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## Chapter 4

### Income management

#### Background

4.1 Income management limits the amount of income support paid to recipients as unconditional cash transfers and imposes restrictions on how the remaining 'quarantined' funds can be spent. Income management was first introduced in prescribed areas of the NT, including 73 remote communities, associated outstations and ten town camp regions, in 2007 as part of the NTNER.

4.2 This measure formed part of the government's response to the 2007 Little Children are Sacred report.<sup>1</sup> While the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse did not directly recommend introducing an income management scheme, it noted:

The Inquiry was told by some people that they would like to see at least 50 per cent, if not all, of the total sum of individuals' "welfare" (Centrelink) payments made in the form of food vouchers. The view was expressed that this may impact positively on alcohol consumption. The Inquiry believes it is worth investigating.<sup>2</sup>

4.3 Under the 2007 NTNER, the majority of Aboriginal and Torres Strait Islander people on income support in the NT had half of their payments income managed.<sup>3</sup> Income managed funds could not be used to purchase excluded items such as alcohol, tobacco or pornography, or be used for gambling. Because of the targeting of substantially Indigenous communities, the implementation of the NTNER required the suspension of the *Racial Discrimination Act 1975* (Racial Discrimination Act).

4.4 In 2010 legislation was passed to extend income management to all welfare recipients in the NT,<sup>4</sup> regardless of where they lived in the Territory, if they met certain criteria. This legislation also reinstated the application of the Racial Discrimination Act.

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1 See Northern Territory Government, *Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse; Ampe Akelyernemane Meke Mekarle: Little Children are Sacred* (2007).

2 Northern Territory Government, *Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse; Ampe Akelyernemane Meke Mekarle: Little Children are Sacred* (2007) 171.

3 The NTNER applied to 73 prescribed communities, their associated outstations and the 10 town camp regions of the NT. In 2008, over 70 per cent of Indigenous people in the NT lived within prescribed areas.

4 *Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of the Racial Discrimination Act) Act 2010*.

4.5 The 2012 Stronger Futures package amended these income management measures so as to apply income management beyond the NT, and to enable income management referrals from a range of state and territory authorities.<sup>5</sup> As at 2016, income management applies to 15 locations outside of the NT.<sup>6</sup>

4.6 In its 2013 report, the committee scrutinised the income management scheme as it operated in the NT as a whole, not limited to the Stronger Futures measures.

4.7 Whether a person is subject to the income management regime differs according to where the person lives. For income management in the NT, a person on welfare benefits can voluntarily sign up for income management, or be made subject to compulsory income management in the following circumstances:

- *Long-term welfare payment recipients*: persons aged over 25 (but under the pension age) who have received unemployment benefits, youth allowance, or parenting payments for 12 of the last 24 months;
- *Disengaged youth*: persons aged 15 to 24 who have received youth allowance, unemployment benefits or parenting payments for three of the last six months;
- *Vulnerable income management referrals*: persons on most types of welfare benefits who are referred for income management by:
  - a Centrelink social worker;<sup>7</sup>
  - a child protection worker;<sup>8</sup>
  - the Northern Territory Alcohol Mandatory Treatment Tribunal (NT AMT Tribunal);<sup>9</sup>

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5 See *Social Security Legislation Amendment Act 2012*.

6 It currently applies in the Perth Metropolitan, Peel and Kimberley regions, Laverton, Kiwirrkurra and Ngaanyatjarra Lands in Western Australia; Anangu Pitjantjatjara Yankunytjatjara Lands, Ceduna, Playford and Greater Adelaide in South Australia; Cape York, Rockhampton, Livingstone and Logan in Queensland; Bankstown in New South Wales; Greater Shepparton in Victoria; and in the NT.

7 Centrelink, in deciding whether a customer should be income managed, will consider whether the person is in financial hardship, whether the person may be subject to financial exploitation, whether the person is failing to undertake reasonable self-care or is homeless or at risk of homelessness.

8 This applies in the case of child neglect, not child abuse. In deciding whether to refer someone the caseworker is required to consider the best interests of the child, the manner in which Centrelink benefits are being used; the availability of additional support services such as financial management services; and whether income management will improve their circumstances.

9 The NT AMT Tribunal issues income management orders for up to 12 months to people who have been placed in mandatory treatment for alcohol related issues.

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- *Automatic vulnerable income management for young people for:*
    - those aged under 16 years receiving Special Benefit;
    - those aged between 16 and 24 years who have been granted a level of Youth Allowance at the Unreasonable to Live at Home level of payment;
    - those aged under 25 years who have received Crisis Payment on release from prison or psychiatric confinement.

4.8 Although income management applies to 15 locations outside of the NT, it is only the NT program that primarily involves people subject to income management because of the length of time they have been receiving benefits (long-term welfare recipients and disengaged youth).

4.9 Income management limits the amount of income support a person will be directly paid and restricts how the remainder of the income support payment can be spent. Most people subject to income management have 50 per cent of their Centrelink payments income managed, but this rises to 70 per cent for those on Child Protection Income Management.

4.10 Income managed funds can be subject to automatic deductions to meet 'priority needs'. Priority needs' are defined as:

- Food, non-alcoholic beverages, clothing, footwear, basic personal hygiene items, and basic household items;
- Housing (including rent, home loan repayments, repairs, and maintenance), household utilities (including electricity, gas, water, sewerage, garbage collection, and fixed-line telephone), rates and land tax;
- health (including medical, nursing, dental or other health services, pharmacy items (the testing of eyes, the prescribing of spectacles or contact lenses, the supply of spectacles or contact lenses); the management of a disability; child care and development, and the supply, alteration or repair of artificial teeth, artificial limb (or part of a limb), artificial eye or hearing aid, or of a medical or surgical appliance);
- education and training;
- items required for the purposes of the person's employment (including a uniform or other occupational clothing, protective footwear, and tools of trade);
- funerals;
- public transport services, where the services are used wholly or partly for purposes in connection with any of the above needs;

- the acquisition, repair, maintenance or operation of a motor vehicle, a motor cycle, or a bicycle that is used wholly or partly for purposes in connection with any of the above needs; and
- anything else specified in a legislative instrument made by the minister.<sup>10</sup>

