



Central Australian Aboriginal Legal Aid Service

and

North Australian Aboriginal Justice Agency

Welfare Rights Outreach Project

June 2009



1. Introduction

North Australian Aboriginal Justice Agency (“NAAJA”) and the Central Australian Aboriginal Legal Aid Service (“CAALAS”) are the two Aboriginal and Torres Strait Islander Legal Services (“ATSILS”) in the Northern Territory.

In addition to their general criminal and civil law practices, NAAJA and CAALAS were funded in 2008 to establish the Welfare Rights Outreach Project (WROP) which:

- a) provides legal advice and assistance to Centrelink beneficiaries; and
- b) provides education and capacity building to communities and organizations about welfare rights.

The recent Federal Budget included additional funding for the Northern Territory Welfare Rights Outreach Project.¹

The WROP at CAALAS and NAAJA is the main source of legal information and advice on welfare rights issues to Indigenous people in the NT.

This paper is a summary of the concerns relating to Schooling Enrolment and Attendance Measure (SEAM) and Income Management that have been raised by the WROP.

In raising these concerns, we note the significant increase and improvement in Centrelink service delivery in remote communities and we welcome the emphasis on face to face communication and the employment and training of Indigenous staff and interpreters.

2. Schooling Enrolment and Attendance Measure (SEAM)

2.1 Background

Under SEAM, a person’s income support payments can be suspended or cancelled if a child or children in their care are not enrolled in or regularly attending school. We understand that the SEAM trial is for a full calendar year and that the enrolment measure commenced at the beginning of Term 1, 2009 and the attendance measures commenced at the beginning of Term 2, 2009 in the trial communities.

2.2 Lack of consultation

CAALAS and NAAJA provided a joint submission to the Senate Community Affairs Committee on the Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) Bill 2008.²

¹

http://www.fahcsia.gov.au/about/publicationsarticles/corp/BudgetPAES/budget09_10/indigenous/Page/s/24_NT_LawOrder.aspx

²

http://www.aph.gov.au/Senate/committee/clac_ctte/soc_sec_vets_entitle_schooling_requirements/index.htm

We also wrote to the Committee to express concern that public hearings were only held in Perth and Canberra despite the majority of the trial sites being in NT.

It is our understanding that NAAJA and CAALAS were the only NT organisations to make a submission or to give evidence to the Committee. This appeared to be a significant gap in the consultation process because as legal services we were unable to provide specific information relating to NT education.

To our knowledge there was no consultation with communities affected by the trial prior to the Bill being passed.

2.3 Racial discrimination

NAAJA and CAALAS believe that the legislation underpinning SEAM is being trialled in a racially discriminatory manner. The NT trial sites announced are Hermannsburg, Katherine, Katherine Town Camps, Wallace Rock Hole, Wadeye and Tiwi Islands. All of these sites aside from Katherine, are prescribed areas and already subject to the Income Management regime. Katherine is the only area where non-Indigenous people will also be subject to the trial, however, this is an area with a large Aboriginal population.

We are not aware of any Government measures to ensure that the trials comply with the *Racial Discrimination Act 1975*, and note that Indigenous Affairs Minister Jenny Macklin does not believe that SEAM “is a discriminatory measure” because the trial includes the town of Katherine.³

2.4 Implementation

The WROP is concerned about the way the trial is being implemented.

While we maintain good communications with Centrelink generally, we have found that information on SEAM implementation, policies and procedures is not readily available. For example, and as with Income Management generally, there is no information available in the Commonwealth Government’s Guide to Social Security Law and Policy.

WROP workers have had reports of community briefings taking place without interpreters being used, which, given the complexity of the scheme and its interaction with Income Management and jobseeker activity requirements, is of great concern.

WROP workers support Centrelink’s plan to utilize social workers when assessing whether a person’s payment will be suspended or cancelled under SEAM. However, we do not know whether there are sufficient resources and assistance to provide direct support to parents who are having difficulty with their children’s enrolment or attendance prior to the matter being referred to Centrelink. Culturally appropriate

³ Quoted on Northern Territory Stateline “Truancy Trial” 24 April 2009 <http://www.abc.net.au/cgi-bin/common/printfriendly.pl?http://www.abc.net.au/stateline/nt/content/2006/s2552314.htm>

support should be made available to families at the time the school identifies a problem with a child's enrolment or attendance.

