

The Senate

Standing Committee on
Community Affairs

Family Assistance and Other Legislation
Amendment (2008 Budget and Other
Measures) Bill 2009 [provisions]

May 2009

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ISBN 978-1-74229-098-0

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This document was produced by the Senate Community Affairs Committee Secretariat and printed by the Senate Printing Unit, Parliament House, Canberra.

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42nd Parliament

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FAMILY ASSISTANCE AND OTHER LEGISLATION AMENDMENT (2008 BUDGET AND OTHER MEASURES) BILL 2009

THE INQUIRY

1.1 On 19 March 2009 the Senate, on the recommendation of the Selection of Bills Committee (Report No.4 of 2009), referred the provisions of the Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2009 to the Community Affairs Committee for inquiry and report by 7 May 2009.

1.2 The Committee received 5 submissions relating to the Bill and these are listed at Appendix 1. The Committee considered the Bill at a public hearing in Canberra on 28 April 2009. Details of the public hearing are referred to in Appendix 2. The submissions and Hansard transcript of evidence may be accessed through the Committee's website at http://www.aph.gov.au/senate_ca.

THE BILL

1.3 The Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2009 (the Bill) introduces one measure from the 2008 budget on the family tax benefit (FTB) and two further non-budgetary measures.

1.4 Schedule 1 of the Bill deals with the streamlining of family tax benefit payments, by amending the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999*. Under the proposed changes from 1 July 2009, the administration of the FTB will be streamlined by removing the Australian Taxation Office (ATO) from delivery of FTB. This will include removal of the option of claiming FTB for a past period through the ATO. However, individuals will continue to be able to claim FTB by instalment or FTB for a past period through Centrelink or Medicare.¹

1.5 Schedule 2 of the Bill amends the *Social Security (Administration) Act 1999* to enable the Social Security Appeals Tribunal (SSAT) to review a decision made under Part 3B of that Act relating to a person who is subject to the Northern Territory income management regime. As a consequence, the Administrative Appeals Tribunal (AAT) will also be able to review such a decision.²

1.6 Schedule 3 of the Bill amends the *Social Security Act 1991* to implement part of the Government's announced reforms to the Community Development Employment Projects (CDEP) program with the aim of improving employment

1 *Explanatory Memorandum*, p. 2.

2 *Explanatory Memorandum*, p. 2.

participation for Indigenous Australians. The amendments will provide new CDEP participants, commencing on or after 1 July 2009, with access to the CDEP program while receiving income support payments, and will provide for continuing CDEP participants to continue receiving CDEP wages from CDEP providers and, in certain circumstances, the CDEP Scheme Participant Supplement.³

FAMILY TAX BENEFIT

Background

1.7 The Family Tax Benefit (FTB) is an annual tax benefit to help families with the cost of raising children. Currently, families can choose to receive their FTB as fortnightly instalments by making a claim for FTB by instalment through Centrelink or Medicare Australia. Alternatively, families can choose to claim FTB as a lump sum following lodgement of the claimant's tax return at the end of the relevant income year by making a claim for FTB for a past period through Centrelink or Medicare Australia, or through the ATO at the same time that the claimant lodges their tax return.

1.8 Under the Bill, from 1 July 2008, the option of claiming FTB for a past period through the tax system will be removed. The *Explanatory Memorandum* for the Bill suggests that 'removing the tax system option for delivery of FTB payments will simplify the system, reduce duplication in delivery of the payments, and improve consistency for claimants'. The financial impact of this aspect of the Bill is estimated at saving \$101.2 million between 2008-09 and 2011-12.⁴ In her second reading speech for the Bill the Minister noted that only around 7 per cent of current FTB customers claim through the ATO.⁵

Issues

1.9 The Committee received minimal comment concerning Schedule 1. The National Welfare Rights Network (NWRN) largely supported the proposed changes to delivery of the FTB. They noted that one of the key elements of the existing system was that it was accessible, providing families with a choice of delivery mechanism – either as direct payments or through the tax system and either in fortnightly instalments or as a lump sum.