4.11 The remainder of the restricted funds can only be accessed using a 'BasicsCard' which allows funds to be spent in stores that accept the card on essential 'basic' items and not on 'excluded goods' or 'excluded services'. Excluded goods are alcoholic beverages, tobacco products, pornographic material, and goods specified in a legislative instrument made by the minister.<sup>11</sup> 'Excluded services' are gambling or a service specified in a legislative instrument made by the minister.<sup>12</sup>

4.12 Around 90 percent of those subject to income management in the NT are Indigenous (around 60 per cent are female),<sup>13</sup> with estimates that just over one-third of the total Indigenous population is subject to income management.<sup>14</sup> Around 78 per cent of all people on income management are on compulsory income management.<sup>15</sup>

4.13 The largest numbers of people subject to income management are on Newstart, Disability Support Pension, Parenting Payments and Youth Allowance.<sup>16</sup> A person subject to compulsory income management because they are considered to be a long-term welfare payment recipient or a disengaged youth can seek an exemption for 12 months from income management if they meet specified criteria. However, very few exemptions from income management have been granted, with most being obtained by non-Indigenous people (the exemption rate for non-Indigenous people is 36.3 per cent compared to 4.9 per cent for Indigenous people).<sup>17</sup>

4.14 As noted above at paragraph [4.7], in the NT there are three categories of vulnerable income management referrals; referral by: a Centrelink social worker; a child protection worker; and, the NT AMT Tribunal.

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10 *Social Security Administration Act 1999*, section 123TH.

11 *Social Security Administration Act 1999*, section 123TI(1).

12 *Social Security Administration Act 1999*, section 123TI(2).

13 See Bray, JR, Gray, M, Hand, K, & Katz, I, *Evaluating New Income Management in the Northern Territory: Final Evaluation Report*, September 2014 (SPRC Report 25/2014) 53 ('Final Evaluation Report'); Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 2 October 2015) Attachment A.

14 Final Evaluation Report 72 and 55.

15 Final Evaluation Report 50.

16 Final Evaluation Report 67.

17 Final Evaluation Report 98.

4.15 A person may be placed on income management via referral by a Centrelink social worker where the worker assesses the person as being vulnerable to financial crisis. This could include people referred to state housing authorities because they are at risk of homelessness due to rental arrears.

4.16 A person may be referred by a case worker from a child protection authority where the case worker believes that income management can help the person and her/his family. In these cases, income management will run for an initial period of three to 12 months, and following assessment of a person's progress, may be extended for another three to 12 months. No exemptions are possible but a person may appeal the decision of a child protection case worker.

4.17 Referral by the NT AMT Tribunal was introduced with the Stronger Futures measures. Under this process, a person receiving welfare will also be subject to income management if the NT AMT Tribunal makes a mandatory treatment order in relation to that person.<sup>18</sup> A mandatory treatment order will be made when the NT AMT Tribunal considers that an adult is misusing alcohol, has lost the capacity to make appropriate decisions about their alcohol use or personal welfare and the misuse is a risk to their health, safety or welfare or to others. A person affected by the decision can make an application to the NT AMT Tribunal for it to vary, revoke or replace the income management order, but there is no access to independent merits review of the NT AMT Tribunal's decision (appeals can only be made to the Local Court on questions of law).<sup>19</sup>

4.18 The Senate Community Affairs Legislation Committee, in its report on the Stronger Futures measures, recommended that the legislation be amended so that only agencies that have in place appropriate internal and external review and appeal processes are able to refer people for income management.<sup>20</sup>

4.19 The government has committed to extending the income management program. In the 2015-16 Budget, funding was provided to extend income management for a further two years. Unspecified funding was also provided for a trial to evaluate the effectiveness of restricted debit card arrangements, which will limit access to discretionary cash for certain welfare recipients. This is based on the recommendation made in the Creating Parity report (the Forrest Review), that a Healthy Welfare Card should be introduced preventing welfare recipients from accessing any cash and restricting purchases that can be made using their welfare payments.<sup>21</sup>

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18 Section 34 of the *Alcohol Mandatory Treatment Act* (NT).

19 Section 51 of the *Alcohol Mandatory Treatment Act* (NT).

20 See Senate Community Affairs Legislation Committee, *Stronger Futures in the Northern Territory Bill 2011 and two related bills* (14 March 2012), recommendation 6, paragraph [3.28].

21 Andrew Forrest, *Creating Parity: the Forrest Review* (2014), Recommendation 5: Healthy Welfare Card, 28-29.

4.20 In light of the government's commitment to extend the income management regime, the report of this committee is particularly vital.

***Findings of the 2013 report on income management***

4.21 The committee's 2013 report found that the income management regime in the NT overwhelmingly applies to Aboriginal communities and so engages the right to equality and non-discrimination. That report also found that the income management regime limits the right to social security, the right to an adequate standard of living, and the right not to have one's privacy, family and home unlawfully or arbitrarily interfered with.

4.22 The 2013 report considered that the regime pursued a legitimate objective, but questioned whether the measures were rationally connected to achieving the stated objective and proportionate.

4.23 The 2013 report concluded that the government had not yet clearly demonstrated that:

- to the extent that the regime may have a differential impact based on race, it is reasonable and proportionate and therefore not discriminatory; and
- the regime is a justifiable limit on the right to social security and the right to privacy and family.

***New information post-2013 report***

4.24 Since the committee's 2013 report, three significant reports commissioned by the Australian government evaluating the effectiveness of the income management regime have been released, though only one examines its operation in the NT. These reports are the Social Policy Research Centre's Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands, and Deloitte Access Economics' Placed Based Income Management Evaluation, which examined how income management operated in five disadvantaged locations across Australia since July 2012: Logan (Qld), Rockhampton (Qld), Shepparton (Vic), Bankstown (NSW) and Playford (SA).

4.25 The third report, also conducted by the Social Policy Research Centre, examined the operation of income management in the NT, and is titled Evaluating New Income Management in the Northern Territory: Final Evaluation Report (Final Evaluation Report). The committee relies on these detailed evaluations, as well as correspondence with the current and former ministers, and submissions to this inquiry for its present review.

***Rights engaged***

4.26 The government has stated that the goals of income management are to achieve results that would advance the enjoyment of a number of rights. Quarantining income support payments of vulnerable individuals and families to ensure that a portion of a person's income support payments are spent on essential

needs, and limiting expenditure on excluded items, including alcohol, may contribute to the enhanced enjoyment of a number of rights. In particular, the right to housing<sup>22</sup> may be advanced by helping to ensure that a portion of a person's income support payments is spent on rent. In addition, the right of children to benefit from social security,<sup>23</sup> the right of children to the highest attainable standard of health,<sup>24</sup> and to an adequate standard of living,<sup>25</sup> will all likely be advanced by income management as income support payments are used to cover minimum basic essential goods and services necessary for the full development of the child.