We have written to the Commonwealth Government about our concerns about correspondence about SEAM which was sent to Centrelink recipients (a de-identified version of the letter is attached). In this letter we said:

"We understand that:

- a) This letter was the standard initial letter sent to all beneficiaries potentially affected by SEAM.
- b) Centrelink practice in remote communities and town camps was to endeavour to personally interview all recipients of these letters and explain in person the content of the letter, what was required to comply and, presumably, the consequences of non-compliance.
- c) In Katherine (but not the Katherine town camps), the letter was sent by post to affected individuals, rather than being hand-delivered. These recipients would have relied on the letter for their understanding of the operation of the trial.
- d) Centrelink was unable to personally interview all addressees in remote communities and town camps.

Given this, we have the following concerns:

1. The letter is in English, yet a significant proportion of recipients would not have had English as a first language, nor be literate in English.
2. The letter is not in plain English, as shown by the following examples:
 - "selected locations" (we suggest that "your community" or the name of the relevant community or town would be more easily understood);
 - "educational outcomes" ("education" or "children's education" or "children's schooling");
 - "required" ("need"); and
 - "extension" ("more time").

We request that for future correspondence consideration is given to:

- use of Plain English;
 - use of non text-based communication aids (such as, for example, the "Income Management: Where is my money?" information sheet developed for income management);
 - use of colour and formatting to provide emphasis;
 - the letter be translated into the first language of the recipients; and
 - critically, focus testing with representatives of intended recipients prior to finalization to check that communications are in an appropriate medium/s and that they effectively and appropriately convey the relevant key messages.
3. The letter is inappropriate and/or inadequate in that it:
 - a. begins with a bureaucratic summary of the SEAM measure, which detracts from the urgency and importance of the notice;
 - b. does not state clearly that the attendance requirements had not yet commenced nor when this was anticipated (attendance requirements commenced at the beginning of Term 2, 2009);

- c. does not sufficiently highlight that it is critical that recipients respond to the letter, in that there is insufficient emphasis:
 - i) that failure to respond will result in suspension; and
 - ii) on the deadline for compliance;
 - d. does not advise that a person can provide the required information direct to a visiting Centrelink representative;
 - e. fails to clearly convey that:
 - i) a person may have a reasonable excuse for non-enrolment of children;
 - ii) a reasonable excuse means that a recipient's payments will not be suspended or cancelled; and
 - iii) notifying Centrelink of a reasonable excuse will protect against suspension or cancellation.
4. The letter does not comply with 124F(3)(b) of the *Social Security (Administration) Act* as details of Secretary's power to extend the period for compliance are not provided in the s 124F notice (the reference to this power can only be inferred from the statement "If you need extra time to get this information, contact us as soon as possible").
5. The letter provides for a relatively limited period for compliance and states that if a person does not provide enrolment details within the period, their payment will be suspended. We do not believe that this reflects the policy that suspension will only occur as a "last resort".

2.5 Impact of measures

Communities have been aware of the commencement of the trial for sometime and some people have expressed anxiety about how it will operate. Community members have reported that barriers to children attending school include inadequate resources at the school, a lack of trust in the relationship and communication with the school, a lack of adequate, reliable transport and incidents of bullying at school.

2.6 SEAM & NT Department of Education policy

The NT Government has announced schools need to achieve 90% attendance by the end of 2009. Concerns have been reported that this may place undue pressure on schools⁴ who may see the SEAM trial as an easy solution to attendance issues, resulting in inappropriate referrals to Centrelink for suspension/cancellation of payments, without proper regard for the individual circumstances of the child and their family.

3. Income Management

3.1 Proposed changes to the Income Management regime

We are concerned that the Government has already decided that compulsory Income Management will continue, either with or without exemptions.⁵

We note that Minister Macklin has said that maintaining compulsory Income Management in the Northern Territory is not at odds with reinstating the Racial

⁴ "Teachers under pressure to chalk up high attendance: Union", ABC Online, 3 February 2009 <http://www.abc.net.au/news/stories/2009/02/03/2481290.htm>

⁵ Future Directions for the Northern Territory Emergency Response Discussion Paper

Discrimination Act. In her view, Income Management has “demonstrably benefited” Aboriginal people living in remote communities in the Northern Territory and so constitutes a special measure.⁶

We believe that the Government should publicly release detailed evidence of these ‘demonstrable benefits’. In addition, clearly articulated measurable indicators of the effectiveness of Income Management must be developed and made publicly available.

