), p. 13; and Australian Council of Social Service, *Poverty in Australia 2012* (2013).

[21] Davidson, *Poverty in Australia 2018*; Australian Council of Social Service, *Poverty in Australia 2012*.

the policy, i.e., whose youngest child was 5–9 years of age, rose from 37 per cent to 55 per cent and from 51 per cent to 67 per cent for those whose youngest child was 10–14 years of age, during the same period. The author notes that the Committee also raised concerns regarding the effect on women of cuts to social security in its recommendations to the State party in 2018.[22]

5.12 The author further responds to the State party's claim that the author merely expects to be provided with the Parenting Payment until her youngest child reaches the age of 16, without any workforce participation requirements. The author argues that this is a distortion of her claim, as parents receiving the Parenting Payment already have participation obligations, and, while she is not advocating that all of these should be removed, the reinstatement of adequate financial support to single parents is necessary in order for them to break the cycle of poverty.

State party's additional observations on admissibility and the merits

6.1 On 22 June 2020, the State party submitted additional observations in response to the authors comments.

6.2 The State party reaffirms its position, stated in its original submissions on the inadmissibility of the author's claims, dated 11 December 2018. In addition, it provides supplemental arguments on the inadmissibility of the author's claims.

6.3 The State party submits that, since its original observations were submitted, it has been able to establish from its records that the author was not, in fact, in receipt of the Parenting Payment, "immediately before 1 July 2006,"[23] meaning that she was not part of the grandfathered group, comprising parents already in receipt of parenting payments when the amendment was passed who were exempted from the change in age limit from 16 to 8 or 6 and were therefore allowed to continue to receive the benefit until their child turned 16, as originally envisioned.

6.4 It claims that she is therefore not a "victim" with the right to make a claim relating to the removal of these provisions, within the meaning of article 2 of the Optional Protocol. It also claims that, as she was not in receipt of the benefit at the time the reforms were passed in 2006, she is also not a victim of the alleged effects of those reforms more generally.

6.5 The State party asserts that records show that the author applied for the Parenting Payment – Single on 20 February 2014 and was granted the Parenting Payment – Single from that date. It argues that since, at that time, the 2006 and 2013 reforms to the Parenting Payment had already taken effect, the author cannot claim to have been personally and directly affected by these changes and therefore submits that her claims are inadmissible, ratione personae.

Author's comments on the State party's further observations on admissibility

7.1 On 13 October 2020, the author provided her comments on the State party's further submissions in relation to the admissibility of her communication.

7.2 The author responds to the State party's assertion that she does not have victim status in relation to the 2006 and 2013 reforms. She reiterates that, in her communication, she clearly stated that, on 28 March 2017, she was denied the Parenting Payment – Single because her youngest child had turned 8 years old. This was a result of the State party passing legalization which limited such payments to children under the age of 8. The author, along with other single mothers, therefore

[22] CEDAW/C/AUS/CO/8, para. 45.

[23] Social Securities Act 1991, sect. 500F, vol. 2, part 2.1 (l) (b) and (2) (b).

immediately experienced hardship, financial stress and insecurity for herself and her three sons.

7.3 The author argues that she has shown in her complaint that she was a direct victim of the series of changes to the law, from 2006 onwards, that changed the eligibility for receipt of the Parenting Payment – Single, reducing the child's age to 8 down from 16 years old, and in forcing them to rely on the Newstart Allowance, which was a lower payment amount with more stringent eligibility requirements and a mandatory waiting period, resulting in a loss of income, along with a reduction in accompanying benefits. The author asserts that she has clearly been personally affected by the series of progressively retrogressive amendments by the State party that have placed single mothers in particular on inadequate and inappropriate unemployment payments. Thus she is a "victim" under article 2 of the Optional Protocol.

7.4 The author claims that these changes had a directly negative impact on parents in the grandfathered group who had already become beneficiaries of the Parenting Payment – Single prior to 2006 and who lost benefits in 2013 despite the promise to support them; parents such as the author, who had children born before 2006 and who expected to receive the Parenting Payment – Single, should they need it, until their children became independent; and all single parents who had children after 2006 and who become ineligible for the Parenting Payment – Single when their child turned 8, with the result that they must meet more stringent requirements to qualify for the significantly reduced Newstart Allowance. The author insists that all of these parents face the same challenge of becoming unable to adequately support their child once the child turns 8, as a result of the reforms.

7.5 The author asserts that, although she was not yet a recipient of the benefit before the law changed, this is irrelevant to her claim that the retrogressive reduction in the benefit led to harm against all future applicants for these social security payments. She argues that the State party is in violation of its international obligations to realize the rights to social security of all individuals who are in need, on an equal basis. In this case, single parents, most of whom are women, and their children, are already among the poorest households in Australia and therefore the State party has a duty to protect them.

7.6 The author further asserts that the State Party has not acted upon the recommendations from the Committee issued in July 2018, which included taking immediate steps to mitigate the effects of budget cuts to social, health, education and justice budgets, to undertake a gender-analysis of these cuts and to implement gender responsive budgeting in the allocation of public resources and to adopt targeted measures and programmes to economically empower single mothers, including measures allowing them to complete higher education, and restore access to Child Care Subsidies for women who are not employed.