However, in addition to seeking to promote these rights, the committee considers that the income management regime engages and limits the following rights:

- the right to equality and non-discrimination;<sup>26</sup>
- the right to social security;<sup>27</sup>
- the right to an adequate standard of living;<sup>28</sup> and
- the right to privacy.<sup>29</sup>

### **Compatibility of the measures with multiple rights**

#### ***Right to equality and non-discrimination***

4.27 The government maintains that the income management regime does not involve racial discrimination on two grounds. First, because the income management regime makes no reference to race in the criteria for those who are liable to be subjected to compulsory income management or who may elect voluntary income management, the measures do not involve differential treatment that is racially based. Second, in any case, income management does not breach the right to equality and non-discrimination because it is a reasonable and proportionate means of ensuring the well-being of vulnerable individuals and families.

4.28 The former minister explained:

Income management, including as amended by this Bill, is consistent with the obligation of the State to undertake not to engage in any act or practice of 'racial discrimination' against persons, groups of persons or institutions (art 2(1)(a) of the ICERD).

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22 ICESCR, article 11(1); CRPD, article 28; CERD, article 5(e)(iii), CRC, article 27(3).

23 CRC, article 26.

24 CRC, article 24.

25 CRC, article 27.

26 ICCPR, article 2 and 26; ICESCR, article 2.2; ICERD, articles 1, 2, 4 and 5; CRC, article 2.

27 ICESCR, article 9.

28 ICESCR, article 11.

29 ICCPR, article 17.

Income management applies in the same way to any person receiving a social security payment in a designated income management area regardless of race.

Income management does not apply in every part of Australia, although its operation is being expanded, and the legislation is capable of national application. The areas into which the measure will be expanded from 1 July 2012 were chosen having regard to a range of objective, non race-based criteria, including unemployment levels, youth unemployment, skills gaps, the number of people receiving welfare payments, and the length of time people have been on income support payments.<sup>30</sup>

4.29 The former minister reiterated this position:

In areas where income management applies or will apply, it is and will be applied to income support recipients on the basis of non race-based criteria related to indicators of risk for the welfare recipient or to children in their care; following assessment by a delegate; or following assessment by a state or territory body exercising a discretionary power to apply income management.<sup>31</sup>

4.30 The current minister has made a similar argument. In a letter to the committee, the current minister noted that 'income management is not an Indigenous-specific measure'.<sup>32</sup> This is true, and the expansion of the income management regime to communities outside the NT is further evidence of this fact.

4.31 However, even though the income management regime is not based on race, many submissions to this inquiry noted that it appears to apply overwhelmingly to Indigenous people. For example, in a joint submission, the Australian Council of Social Service and the Northern Territory Council of Social Service explained that 'despite amendments to achieve compliance with the RDA [*Racial Discrimination Act 1975*]', they remained concerned that 'the policy's design and implementation ensures its disproportionate impact on Aboriginal and Torres Strait Islander peoples'.<sup>33</sup>

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30 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 3.

31 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 4.

32 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015) Attachment A, 4.

33 Australian Council of Social Service (ACOSS) & Northern Territory Council of Social Service (NTCOSS), Submission 12, 1.

4.32 The former minister recognised that the income management regime may disproportionately affect Indigenous Australians. However, the former minister explained that, rather than a result of design, this fact simply:

...reflects the fact that the proportion of Indigenous people in the Northern Territory on income support payments is high; and also reflects the fact that of the 4,096 people who chose voluntary income management in the Northern Territory, more than 98 per cent are Indigenous.<sup>34</sup>

4.33 This has not changed in the intervening period. Indeed, the current minister has acknowledged that the additional sites where income management applies are predominately Indigenous communities:

Of the income management sites outside the NT, the majority of the population (exact percentages are not disclosed) is Indigenous in the four Cape York communities, APY Lands, Ng Lands (including Kiwirrkurra) and Ceduna. In Perth Metro and the Kimberly, 63 per cent of the population is Indigenous and in locations where place-based income management is implemented (Bankstown, Greater Shepparton, Logan, Playford, Rockhampton) 18 per cent of the population is Indigenous.<sup>35</sup>

4.34 Data, current as at 28 August 2015, collected by the Department of Social Services and provided by the current minister to the committee indicates that, in the NT, 88 per cent of people on income management are Indigenous. Across Australia, 78 per cent of people on income management are Indigenous.<sup>36</sup>

4.35 The ICCPR defines 'discrimination' as a distinction based on a personal attribute (for example, race, sex or religion),<sup>37</sup> which has either the purpose (called 'direct' discrimination), or the effect (called 'indirect' discrimination), of adversely affecting human rights.<sup>38</sup> The UN Human Rights Committee has explained that indirect discrimination is 'a rule or measure that is neutral on its face or without

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34 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 3.

35 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 25 August 2015) Attachment A, 4.

36 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 2 October 2015).

37 The prohibited grounds are race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Under 'other status' the following have been held to qualify as prohibited grounds: age, nationality, marital status, disability, place of residence within a country and sexual orientation.

38 UN Human Rights Committee, *General Comment 18*, Non-discrimination (1989). See also ICERD, article 1.

intent to discriminate', which exclusively or disproportionately affects people with a particular personal attribute.<sup>39</sup>

4.36 This understanding is congruent with the definition of racial discrimination in article 1 of the ICERD, which refers to measures as racially discriminatory if they have 'the purpose or effect' of restricting the enjoyment of human rights.

4.37 As such, in order to be non-discriminatory the income management measures will need to be shown to be based on objective and reasonable grounds and be a proportionate measure in pursuit of a legitimate objective. The analysis conducted under this test is essentially similar to that considered when assessing whether a limitation on a right is permissible.

### ***Right to social security***

4.38 The right to social security is protected by article 9 of the ICESCR. This right recognises the importance of adequate social benefits in reducing the effects of poverty and plays an important role in realising many other economic, social and cultural rights, particularly the right to an adequate standard of living and the right to health.