Furthermore, it seems extraordinary to commit to “intensive consultation with Indigenous communities across the Northern Territory”,⁷ whilst appearing to have already made a decision about the outcome of the consultation – that is that compulsory income management will continue, either with or without exemptions. It is difficult to see how such consultation is in accordance with Article 19 of the UN Declaration on the Rights of Indigenous People that:

“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent *before* adopting and implementing legislative or administrative measures that may affect them.” (emphasis added)

Widespread consultation was conducted by the NTER Review Board which led to their recommendations that:

- the current blanket application of compulsory Income Management in the Northern Territory cease;
- Income Management be available on a voluntary basis to members who choose to have some of their income quarantined for specific purposes, as determined by them; and
- compulsory Income Management should only apply on the basis of child protection, school enrolment and attendance and other relevant behavioural triggers.⁸

NAAJA and CAALAS support the changes recommended by the NTER Review Board.

3.2 Merits Review

NAAJA made a submission to the Senate Community Affairs Committee on the Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2009 (“Family Assistance Bill”).⁹

⁶ *Macklin defends income management*, Sydney Morning Herald, 26 May 2009, <http://news.smh.com.au/breaking-news-national/macklin-defends-income-management-20090526-bm9o.html>

⁷ http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/closing_gap_nt_12may2009.htm

⁸ Report of the NTER Review Board - October 2008

⁹ See <http://www.naaaja.org.au/index.cfm?fuseaction=page&p=225&m=23>

NAAJA and CAALAS are supportive of the proposed amendments to the *Social Security (Administration) Act 1999* (“the Act”), as provided for in the Family Assistance Bill. The Family Assistance Bill provides for a right of review to the Social Security Appeals Tribunal and the Administrative Appeals Tribunal in relation to decisions made under Part 3B of the Act (the Income Management regime).

However, our support is qualified because the breadth of the powers provided to Centrelink and the Commonwealth Government under the Income Management regime provide extremely limited opportunities under which such review can be sought.

Despite our concerns, we believe that the Family Assistance Bill will go some way to correcting the discriminatory effect of the current legislation, namely that Indigenous Australians in the Northern Territory are excluded from access to rights of review which are available to all other Australians who seek review of Centrelink decisions.

3.3 Exemptions from income management.

a) Centrelink exemptions

Initially when Income Management commenced, a person who moved permanently from a prescribed area was unable to obtain an exemption from income management. Centrelink policy has since changed and there is now a more flexible exemption policy in instances where a person moves permanently out of a prescribed area. For an exemption to be granted, a Centrelink recipient will usually need to provide evidence that their move is permanent, for example by providing lease agreements or bills sent to their new address. WROP workers are concerned that some people may have difficulty providing the required evidence, as for example, people who stay with family members and so do not enter into formal lease arrangements.

b) Ministerial exemptions

Under the Act, the Minister has the power to provide exemptions for income management. WROP is not aware of any successful applications to date. NAAJA made an application to the Minister for an exemption on behalf of a client. In our view, the Minister’s response failed to address the issues raised in the application. The response implicitly suggested that the Minister has a blanket policy of refusing exemptions where a person is permanently resident in a declared relevant area without considering the merits of the individual application for exemption.

3.4 Issues with the current operation of the Income Management regime

a) Delays and confusion in transfer of Income Management funds

Both NAAJA and CAALAS have received complaints of delays and confusion in the transfer of Income Management funds. Generally, if money is paid into a store under Income Management and the person moves or travels to another community, there have been significant delays in getting money back from the

store and moved into another nominated account. The process is that Centrelink firstly requests the money from the store, the store then returns the money to Centrelink and Centrelink then disburses the money to another account (for example, the store where the person is now located). The whole process can take up to 2 weeks.