Supplemental observations by the State party

8.1 On 4 March 2021 the State party submitted its further observations in response to the authors comments.

8.2 The State party refers to its previous submissions, which it reiterates.

8.3 It notes that, in her further submissions, the author acknowledges that she is not part of the group of parents who were excluded from the transitional provisions that came into effect on 1 July 2006. It further notes that the author, in clarifying her position, stated herself to be a victim because she is a member of a group who "expected to receive the Parenting Payment – Single, should they need it, until their children became independent" and that there are two other groups of alleged victims

of which the author is not a member, but on behalf of which she also brings her complaint, including single parents in the grandfathered group who lost benefits. The State party therefore reiterates its assertion that the author is not a victim within the meaning of the Optional Protocol.

8.4 The State party maintains that the denial of benefits to the author in 2017 was not made under the aforementioned legislative reforms, as she had not yet applied for the Parenting Payment – Single, and her youngest child had not yet been born at the time of the 2006 reforms. As such, it states that the author had no direct experience of the changes identified and was not personally affected, as defined by the Committee in *Dayras and others v. France*,[24] in which it confirmed that, to be a victim, an author must have "personally been adversely affected by [the] legislation currently in force", requiring an experience of both the conditions prior to, and following, the reform and that a person cannot, "by way of an actio popularis" challenge a law or practice contrary to the Convention. It further states that the author has no standing to bring a claim actio popularis as, pursuant to rule 68 of the Rules, the author has not obtained consent to act on behalf of this group of individuals nor has she justified acting on their behalf without consent.

8.5 The State party challenges the author's statement that it has taken no action on the Committee's 2018 recommendations and states that steps taken to implement the Committee's recommendations include developing guidance to assist agencies to better identify and better articulate the gender impacts of policy, revising and enhancing its gender indicators publication that collate existing data to compare outcomes for women and men in the domains of economic security, education, health, work and family balance, safety and justice, democracy, governance and citizenship, a new childcare support package targets support to those spending the most hours working, training and studying. As a result, over 70 per cent of families have out-of-pocket costs of less than $A 5 an hour for centre-based childcare and nearly a quarter are paying less than $A 2 per hour for centre-based childcare.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 In accordance with rule 64 of its rules of procedure, the Committee is to decide whether the communication is admissible under the Optional Protocol. In accordance with rule 72 (4) it must do so before considering the merits of the communication.

9.2 The Committee notes the State party's claims that the author is not a victim within the definition of article 2 of the Optional Protocol, as she was not a member of the grandfathered group of parents receiving the Parenting Payment – Single at the time the transitional provisions were passed in 2006, as she applied for and began to receive the Parenting Payment – Single only in 2014, which not denied by the author. It notes that, as a result, the State party claims that the author was not directly affected by either the initiating legislation or transitional provisions or removal of the same. In response the author states that she was at all times a parent with children of the age to receive the benefit and was therefore affected by the change. It also notes that she claims to bring her complaint on behalf of all single mothers affected by the reforms, including those under the grandfathered provisions.

9.3 The Committee notes its jurisprudence that victim status depends on whether the author has been directly and personally affected by the violation alleged. An author may claim to be a victim only if she is personally affected by the act or omission of the State party at issue, and no individual may, in the abstract, by way of

[24] CEDAW/C/44/D/13/2007.

an actio popularis, challenge a law or practice claimed to be contrary to the Convention.

9.4 The Committee notes that the author's first child was born in 2004. She went on to have two more children, in 2006 and 2009, and therefore her youngest child was two years old, and thus of qualifying age, at the relevant cut-off for the grandfathering provision, in June 2006, and, at the time the legislation took effect, in January 2013, her youngest child was then four years old. Therefore, had she been in receipt of the Parenting Payment – Single in 2006, the author would have been a member of the protected grandfathered group, had those provisions not been removed, in January 2013. However, as is clear from the information provided by both parties, the author was not in receipt of the Parenting Payment – Single in June 2006, and therefore was not a member of that group. She was also not in receipt of the Parenting Payment – Single in 2013, when the changes were implemented and applied and began receiving it only in 2014. Therefore, the author was not part of the grandfathered group and therefore did not have any reasonable expectation of being able to rely on the Parenting Payment – Single until her youngest child turned 16 years old. The Committee therefore does not find that the author suffered a direct and personal impact as a result of the introduction and implementation of the removal of grandfathering provisions. As she was not eligible for the Parenting Payment – Single during either 2006 or 2013, owing to her employment status, the Committee finds that the author also lacks victim status in relation to her wider claims of loss caused by the Welfare to Work reforms in general. It also notes that the claims in relation to the effect of the reforms on other single mothers are not submitted with the consent of those individuals, nor is any justification for acting on their behalf without such consent provided by the author.

9.5 In the light of the foregoing, and in the absence of any further relevant information on file, the Committee concludes that the present communication is inadmissible under article 2 of the Optional Protocol, as not being submitted by or on behalf of an individual who has been directly and personally affected by the violations alleged.

10. In the light of this conclusion, the Committee decides not to examine any other grounds of inadmissibility invoked by the State party.

11. The Committee therefore decides that:

(a) The communication is inadmissible under article 2 of the Optional Protocol because the author does not have victim standing and does not submit on behalf of individuals who have consented to have such claims presented on their behalf;

(b) The present decision shall be communicated to the State party and to the authors.