4.39 Access to social security is required when a person has no other income and has insufficient means to support themselves and their dependents. Enjoyment of the right requires that sustainable social support schemes are:

- available to people in need;
- adequate to support an adequate standard of living and health care;
- accessible (providing universal coverage without discrimination and qualifying and withdrawal conditions that are lawful, reasonable, proportionate and transparent; and
- affordable (where contributions are required).

### ***Right to an adequate standard of living***

4.40 The right to an adequate standard of living is described above at paragraphs [2.31] to [2.32].

### ***Right to privacy***

4.41 Article 17 of the ICCPR prohibits arbitrary or unlawful interferences with an individual's privacy, family, correspondence or home. However, this right may be subject to permissible limitations which are provided by law and are not arbitrary. In order for limitations not to be arbitrary, they must seek to achieve a legitimate objective and be reasonable, necessary and proportionate to achieving that objective.

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39 *Althammer v Austria* HRC 998/01, [10.2].

4.42 Privacy is linked to notions of personal autonomy and human dignity: it includes the idea that individuals should have an area of autonomous development; a 'private sphere' free from government intervention and excessive unsolicited intervention by others. The right to privacy requires that the state does not arbitrarily interfere with a person's private and home life.

*Compatibility of the measure with these rights*

4.43 In its 2013 report the committee found that the income management regime limits the right to social security, the right to an adequate standard of living, and the right to privacy. In particular, the committee held that the regime involves:

a significant intrusion into the freedom and autonomy of individuals to organise their private and family lives by making their own decisions about the way in which they use their social security payments.<sup>40</sup>

4.44 In introducing the Stronger Futures measures, the former minister argued that the income management regime is consistent with the right to social security, noting that:

- income management does not limit access to social security, nor does it reduce the amount of the benefit provided. Rather, it provides that the benefit is provided in a particular way; and
- the Committee on Economic, Social and Cultural Rights has stated that the right to social security encompasses the right to access and maintain benefits 'in cash or in kind'.<sup>41</sup>

4.45 The committee agrees with this analysis. However, the Committee on Economic, Social and Cultural Rights has also stated that the provision of social security should aim to prevent social exclusion and promote social inclusion.<sup>42</sup> Evidence indicates that despite some mixed support for the system, the income management regime fails to promote social inclusion, but rather stigmatises individuals, and as such, limits the enjoyment of the right to social security, an adequate standard of living and privacy. This evidence will be examined below.

4.46 Accordingly, it is necessary to justify that the measure pursues a legitimate objective, is rationally connected to achieving that objective, and that it imposes only a proportionate limitation on these rights.

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40 See 2013 report, 60, paragraph [1.215].

41 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 2. Citing Committee on Economic, Social and Cultural Rights, *General Comment 19: The Right to Social Security (art 9)* (23 November 2007), UN Doc. E/C.12/GC/19, paragraph [2].

42 Committee on Economic, Social and Cultural Rights, *General Comment 19: The Right to Social Security (art 9)* (23 November 2007), UN Doc. E/C.12/GC/19, paragraph [3].

## **Legitimate objective**

4.47 The rationale for the income management regime has been set out in a number of explanatory memoranda and statements accompanying the Stronger Futures legislative measures. For example, the statement of compatibility relating to one of the more recent legislative instruments made under the Stronger Futures legislation states that the key objectives of income management are to:

- reduce immediate hardship and deprivation by directing welfare payments to the priority needs of recipients, their partner, children and any other dependants;
- help affected welfare payment recipients to budget so that they can meet their priority needs;
- reduce the amount of discretionary income available for alcohol, gambling, tobacco and pornography;
- reduce the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments; and
- encourage socially responsible behaviour, particularly in the care and education of children.<sup>43</sup>

4.48 As noted above at paragraph [4.26], the income management regime is also intended to advance a number of other rights, including the right to housing and the rights of children to: benefit from social security; an adequate standard of living; and the highest attainable standard of health. The former minister identified this and reiterated that the 'central purpose' of income management is to:

...ensure that a portion of income support payments are used to cover minimum basic essential goods and services, including food, rent and utilities. This improves living conditions for the children of income support recipients subject to income management.<sup>44</sup>

4.49 In its 2013 report, the committee accepted that the objective of income management is to support vulnerable individuals and families by helping to ensure that a portion of a person's income support and family payments is spent on essential needs, and limiting expenditure on excluded items, including alcohol, tobacco, pornography and gambling goods and activities. The committee remains convinced that improving living conditions for the children of income support recipients, encouraging socially responsible behaviour and reducing harassment and

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43 Social Security (Administration) (Declared income management areas – Ceduna and Surrounding Region) Determination 2014 [F2014L00777], statement of compatibility 7.

44 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 3.

abuse of income support payment recipients is an important and worthwhile objective.

### **Rational connection**

4.50 In terms of rational connection, the key question is whether the measures are likely to be effective in achieving the objective. On that basis, the committee must assess whether the income management regime is likely to be effective in achieving the aim of supporting budgeting skills and financial acumen, ensuring that the priority needs of housing and food are met, and increasing socially responsible behaviour, including care and education of children.

4.51 When introducing the Stronger Futures legislative measures to amend the operation of the income management regime, the former minister argued that the regime was achieving its objectives:

Evaluations in the NT and WA indicate that income management is having a positive effect on the lives of many individuals. In a WA evaluation a majority of participants believed income management has had a positive impact on the wellbeing of individuals, children and families. In relation to income management's application in the NT, there is evidence that income management is achieving positive outcomes, particularly for children.<sup>45</sup>

4.52 Noting this statement, the committee's 2013 interim report found that there is 'a range of evidence available on the effects, positive and negative, of income management'.<sup>46</sup>

4.53 Indeed, some evidence suggested that income management was having a minimal effect on limiting purchases of excluded goods and increasing purchases of 'beneficial' goods. For example the Menzies School of Medical Research compared expenditure patterns of stores in the NT from 2006 to 2009. It found that income management 'appeared to have no effect on total store sales, food and drink sales, tobacco sales, and fruit and vegetable sales, independent of the government stimulus payment'.<sup>47</sup>

4.54 At the time of the committee's interim report, the First Evaluation Report commissioned by the Department of Families, Housing, Community Services and Indigenous Affairs had been published. This report examined income management in the NT up until October 2011 and found diverse impacts across the schemes, both in how those subject to income management viewed and experienced the process and

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45 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 4.