Centrelink appears to have failed to action allocations from Income Management funds in some instances. For example, several clients have reported that they had arranged with Centrelink for their rent to be paid from Income Management funds. However, these clients were later advised by their community housing provider that their rent was in fact not being paid by Centrelink and as a result, they were in arrears. The extra payments required to cover the arrears has placed these clients in financial hardship as a result of Centrelink's failure to act as they instructed.

In some circumstances the lack of Northern Territory Aboriginal language speakers in the Indigenous Call Centre (ICC) may cause confusion as to where people's funds are directed. CAALAS clients in Mutijulu and Wilora have advised Centrelink that they wanted funds to go to their BasicsCard, but instead the money was sent to their local store or retained in their Income Management account, which then required further contact with Centrelink to rectify the mistake.

b) Communication costs for people subject to Income Management

Currently there are no free call numbers available for Centrelink recipients subject to Income Management to contact Centrelink about their Income Managed funds. Given the limited number of fixed telephone lines, or public payphones in remote communities, many people rely on mobile telephones to contact Centrelink. This is particularly an issue in remote communities. Income Management often requires increased communication with Centrelink, meaning these people bear additional costs not borne by other Centrelink recipients. In practice, this results in reduced payments for people subject to Income Management.

We recommend that free call numbers are available to Centrelink recipients to contact Centrelink about Income Management and that such free call numbers are available from mobile telephones.

c) Deceased estates

Currently when the residual balance of a deceased person's Income Management account is more than \$500, in order to access the funds (where the person has died intestate), relatives need to satisfy Centrelink that they are the legal personal representative of the deceased person. This involves an application to a Court for letters of administration, which is costly and time consuming.

This issue is compounded by the extremely limited number of services to assist people in relation to deceased estates, particularly in remote

communities. This means that it can be very difficult for family members to access any remaining Income Management funds of deceased persons.

In our experience, this situation can be very distressing for family members. For example, NAAJA was recently approached by the relatives of a deceased man who could not access his Income Management funds on his death. The family wished to access the deceased's Income Management account so as to assist loved ones to travel to the funeral, and also to arrange for proper storage of his body while they waited for the funeral to take place. However under current Income Management legislation and policy the family were unable to access the deceased's Income Management account.

NAAJA has written to FAHSCIA seeking a review of the legislation and policy. In this letter, NAAJA suggested a significant increase in the limit for release of funds to relatives who could demonstrate that they were carrying out appropriate activities in relation to the affairs of the deceased. NAAJA is still waiting for a detailed response, although we understand that the issue is being considered.

d) Fines and income management

NAAJA and CAALAS have concerns about the impact of Income Management on people's ability to manage their fine repayments.

As fine repayments are not legislated priority needs, people are unable to make regular repayments of their Income Management funds to repay fines. People must apply to Centrelink to use their Income Management funds to repay fines each fortnight, and this application will only be granted where people have surplus funds available after all their priority needs have been met.

Initially people were advised by Centrelink staff that they could not pay fines at all from Income Management funds. However Centrelink has undertaken regular training with staff confirming that fines can be repaid as set out above. We understand this has resulted in an increase of Income Management funds being used to pay fines.

However it is still an issue that people are not able to set up regular deductions from their Income Managed funds to pay fines.

We recommend that the legislation is amended to include fine repayments and restitution orders in the list of priority needs.

e) Interstate Travel

We are currently seeking information on the locations of BasicsCard merchants outside the Northern Territory, but we understand that the number of such merchants is limited. This creates difficulties for people on Income Management when travelling interstate which restricts people's movement and

ability to attend to their cultural and other obligations outside of the Northern Territory.

Centrelink offices interstate carry store cards for retailers such as Woolworths and Coles, however, these stores are not necessarily available in the areas to which a person may travel, nor will they carry the full range of goods and services that persons on Income Management may require.

At present, a person leaving the Northern Territory will have to contact Centrelink to arrange store cards or for one-off credit card payments to be made, (for example to accommodation providers), if they wish to rely on their non BasicsCard Income Management funds while travelling. This can create difficulties for example when travelling with family members for urgent medical treatment.

This can result in people on Income Management needing to rely upon family members to support them.

Income Management could be improved by allowing for temporary suspension of Income Management when people travel out of the Northern Territory.

f) Income management statements and information

Income management statements are provided each 3 months by mail as required under the Act. We believe that the statements could be improved in layout and clarity.