1.10 However the NWRN noted that a flaw exists in the current system because of the different assessment approaches taken by the ATO in the determination of a FTB claim compared to Centrelink or Medicare. Claims made through the ATO are subject to self-assessment while those made through Centrelink and Medicare are subject to a

3 *Explanatory Memorandum*, p. 2.

4 *Explanatory Memorandum*, p. 5.

5 The Hon Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, *House of Representatives Hansard*, 18 March 2009, p. 3026.

decision-making process.⁶ The NWRN was aware of instances where the inconsistency in the treatment of a FTB claim has led to inequitable outcomes. They also noted that 'claims made through the ATO were also unacceptably vulnerable to error due to the design of the ATO software package, which did not include a verification mechanism for the FTB claim part of the program'.⁷

1.11 The Commonwealth Ombudsman also welcomed the regularisation of the arrangements for FTB claimants and the requirement that Actual Taxable Income (ATI) be verified to determine entitlement. From their experience 'the differential processes resulted in inconsistencies and were particularly vulnerable to error, which often resulted in debts, especially in shared-care cases'.⁸ However they also noted that claimants who are self-employed might feel disadvantaged by the change. They stated:

We note that changes to requirements for a claimant's partner to also provide proof of ATI is likely to result in delayed payment of lump sum FTB for those claimants who are self-employed, and who generally lodge their tax returns later in the year than PAYG claimants. This group commonly avoids being paid FTB fortnightly because of the difficulty of estimating income, and the desire to avoid a debt.⁹

1.12 The Commonwealth Ombudsman also noted their concern that the changes be clearly communicated 'through tax agents and elsewhere, so that people who have previously had little awareness of FTB as a component of their tax return or processing are not left unaware of their capacity to claim FTB through Centrelink, both for the current and previous years'.¹⁰

NTER INCOME MANAGEMENT APPEALS

Background

1.13 The Northern Territory Emergency Response (NTER), also known as 'the Intervention', was announced on 21 June 2007 by the former Australian Government. Legislation in support of the NTER was passed in August 2007 including the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007*, which introduced new Part 3B into the *Social Security (Administration) Act 1999*. Part 3B establishes an income management regime for recipients of certain welfare payments.

6 Ms Kate Beaumont, National Welfare Rights Network, *Proof Committee Hansard*, 28 April 2009, p. 6.

7 National Welfare Rights Network, *Submission 3*, p. 2.

8 Commonwealth Ombudsman, *Submission 5*, p. 3.

9 Commonwealth Ombudsman, *Submission 5*, p. 3.

10 Commonwealth Ombudsman, *Submission 5*, p. 3.

1.14 Section 123UB in Division 2 of Part 3B provides that the income management regime apply to a person who, amongst other things, has been physically present overnight in a specified Northern Territory area. Other amendments to the *Social Security (Administration) Act 1999* expressly prevented merits review, by the Social Security Appeals Tribunal (SSAT) of decisions under Part 3B in relation to a person who is subject to the income management regime under the NTER. Section 179 of the Act provides that appeals to the Administrative Appeals Tribunal (AAT) can only be made for review of a decision that has been considered by the SSAT. The operation of the *Racial Discrimination Act 1975* was also explicitly suspended and the protection of anti-discrimination law in the Northern Territory was removed for the purposes of the NTER.¹¹

1.15 On 6 June 2008 the current Australian Government appointed a Review Board to conduct an independent review of the first 12 months of the NTER to assess its progress. The NTER Review Board reported in October 2008. One of the overarching recommendations of the NTER Review Board was that 'Government actions affecting Aboriginal communities respect Australia's human rights obligations and conform with the *Racial Discrimination Act 1975*'. In relation to income management the Review Board recommended that the current blanket application of compulsory income management should cease and should only apply on the basis of child protection, school enrolment and attendance and other relevant behavioural triggers. The Review Board also recommended that 'all welfare recipients to have access to external merits review'.¹²

1.16 On 23 October 2008, the Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Jenny Macklin MP, announced that:

The current comprehensive income management system will be extended for at least twelve months. We will design a compulsory income management policy which does not require the suspension of the RDA. This will involve consultation with Indigenous communities.