46 See 2013 report, 53, paragraph [1.189].

47 Julie Brimblecombe et al, 'Impact of income management on store sales in the Northern Territory' (2010) 192:10 *Medical Journal of Australia* 549, 552.

also in the effect it had on their lives so far as ensuring that the priority needs of themselves and their families were concerned. That study concluded:

The evidence gathered to date for this evaluation suggests that NIM [New Income Management] has had a diverse set of impacts. For some it has been positive, for others negative and for others it has had little impact. Taken as a whole there is not strong evidence that, at this stage, the program has had a major impact on outcomes overall. Although many individuals report some gains, others report more negative effects.<sup>48</sup>

4.55 In terms of potential long-term impact, the report found:

There is little evidence to date that income management is resulting in widespread behaviour change, either with respect to building an ability to effectively manage money or in building 'socially responsible behaviour' beyond the direct impact of limiting the amount that can be spent on some items. As such, the early indications are that income management operates more as a control or protective mechanism than as an intervention which increases capabilities.<sup>49</sup>

4.56 As noted above at paragraph [4.25], since the committee's 2013 report, the Final Evaluation Report into income management in the NT has been published. This substantial report provides detailed evaluation of the effectiveness of the income management regime and has found that it has been of mixed success.

4.57 In particular, for persons subject to compulsory income management, the Final Evaluation Report found no evidence that income management has achieved its intended outcomes. Rather than promoting independence and building skills and capabilities, it appears to have 'encouraged increasing dependence upon the welfare system', and there is no evidence to indicate its effectiveness at the community level or that it facilitates long-term behaviour change.<sup>50</sup> The evaluation found further that:

- income management has been relatively successful in ensuring income managed funds are not spent on proscribed items;
- there is little evidence to show funds have been used simply for priority needs (for example, spending on fruit and vegetables on the BasicsCard is very low);
- significant problems have been reported with the BasicsCard (such as not supporting the payment of rent in group housing situations requiring cash payments, and the limited number of outlets at which it can be used), although some people value the fee-free banking service it provides;

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48 J Rob Bray et al, Social Policy Research Centre, UNSW, Australian National University and Australian Institute of Family Studies, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (July 2012) 266 ('First Evaluation Report').

49 First Evaluation Report xix.

50 Final Evaluation Report 320.

- around two-fifths of people on income management thought it had made things better for them, about one-third thought it had made no difference and about one-quarter thought it had made things worse for them;
- a substantial group of people felt that income management is unfair, embarrassing and discriminatory;
- there was no substantive evidence that the program had made significant changes, including changing people's behaviour;
- there was no evidence of changes in spending patterns, other than a slight possible improvement in the incidence of running out of food for those on voluntary income management;
- there was no evidence of overall improvement in financial wellbeing;
- there were some positive outcomes for those assessed as vulnerable income management (referred by a Centrelink social worker); and
- many of those on income management want to remain on it indefinitely as it was easier to stay on; therefore, rather than building capacity and independence, the program has made many people more dependent on welfare.<sup>51</sup>

4.58 Taken holistically, the Final Evaluation Report indicates that income management is most effective when it is applied to participants after considering their individual circumstances, rather than applied coercively and compulsorily.<sup>52</sup>

4.59 Consistent with the findings of the Final Evaluation Report, is an August 2014 evaluation of the Place-based income management sites (at the time: Playford, Greater Shepparton, Bankstown, Rockhampton and Logan). This report found that while voluntary income management participants benefited from the scheme, persons referred to income management based on their membership of a category (i.e. compulsory income management participants) did not show positive improvements in financial stress indicators, or in expenditure on tobacco or alcohol.<sup>53</sup>

4.60 A third report, evaluating income management in the Anangu Pitjantjatjara Yankunytjatjara Lands was more positive. This report found that a majority of community members and other stakeholders who participated in the study were positive about the introduction of income management. The report found further that income management may have made a 'modest contribution' to addressing challenges within the community, but that responses were mixed in relation to its

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51 Final Evaluation Report xxi-xxii.

52 Final Evaluation Report 320.

53 Deloitte Access Economics, *Place Based Income Management – Process and short term outcomes evaluation* (Department of Social Services, August 2014) 103-104.

impact on the wellbeing of the community as a whole.<sup>54</sup> However, critically, the report notes that 'the fact that the communities had requested income management, and had been consulted about its introduction, appears to have had a major influence on the communities' view of income management'.<sup>55</sup>

4.61 Significantly, the design of a compulsory income management regime appears to hamper its possible effectiveness, by failing to properly target those who would be assisted by income management. The Final Evaluation Report noted that the targeting strategies employed under the income management regime were not appropriately adapted to achieving its objectives:

There was no evidence that targeting income management on the basis of duration in receipt of income support payment provides an effective basis for identifying those with particular vulnerabilities or a low level of money management skills. Similarly, there is no evidence that the range of income support payments at which Compulsory Income Management is targeted reflects the groups at highest risk. Compulsory Income Management is imposed upon a large group of people whom income management does not assist. This imposes costs upon those subject to income management and to the government.<sup>56</sup>

4.62 This is consistent with the report's findings that individual consideration, rather than blanket application of a rule, is integral to building financial capability and ultimately ensuring that sufficient levels of income support payments are used to cover minimum basic essential goods and services—the aims of the program.

4.63 On the basis of these three reports, the compulsory income management regime does not appear to be an effective approach to addressing issues of budgeting skills and ensuring that an adequate amount of income support payments is spent on priority needs. While the income management regime may be of some benefit to those who voluntarily enter the program, it has limited effectiveness for the vast majority of people who are compelled to be part of it.

### **Proportionality**

4.64 In assessing whether a measure is proportionate some of the relevant factors to consider include whether the measure provides sufficient flexibility to treat different cases differently or whether it imposes a blanket policy without regard to the merits of an individual case, whether affected groups are particularly vulnerable, and whether there are other less restrictive ways to achieve the same aim. It is also

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54 Ilan Katz and Shona Bates, Social Policy Research Centre, UNSW, *Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands* (September 2014) 1-2.

55 Ilan Katz and Shona Bates, Social Policy Research Centre, UNSW, *Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands* (September 2014) 41. See also Dr Shelly Bielefeld, Submission 10, 3.

56 Final Evaluation Report 319.

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relevant to consider whether the communities affected by the measure have been consulted and agree to the measures imposed.