The Centrelink computer system does not have a screen or a system which can provide a user-friendly 'snapshot' of a person's regular Income Management account deductions. We believe such a feature would be of assistance.

There is still no detailed statement that shows expenditure of BasicsCard funds. We understand that this is in development but note that it is many months since the BasicsCard was introduced.

g) Communities without a Basicscard or FAHSCIA approved merchant

WROP have been informed of one remote community which does not have BasicsCard or FAHSCIA approved merchant. The result is that residents of this small and isolated community must charter flights at great additional cost in order to shop using their Income Managed funds.

h) Mistake in imposition of income management

In Katherine a client mistakenly had her Centrelink money income managed for a period of approximately 18 months. As the client was paying rent to an Aboriginal corporation, it was incorrectly assumed the client was living in a prescribed area.

i) Continual assessment of Priority Needs expenditure

We understand it is Centrelink policy to review all current and potential priority needs expenditure each time a person contacts Centrelink to change their priority needs allocations. WROP workers are concerned that this questioning may be unnecessary or overly intrusive. It can also result in people being required to engage in lengthy telephone interviews at their own expense. This issue is also related to the lack of free call numbers, which we believe should be available from fixed line and mobile telephones.

We recommend that each officer reviews previous comments as to a person's current commitments prior to making further inquiries of that person, so that questioning can be kept to a minimum.

3.3 BasicsCard issues

WROP workers have noted the increased flexibility that is offered by the BasicsCard for Income Managed persons living or visiting communities or towns with multiple BasicsCard retailers. We are unsure of how much the experience of Income Management has changed for those people living in communities with one or no BasicsCard retailers.

a) Discrimination

NAAJA has raised complaints of people being discriminated in shops because they are BasicsCard customers. Using the card in public identifies people as being subject to Income Management. We have witnessed customers being publicly humiliated by the treatment of supermarket staff members and noticed a marked difference in the treatment given to Aboriginal customers paying with a BasicsCard and the treatment of other customers. People paying with a BasicsCard are repeatedly asked by staff of BasicsCard merchants if they have sufficient balance, and/or what their balance is. These questions are not asked other people using credit cards facilities.

People have reported going to the supermarket can be a 'shame job', especially when they do not know the balance on the BasicsCard, or have miscalculated the total of the shopping bill, and the transaction is denied. The supermarket is unable to provide the person with information about the balance on the BasicsCard which would enable the person to return some grocery items and purchase the rest of their shopping.

b) Difficulties in accessing BasicsCard balance

People continue to experience significant problems as there are a limited range of options for checking the balance available on their BasicsCard.

Currently a person can obtain their BasicsCard balance by:

- a) enquiring in person at a Centrelink office or agency;

- b) using the “hot linked” phones that have been installed in some remote stores;
- c) using the on-site card readers that are being trialled in some stores; or
- d) contacting Centrelink through user pay telephone numbers.

People experience difficulties with this system if:

- they are in an area without phone coverage
- they do not have credit to make a phone call
- they do not have cash available to make a phone call.

There are also still often considerable wait times experienced by people who telephone Centrelink and changes to allocations usually take a considerable amount of time (up to half an hour) to complete. These long delays result in people running out of credit or hanging up.

There is no freecall number available for BasicsCard users to find out the balance on the card (although BasicsCard merchants are provided with a freecall number). We understand that a freecall number is being considered for BasicsCard customers.

It is critical that this service be made available from mobile phones as many BasicsCard customers rely on mobile telephones because of the limited number of fixed telephone lines, or public payphones in remote communities. Currently people who are unable to contact Centrelink through a Centrelink office, hotlink phone, or public telephone, are forced to rely on mobile telephones. Because free call numbers are not available from mobile telephones and Income Management often requires increased communication with Centrelink, these people bear additional costs not borne by other Centrelink recipients. In practice, this results in reduced payments for people subject to Income Management.

c) BasicsCard technical issues

We have received complaints regarding disruption for over 24 hours to the BasicsCard service in Alice Springs on 16 – 17 January 2009. When individuals within the Aboriginal community are not able to access money for food for extended periods of time, this has repercussions for the individual’s extended family, as resources are generally shared.