Legislative amendments to bring existing NTER legislation within the scope of the RDA will be introduced in the Spring Parliamentary session next year. The Government will respond in full to the Review Board's recommendations, including future funding arrangements, over the coming months.¹³

1.17 The *Australian Government Initial Response to the NTER Review* (attached to the Minister's announcement) also provided that:

The Government will also legislate in the first half of 2009 to ensure that people subject to the NT income management regime will have access to

11 *Report of the NTER Review Board*, October 2008, p. 9.

12 *Report of the NTER Review Board*, October 2008, p. 12.

13 Minister for Families, Housing, Community Services and Indigenous Affairs, 'Compulsory income management to continue as key NTER measure', *Media Release*, 23 October 2008, p. 1.

the full range of appeal mechanisms afforded to other Australians, including through the Social Security Appeals Tribunal and the Administrative Appeals Tribunal.¹⁴

1.18 The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) noted that the appeal rights relate to where there is actual decision making by Centrelink or by the delegate with the authority to make decisions set out in the legislation. Mr Gavin Matthews, Branch Manager, Welfare Payments Reform Branch noted:

There are elements where a person may have some reason to appeal. But in terms of the point ... 'Is the person subject to income management or not?' obviously where you have a scheme where it is universal, there is not a lot of decision making around that element.¹⁵

Issues

Limited Scope

1.19 While a number of witnesses welcomed the amendment in relation to merits review, they were also concerned regarding the limited scope of appealable matters for those subject to the NTER income management regime.

1.20 The NWRN described access to external appeal rights as 'long overdue' and noted their previous objections to the removal of rights of external appeal to the SSAT for Northern Territorians subject to the income management of welfare payments. In particular they highlighted that the right of appeal has always been a fundamental protection for social security recipients against bureaucratic neglect and error and the removal of appeal rights 'undermines efforts by Centrelink over recent years to improve the use of and awareness of the appeals system'.¹⁶

1.21 However the NWRN also remained concerned that despite access to external appeals this will not result in any discernible change as long as other deficiencies in the construction of the Northern Territory income management legislative provisions are not addressed. In particular they highlighted that the legislation only permits limited exemptions for those who reside in a declared area, making challenge of decisions in the first instance or through the appeals system a futile exercise.¹⁷

1.22 Similarly the Northern Australian Aboriginal Justice Agency (NAAJA) supported the proposed amendment but suggested it would have little practical

14 Minister for Families, Housing, Community Services and Indigenous Affairs, 'Compulsory income management to continue as key NTER measure', *Media Release*, 23 October 2008, p. 1.

15 Mr Gavin Matthews, Department of Families, Housing, Community Services and Indigenous Affairs, *Proof Committee Hansard*, 28 April 2009, p. 17.

16 National Welfare Rights Network, *Submission 3*, p. 3.

17 Ms Kate Beaumont, National Welfare Rights Network, *Proof Committee Hansard*, 28 April 2009, p. 7.

relevance as 'the breadth of the powers provided to Centrelink and the Commonwealth Government under the income management regime provide extremely limited opportunities under which review can be sought'.¹⁸

1.23 NAAJA provided examples such as challenging a declaration that an area is a declared area. They noted that section 123TE of the Act provides the Minister with a power to determine that an area is a declared relevant area. They stated:

The proposed amendment, providing a right of external merits review does not operate to provide a practical avenue of relief to a recipient challenging the validity of a declaration under 123TE as in any event section 123TE (6) provides that any failure to have regard to these factors does not invalidate a declaration.¹⁹