4.65 The government maintains that the income management regime is a reasonable and proportionate means of promoting the right to housing as well as the rights of children to: benefit from social security; the highest attainable standard of health; and an adequate standard of living. This position is neatly encapsulated in explanatory statements accompanying a number of the legislative instruments adopted to implement the *Stronger Futures* measures. For example, in relation to declarations of voluntary income management that specify the Greater Adelaide region, the explanatory statement provided:

The Determination is compatible with human rights. Income management will advance the protection of human rights by ensuring that income support payments are spent in the best interests of welfare payment recipients and their dependants whilst also helping to improve their budgeting skills so they can meet their priority needs. To the extent that they may limit human rights those limitations are reasonable, necessary and proportionate to achieving the legitimate objective of reducing immediate hardship and deprivation, encouraging socially responsible behaviour, and reducing the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments.<sup>57</sup>

4.66 This position has not substantially changed from 2012, when the former minister explained that:

Substantial benefits can be achieved for individuals through income management, including ensuring that sufficient food is available to recipients and dependents, stable and adequate housing is secured, access to essential utilities is maintained and harassment is minimised.<sup>58</sup>

4.67 However, stakeholders and submitters to this inquiry questioned this view. In particular, many individuals and organisations were concerned with: the compulsory aspects of the regime and the difficulty of obtaining exemptions or exceptions; the particular effect on Indigenous Australians; and whether less rights restrictive measures may offer a clearer path to achieving the objectives of income management. Indeed, the joint submission of the Australian Council of Social Service and the Northern Territory Council of Social Service, spoke for many when it noted

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57 Explanatory statement, Social Security (Administration) (Declared voluntary income management areas – New South Wales, Queensland, South Australia and Victoria) Amendment Declaration 2015 [F2015L01511] 7.

58 Letter from the Hon Jenny Macklin MP, Minister for Families, Community Services and Indigenous Affairs, to the Hon Harry Jenkins MP (27 June 2012) 'Assessment of Policy Objectives with Human Rights: Social Security Legislation Amendment Bill 2011', 3.

its concern that 'compulsory income management is a crude, stigmatising and ineffective policy response to a range of complex social problems'.<sup>59</sup>

### ***Insufficient flexibility***

4.68 As noted above at paragraph [4.7], a major aspect of the income management regime is that it is compulsory.

4.69 The blanket imposition of income management based on a person's membership of a category significantly curtails the flexibility of the program. This is particularly problematic as, as noted above at paragraphs [4.57] to [4.62], research evaluating the effectiveness of the program demonstrates that compulsory income management does not produce beneficial results. This research indicates that income management is most effective when it is voluntary, or when it is applied to individuals after considering their particular circumstances—that is, when it is applied flexibly.

4.70 Of course, the process is not entirely inflexible and exemptions from the compulsory income management regime are possible if a person is able to demonstrate certain behaviour. However, the process of applying for and obtaining exemptions is also problematic and appears to discriminate in effect against Indigenous Australians.

4.71 The Final Evaluation Report recorded that the exemption rate between August 2011 and December 2013 was steady at around 1600 people. Likewise, the exemption rate has also remained steady at approximately 10 per cent.<sup>60</sup> However, as the report notes (and is illustrated in Table 4.1 set out below), this relatively low exemption rate obscures dramatic variation by both gender and Indigenous status.<sup>61</sup>

**Table 4.1 Exemption rates by gender and Indigeneity as at December 2013**

	Non-Indigenous			Indigenous		
	Male	Female	Total	Male	Female	Total
<b>Total</b>	7.8%	51.4%	36.3%	0.4%	7.6%	4.9%

4.72 The very low rate of exemptions among Indigenous peoples can somewhat be explained by a lower application rate. The National Welfare Rights Network examined income management appeal data obtained through Senate Estimates and

59 Australian Council of Social Service (ACOSS) & Northern Territory Council of Social Service (NTCOSS), Submission 12, 1.

60 Final Evaluation Report 96.

61 Final Evaluation Report 98.

found that despite making up approximately 90 per cent of those on income management, Indigenous people accounted for only one-third of those lodging appeals.<sup>62</sup> This finding accords with that of the Final Evaluation Report.<sup>63</sup>

4.73 In its submission to this inquiry, the North Australian Aboriginal Justice Agency (NAAJA) argued that barriers to accessing exemptions, appeals and information is a critical reason for the low application and low exemption rates of Indigenous Australians. NAAJA explained:

...someone without dependent children has to be working 15 hours a week for six months, or engaged in fulltime study to obtain a 12 month exemption from income management. This is nearly impossible in remote communities because of limited access to employment and educational opportunities and entrenched barriers to participation in the few jobs or fulltime study opportunities that arise (e.g. low literacy and numeracy skills, poor health, inadequate housing and cultural and language differences).<sup>64</sup>

4.74 NAAJA informed the committee that it has previously raised its concerns with the exemption process with the Department of Human Services. In its view, 'the process itself was contributing to the low rate of exemptions amongst Aboriginal people in the NT', in particular:

- the lack of accessibility of the exemption process, particularly for remote clients;
- the lack of information about exemptions in remote communities; and
- the lack of clear information about Centrelink's decisions provided to remote Aboriginal customers in exemption rejection letters.<sup>65</sup>

4.75 In her submission to this inquiry, the Northern Territory Anti-Discrimination Commissioner agreed with NAAJA, describing the exemption system as 'discriminatory' because it 'includes numerous structural and systemic barriers for Aboriginal people living in remote communities of the Northern Territory'.<sup>66</sup>

4.76 The Final Evaluation Report noted similar problems:

A very clear theme in views around the experience of trying to obtain an exemption concerned the amount of paperwork people were required to complete and records they had to obtain. In some cases this resulted in people simply walking away from the process. This problem was often compounded by the fact that English was not their first spoken language...

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62 National Welfare Rights Network, Submission 14, 12.