These issues are highlighted in this case study:

“CAALAS’s client had gone shopping with her sister in law. They were shopping for a family in excess of 20 people, including 14 children. CAALAS’s client observed seven or so unattended trolleys as she approached the checkout, filled with food. CAALAS’s client and her sister in law loaded their groceries onto the conveyor and produced a BasicsCard for payment. At that stage, they were advised that they could not use the BasicsCard; the shop attendant having attempted to

put a transaction through. Having no other means of payment, our client and her sister in law unloaded the trolley and left the store.

CAALAS's client and her sister in law then attended Woolworths in Alice Springs, but were advised that it was having the same problem with BasicsCards. CAALAS's client and her family were left without food, and had to rely on extended family members for assistance.

CAALAS's client again attempted to buy food for the family on 17 January 2009 at 6.00 to 7.00 pm. She was advised by the person at the checkout that BasicsCards were still not working. Our client attended the Northside IGA but purchased only a small amount of items, as that retailer is more expensive than Coles."

We are not aware of any back up systems that have been installed to ensure this does not occur again.

d) BasicsCard surcharge

The use of the BasicsCard for a taxi fare incurs a significant surcharge in the Katherine region and Alice Springs. This greatly increases taxi fares, in particular for those travelling to remote communities who spend hundreds of dollars on taxi fares, and those people who live in town camps, where there is no regular public transport.

Centrelink have advised this surcharge is standard for use of EFTPOS facilities in taxis and it is not in breach of BasicsCard merchant agreements. Although a client can obtain a cheque from Centrelink for a taxi fare this does not assist people who decide to take a taxi outside of Centrelink office hours, including on weekends.

e) Minimum transactions and maximum daily expenditure on BasicsCard

There is an \$800 daily limit that can be spent on the BasicsCard. Centrelink increased the limit to \$3000 per day between 8 December 2008 and 31 January 2009 to facilitate payment of the Economic Security Strategy payments paid in December 2008.

The limit has now reverted to \$800 and WROP still have concerns about the impact of this. It is inconvenient and can mean people travelling to larger towns to do bulk shopping or purchase larger items incur greater expenses.

Income management could be improved by increasing the daily spend limit on the BasicsCard.

There are also issues with the minimum \$5 BasicsCard expenditure in the BasicsCard merchant contracts and the \$10 minimum that is being imposed by some BasicsCard merchants. This means that people are unable to access their Income Managed funds below a certain balance.

4. Debts and prosecutions

WROP has successfully sought waiver on debts that were the subject of criminal prosecutions. We are concerned that:

- a) waivers had not been considered, despite the clients having advised Centrelink that they did not understand either the debt or their obligations, and the clients being resident in remote communities with English as a second language;
- b) in one case, the debt, less the recovery fee, was less than \$5000.

The cases highlight the lack of knowledge amongst some in remote communities about the basis on which they are paid benefits, how income and family situations change entitlements and the nature and reason for their various obligations – such as to report income because it may change the rate of payment to which a person is entitled. The importance of Centrelink correspondence is also poorly understood among many remote recipients. We believe this is partly because of the reliance by Centrelink on communication with benefit recipients in remote communities through written notices in English. Compounding this problem is that most correspondence is not clearly set out or in plain English.

5. Job network providers

We hold concerns about the operation of job network providers in some communities. For example, one client in a remote community was attending fortnightly meetings with a job network provider despite being employed by the Shire Council full-time. The client assumed they needed to keep attending these appointments. Other reports from the same community included that the job network provider did not provide any training and that each fortnight the same questions were asked about education and work history.

6. Proposed changes to CDEP

The proposed CDEP reforms will have significant impacts on remote communities. The most detrimental of these will be the transfer of significant numbers of people from CDEP onto income support payments, who will then be subject to the Income Management regime.

NAAJA has raised these issues in its submission to the Commonwealth Government about “Increasing Indigenous Employment Opportunity: Proposed Reforms to the CDEP and Indigenous Employment Programs” and to the Senate Community Affairs Committee on the Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2009.¹⁰

¹⁰ Both submissions are available at <http://www.naaaja.org.au/index.cfm?fuseaction=page&p=225&m=23>