1.24 They highlighted that decisions made under section 123TE can cause significant difficulties for affected residents, particularly where there is no FaHCSIA licensed store meaning people are unable to shop using their income managed funds at the non-licensed store in their community. The NWRN also noted this has caused significant hardship as 'the communities have been forced to incur substantial additional costs chartering flights to deliver food and other essential items purchased offsite using their income managed funds'.²⁰

1.25 The Commonwealth Ombudsman's office outlined their role in overseeing the implementation and administration of NTER measures. While supporting the amendment in the Bill they noted that the expansion of merits review to income will only have limited application for those seeking review of government administration. The Commonwealth Ombudsman's office noted the majority of income management related complaints and issues reported to them are not matters which would be reviewable on their merits by a tribunal. They relate to issues of implementation and administration, including:

- the level of communication and provision of information to people about income management and how it works,
- the way in which people access their income managed funds, check balances, transfer money and obtain statements,
- confusion surrounding what income managed funds can be used for,
- the allocation of income managed funds to priority needs,
- accessing income managed funds with BasicsCards.²¹

1.26 They also stated that in areas which the SSAT is likely to have jurisdiction, such as exemptions from income management, the issues raised with the Ombudsman

18 Northern Australian Aboriginal Justice Agency, *Submission 4*, p. 2.

19 Northern Australian Aboriginal Justice Agency, *Submission 4*, p. 3.

20 National Welfare Rights Network, *Submission 3*, p. 4.

21 Commonwealth Ombudsman, *Submission 5*, p. 4.

are unlikely to be followed up. These areas included confusion about income management and the criteria used to determine if someone would be subject to it; a lack of information about income management exemptions and how people could apply for an exemption; and the difficulties for people to provide evidence to show they reside permanently in an area which is not subject to income management.²²

1.27 The Law Council of Australia highlighted that the amendment in Schedule 2 was in response to the recommendation of the NTER Review Board. However they argued that the recommendation had been made in the context of other recommendations, including that blanket compulsory income management be repealed and applied only on a voluntary basis or in response to certain triggers, including child protection, school enrolment and attendance, etc. They stated:

In making the recommendation, the Review Board envisaged that appeals would be from decisions against a person based on their child's health and safety, school enrolment status and school attendance record, not on the basis of whether they had stayed in a designated area at any stage since the announcement of the NT Intervention on 21 June 2007.

Accordingly, it is difficult to discern what will be the actual impact of removing s144(ka) from the SSA Act.²³

Racial Discrimination

1.28 The Law Council of Australia submission argued that while the measures in Schedule 2 of the Bill should be enacted, the NTER income management regime continues to be contrary to Australia's obligations under international law, including the *Convention on the Elimination of All Forms of Racial Discrimination* and the *United Nations Charter*. They noted that under the legislation implementing the NT Intervention, the *Racial Discrimination Act 1975* (the RDA) has been suspended for the majority of its operative provisions. While the Law Council of Australia acknowledged the undertaking of the Government to bring the NTER legislation into compliance with the RDA, it argued this was 'a matter which requires utmost urgency'. They stated:

Applying mandatory income management on the basis of race or geographical location is arbitrary and discriminatory. The Law Council considers that the better approach would be to implement the recommendation of the NT Emergency Response Review Board, that compulsory income management be removed and replaced with voluntary income management, or income management applicable only on certain triggers – including school enrolment and attendance, child safety etc.²⁴

22 Commonwealth Ombudsman, *Submission 5*, p. 4.

23 Law Council of Australia, *Submission 1*, p. 6.

24 Law Council of Australia, *Submission 1*, p. 4.

1.29 The Law Council noted that the implementation of the NTER Review Board recommendations would not remove income management measures but would resolve concerns in relation to the RDA and Australia's international obligations.²⁵

1.30 NAAJA also recommended that the Committee consider the NTER Review Board's recommendation and urged the Committee to seek further amendments which would have the effect of removing the requirement to impose compulsory income management in declared relevant areas of the Northern Territory. They noted that there 'are people currently subject to the regime who find it racist, hurtful, misguided and demeaning, as well as practically inconvenient and economically disadvantageous'.²⁶