63 Final Evaluation Report 106.

64 NAAJA, Submission 20, 8.

65 NAAJA, Submission 20, 9.

66 Northern Territory Anti-Discrimination Commissioner, Submission 21, 1-2.

A particular issue raised by many was the reliance by Centrelink on a centralised exemptions team that people had to deal with by phone. This presented a range of problems for some, including: the cost of contact, difficulties relating to language, and cultural preferences to deal with people face-to-face.<sup>67</sup>

4.77 The Final Evaluation Report's conclusions demonstrate that the exemption process is not working effectively:

Exemptions constitute a mechanism that is disproportionately used by non-Indigenous people with children, most of whom are never actually placed on income management. Access to exemptions by Indigenous Australians is low and there is no evidence of the gap closing, nor is there evidence of access to exemptions operating as an incentive for changing behaviours, or of income management playing a role in preparing people to be in a situation in which they can gain an exemption.<sup>68</sup>

4.78 The compulsory income management regime does not operate in a flexible manner. Evidence indicates that the blanket application of the regime disproportionately affects Indigenous Australians and the exemption process is not conducive to allowing Indigenous Australians to apply for an exemption and to succeed in that application. This indicates that the income management regime may be a disproportionate measure and therefore incompatible with Australia's international human rights law obligations.

### ***Vulnerability of particular groups***

4.79 As discussed above at paragraphs [4.35] to [4.37], a measure can be indirectly discriminatory if, though neutral on its face, it disproportionately affects people with a particular personal attribute, such as race. In order to be non-discriminatory the government must demonstrate that the regime is based on objective and reasonable grounds and is a proportionate measure in pursuit of a legitimate objective.

4.80 Although the income management regime is not an Indigenous specific measure, the 2014 Final Evaluation Report noted that around 90 percent of those subject to income management in the NT are Indigenous (around 60 per cent are female),<sup>69</sup> with estimates that just over one-third of the total Indigenous population is subject to income management.<sup>70</sup> Across all sites around the country, approximately 78 per cent of people on income management are Indigenous.<sup>71</sup> The

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67 Final Evaluation Report 112.

68 Final Evaluation Report 117.

69 Final Evaluation Report 53.

70 Final Evaluation Report 72 and 55.

71 Appendix 3, letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith (received 2 October 2015) Attachment A, 1.

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Northern Territory Anti-Discrimination Commissioner has described this as an 'ongoing concern'.<sup>72</sup>

4.81 In addition, as noted above at paragraphs [4.71] to [4.77], the exemption process seems to result in a disproportionately lower number of Indigenous Australians succeeding in obtaining an exemption from the compulsory income management regime (or even applying for an exemption). Indeed, the particular vulnerabilities of Indigenous Australians subject to compulsory income management, such as language barriers and remote location, do not appear to have been considered in developing the measure.

***Less restrictive ways to achieve the same aim***

4.82 Another important factor in assessing the proportionality of a measure is whether there are less rights restrictive ways to achieve the same objective. As the committee has already noted, quarantining income support payments and precluding the purchase of proscribed items on the basis of a category or place limits a number of human rights.

4.83 This is significant because, as the committee noted at paragraphs [4.59] to [4.62], evidence from two Department of Social Services' commissioned reports (the Final Evaluation Report and the Place Based Income Management Report) indicate that compulsory income management does not produce beneficial results.

4.84 Indeed, both reports found that compulsory income management, rather than encouraging individuals to take control of their financial wellbeing, may produce negative effects. The Place Based Income Management Report noted that people on compulsory income management reported 'more negative experiences' as a result of their participation, including 'a greater proportion feeling judged and embarrassed when they use the BasicsCard'.<sup>73</sup>

4.85 The First Evaluation Report found that people commonly associated embarrassment and stigma with using the BasicsCard.<sup>74</sup> Qualitative interviews of people subject to income management, Centrelink staff, service providers, and merchants indicated that this stigma is widespread, compromising a person's right to social security as well as privacy. The report observed that BasicsCard users reported:

- being told by shop assistants that their choice of purchases is inappropriate, even though it did not fall within the list of excluded items;
- feelings of stigmatisation surrounding identification as 'deficient' or as 'bad mothers';

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72 Northern Territory Anti-Discrimination Commissioner, Submission 21, 1.

73 Deloitte Access Economics, *Place Based Income Management – Process and short term outcomes evaluation* (Department of Social Services, August 2014) 96.

74 First Evaluation Report 93.

- being repeatedly asked by shop assistants whether they have sufficient balance; and
- that going to the supermarket can be a 'shame job', especially where they do not know or have miscalculated their balance, forcing some people to shop in a suburb away from their home to avoid being seen using it.<sup>75</sup>

4.86 In its submission to this inquiry, NAAJA reiterated these observations. NAAJA explained that it has:

...lodged complaints on behalf of people discriminated against in shops because they are BasicsCard customers. We have witnessed customers being publically humiliated by supermarket staff and noticed a marked difference in the treatment given to Aboriginal customers paying with a BasicsCard and the treatment of non-BasicsCard customers.<sup>76</sup>

4.87 Many submissions to this inquiry noted that the focus on quarantining income support payments was misguided. In the view of these submitters, entrenched disadvantage and structural barriers that Indigenous Australians face and contend with are the root cause of disadvantage. For example, NAAJA explained:

The idea that quarantining the income support payments of individuals can address the root causes of Aboriginal intergenerational disadvantage, in the context of significant structural barriers to economic development, is simplistic and naïve. Addressing entrenched social disadvantage requires sustained investment into community driven initiatives and support services that promote self-determination and autonomy rather than control and punishment.<sup>77</sup>

4.88 NAAJA continued:

There is no guarantee that a person who has their income managed will use their money 'responsibly'. Consumption and spending patterns do not change based on income source – they are connected to availability of fresh food, access to alternatives and education levels. Factors such as substandard housing and overcrowding, poor health, domestic violence and geographic isolation adversely affect child health outcomes and school attendance and educational outcomes. These can be factors that parents have limited ability to control.<sup>78</sup>

4.89 NAAJA reiterated these comments throughout its submission:

Income management does not create employment or education opportunities or address barriers to employment.<sup>79</sup>

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75 First Evaluation Report 93-94.

76 NAAJA, Submission 20, 7.

77 NAAJA, Submission 20, 13.

78 NAAJA, Submission 20, 17.

79 NAAJA, Submission 20, 17.

There is limited access to financial support and counselling in remote communities. IM [income management] will not increase financial literacy, without specific investment into culturally competent services.<sup>80</sup>

4.90 The February 2015 Report of the Reference Group on Welfare Reform to the Minister for Social Services also agreed. This report urged that a cautious approach should be taken to expanding income management, noting that it should be used 'judiciously' and delivered 'in conjunction with financial capability and other support services'.<sup>81</sup> It is likely that these complementary services will produce greater benefits than the current income management regime.