Utilisation of appeals process

1.31 A number of witnesses noted that Indigenous Australians were far less likely than others in the community to challenge decisions made by Centrelink and utilise the SSAT appeals process.²⁷ NAAJA indicated a number of reasons why Indigenous Australians were not utilising the appeal process. These include lack of education and knowledge about the appeal process as well as language and literacy difficulties. Ms Pengilley also stated that: 'Indigenous people in the Northern Territory, have been subject to wave after wave of different legislative schemes, one after the other, and that many people are resigned... some people just give up, sadly'.²⁸ NAAJA also noted that:

...there are a number of people within those communities who live very traditional lives where English is a second, third or fourth language. There are often low levels of literacy and the entire workings of the mainstream legal system are often very foreign to them.²⁹

1.32 The Commonwealth Ombudsman's office made suggestions, based on their experience, for how the expansion of merits review rights for income management decisions could be assisted. They highlighted the importance of their outreach visits to prescribed communities and that relevant information be accessible, available in appropriate languages and through a variety of methods. They also noted that SSAT processes will need to take account of the unique circumstances of people living in

25 Law Council of Australia, *Submission 1*, p. 7.

26 Northern Australian Aboriginal Justice Agency, *Submission 4*, p. 5.

27 Mr Gerard Thomas, National Welfare Rights Network, Proof Committee Hansard, 28 April 2009, p.8; Northern Australian Aboriginal Justice Agency, *Submission 4*, p. 2.

28 Ms Annabel Pengilley, Northern Australian Aboriginal Justice Agency, *Proof Committee Hansard*, 28 April 2009, p. 13.

29 Ms Helen Wodak, Northern Australian Aboriginal Justice Agency, *Proof Committee Hansard*, 28 April 2009, p. 13.

remote areas and the difficulties associated with communicating directly with complainants in remote communities.³⁰

1.33 FaHCSIA noted that it would be implementing communication changes to the rights to appeal:

Centrelink staff visit communities quite regularly. They go out with a remote visiting team consisting of a few members, generally with interpreters, on average between every two and five weeks. The average is about three weeks. It is sometimes longer; it is sometimes shorter. But, generally speaking, it is reasonably quite frequent. When the legislation is passed, we will be using that method to communicate this particular change to people. We will also provide information through the government business manager network and the ICC network. So we will be undertaking some things to ensure that people in the communities are aware of their rights through that process. Centrelink also has agents in the communities, and we will obviously be making sure that they have information to assist people in becoming aware of their capacity to appeal.³¹

COMMUNITY DEVELOPMENT EMPLOYMENT PROJECTS (CDEP)

Background

1.34 Commenced in 1977, CDEP is a federally funded scheme under which members of participating Indigenous communities can forgo social security income support for a grant paid to the community. These funds are then paid to individuals as wages for work on projects within the community, run by local Indigenous organisations. Participant numbers within each community are capped, with many community members already on income support. CDEP participants receive variable payments based on hours worked.

1.35 As part of the *Apology to Australia's Indigenous People's*, the Prime Minister, the Hon Kevin Rudd, stated that the Government's aim was to halve the employment gap between Indigenous and non-Indigenous Australians within a decade. On 19 December 2008, the Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon Jenny Macklin MP and the Minister for Employment Participation, the Hon Brendan O'Connor MP, announced reforms to the CDEP and the Indigenous Employment Program (IEP) beginning on 1 July 2009. Under the reforms CDEP will cease in non-remote areas with established economies. Where CDEP continues the announcement provided that:

From 1 July 2009, new CDEP participants will be paid income support, with existing CDEP participants continuing to access CDEP wages until 30 June 2011 before transferring to income support. This means young

30 Commonwealth Ombudsman, *Submission 5*, p. 5.

31 Mr Gavin Matthews, Department of Families, Housing, Community Services and Indigenous Affairs, *Proof Committee Hansard*, 28 April 2009, p. 18.