4.91 This is significant as the current income management regime is expensive. In a 2014 article in the *Sydney Law Review*, Dr Shelly Bielefeld noted:

Buckmaster and others estimate that the implementation of the income management scheme will cost the government 'in the range of \$1 billion' between '2005-06 to 2014-15'. The Australian National Audit Office estimates that income management for welfare recipients living in remote areas costs approximately '\$6600 to \$7900 per annum', which is equal to 62 per cent of the \$246-a-week Newstart Payment'. The finances currently allocated to resourcing the compulsory income management system could arguably be better spent on providing necessary social services to effectively assist these welfare recipients in a culturally appropriate manner.<sup>82</sup>

4.92 Indeed, the Social Policy Research Centre's *Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands* report noted that a range of voluntary measures designed to allow people to allocate money for specific purposes existed prior (and as an alternative) to the introduction of the BasicsCard.<sup>83</sup>

4.93 At least in the APY lands, these budgetary measures were seen as beneficial in helping individuals manage their finances. The committee considers that it is likely similar approaches in other communities would produce beneficial results without the stigmatising impact of compulsory income management. The National Welfare Rights Network agrees, noting that weekly payments of Centrelink benefits, 'an option that is currently used by around 20,000 vulnerable social security recipients' could also assist people with budgeting.<sup>84</sup>

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80 NAAJA, Submission 20, 16.

81 Report of the Reference Group on Welfare Reform to the Minister for Social Services, *A New System for Better Employment and Social Outcomes* (February 2015) 24.

82 Shelly Bielefeld, 'Compulsory Income Management and Indigenous Peoples – Exploring Counter Narratives amidst Colonial Constructions of 'Vulnerability' (2014) 36 *Sydney Law Review* 695, 716.

83 Ilan Katz and Shona Bates, *Voluntary Income Management in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands*, 18-19.

84 National Welfare Rights Network, Submission 14, 13.

### **Consultation with affected communities**

4.94 Finally, as noted in the committee's 2013 report, one of the much criticised features of the 2007 NTNER was the failure to consult with the communities and groups affected by the measures introduced.<sup>85</sup> The 2013 report acknowledged that in developing and introducing the Stronger Futures measures the government went to considerable effort to consult with Indigenous communities and other stakeholders around many aspects of the proposed measures.<sup>86</sup> However, as stated by the Senate Community Affairs Legislation Committee, notwithstanding this, there remained much confusion and frustration in many communities over the measures.<sup>87</sup>

4.95 Income management in the NT has never been implemented with the agreement of, or following consultation with, the communities in which it applies. As noted above at paragraph [4.60], consultation is recognised as critical in the effectiveness of any income management regime.

### **Committee view**

4.96 In its 2013 report, the committee found that even though the income management regime is formulated without explicit reference to the race or ethnic origin of the potential participants, the history of the measure and the fact that it appears to apply overwhelmingly to Indigenous Australians suggest that it should be characterised as a measure that has the purpose or effect of limiting the rights of persons of a particular race or ethnic origin within the meaning of article 1 of the ICERD. No evidence since the 2013 report suggests that this finding should be revisited. The income management regime continues to overwhelmingly affect Indigenous Australians.

4.97 Additionally, despite having the potential to advance a number of human rights, the income management regime also engages and limits the right to social security, an adequate standard of living, and to privacy. Accordingly, it must be closely scrutinised and the onus is on the government to demonstrate clearly that it pursues a legitimate objective and is rationally connected to achieving that objective, as well as a proportionate measure.

4.98 The committee accepts that the objectives of the income management regime are legitimate. Improving the living conditions of children of income support recipients, reducing harassment and abuse and encouraging socially responsible behaviour are worthy and important goals.

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85 See 2013 report, 31.

86 See 2013 report, 31.

87 Senate Community Affairs Legislation Committee, *Stronger Futures in the Northern Territory Bill 2011 and two related bills* (14 March 2012) 62-63.

4.99 However, the committee is concerned that the income management regime is not rationally connected to achieving its objectives. Since the committee's 2013 report, three substantial evaluations of different aspects of the income management regime have been released. These reports demonstrate that income management is effective only when it is applied to participants after considering their individual circumstances, rather than applied coercively and compulsorily.

4.100 In any case, the committee considers that compulsory income management is a disproportionate measure. The imposition of significant conditions on the provision of income support payments, including what goods or services may be purchased and where, is an intrusive measure that robs individuals of their autonomy and dignity and involves a significant interference into a person's private and family life.

4.101 The compulsory income management provisions operate inflexibly raising the risk that people who do not need assistance managing their budget will be caught up in the regime. This concern is heightened by the exemptions process which appears to discriminate in effect against Indigenous Australians.

4.102 Indeed, given the disparate impact on Indigenous people, the committee considers that the measures may be viewed as racially based differential treatment within the meaning of article 1 of the ICERD. Further, in light of the fact that there is some evidence to suggest that the majority of persons subject to income management are women, concerns also arise as to the consistency of the measure with guarantees against non-discrimination on the basis of sex.

4.103 The committee considers that a host of less rights restrictive measures may be developed and implemented in place of compulsory income management. Chief among these is removing the compulsory categories of income management and trialling a voluntary program across all current sites.

**4.104 The income management measures engage and limit the right to equality and non-discrimination, the right to social security and the right to privacy and family. Although the committee considers that under certain conditions income management is a legitimate and effective mechanism, evidence before the committee indicates that compulsory income management is not effective in achieving its stated objective of supporting vulnerable individuals and families. The committee considers that this objective remains an important and legitimate goal.**

**4.105 A human rights compliant approach requires that any measures must be effective, subject to monitoring and review and genuinely tailored to the needs and wishes of the local community. The current approach to income management falls short of this standard. As such the committee makes the following recommendations in order to improve the human rights compatibility of the measures:**

**Recommendation 4**

- **The committee recommends the continuation of community led income management where there has been a formal request for income management in a particular community following effective consultation on the particular modalities of its operation, including whether it should be a voluntary program.**

**Recommendation 5**

- **The committee recommends that income management should be imposed on a person only when that person has been individually assessed as not able to appropriately manage their income support payments. Information concerning rights and processes of appeal should be provided to the person immediately and in a language that they understand.**