people and school leavers have the strongest incentives to get a job and existing CDEP participants are given time to transition.³²

1.36 The reforms to CDEP were intended to align 'the incentives and participation requirements of CDEP participants and other Indigenous job-seekers...' and complemented a number of other reforms to mainstream and Indigenous specific programs to support Indigenous employment, including the creation of on-the-job work experience opportunities, traineeships, and jobs created from previously CDEP-funded positions in government service delivery.³³

1.37 FaHCSIA informed the Committee that there are currently 17,319 CDEP participants, with 73 per cent of those in remote areas (12,643). Approximately 5000 CDEP positions would cease on 1 July 2009 in non-remote areas.³⁴

Issues

Abolition of CDEP

1.38 Professor Altman and Dr Jordan argued the decision to abolish CDEP in non-remote areas should be reversed as CDEP remains an 'an innovative program that facilitates community controlled economic and social development'. Professor Altman argued that the proposed reform of CDEP would lead to more inactivity in remote Indigenous communities as 'it will not address the structural circumstances of most Indigenous communities linked to remoteness, historical neglect and an inadequate economic base'.³⁵

1.39 While it was unclear how many CDEP positions would be converted into non-subsidised jobs under the reforms, Professor Altman and Dr Jordan were sceptical that 'enough jobs could be generated in limited and remote markets to engage the majority of Indigenous working-age residents in non-subsidised jobs'. They stated:

Rather than the stated aim of shifting CDEP participants into so-called 'real jobs', the likely result is shifting people out of active work through the CDEP scheme and onto long-term income support.³⁶

1.40 They also noted that the removal of subsidised CDEP labour was likely to negatively affect 'many successful Indigenous enterprises in remote areas, including Indigenous ranger programs, arts and tourism ventures, community stores and

32 Minister for Families, Housing, Community Services and Indigenous Affairs, 'Strengthening Indigenous employment opportunities', *Media Release*, 19 December 2008, pp. 1-2.

33 Minister for Families, Housing, Community Services and Indigenous Affairs, 'Strengthening Indigenous employment opportunities', *Media Release*, 19 December 2008, p. 2.

34 Mr Bernie Doman, Department of Families, Housing, Community Services and Indigenous Affairs, *Proof Committee Hansard*, 28 April 2009, p. 19.

35 Professor Jon Altman, *Proof Committee Hansard*, 28 April 2009, p. 1.

36 Professor Jon Altman and Dr Kirrily Jordan, *Submission 2*, p. 2.

community service providers, with these enterprises lacking the capacity to transform CDEP positions into non-subsidised jobs at award wages'.³⁷

1.41 This point was repeated by the NAAJA who argued that, while many CDEP projects may not be economically viable, they are still valuable to the community by 'providing a significant public good by supporting people to work productively, to engage in important cultural practices, to care for country, and in creating significant art and craft'.³⁸

1.42 The NRWN acknowledged that those Indigenous Australians that were able to transition from a CDEP position to ongoing employment would reap many benefits, including 'wages, leave, superannuation, training and professional development'. However they argued that the vast majority of people in the Northern Territory are likely to be significantly worse off with little prospect of employment within their own communities.³⁹ In particular they highlighted research by the Centre for Aboriginal Economic Policy Research in 2002 which found that on average CDEP participants earned \$5,668 per annum more than unemployed people.

1.43 During the inquiry witnesses noted that there was variability in the success of CDEP programs in different communities.⁴⁰ For example Professor Altman noted that in some communities CDEP works 'exceptionally well' and in other works 'very badly'. He argued that rather than a blanket approach to CDEP, a flexible approach on a 'community to community basis or regional basis' was preferred. He also argued for a CDEP expansion focusing on the long-term unemployed 'to give them work experience, opportunity for training, opportunity for structured work for a community-based organisation'.⁴¹

1.44 The Commonwealth Ombudsman's office noted the feedback it had received relevant to the changes proposed in the Bill. These included that CDEP participants benefited from increased self-esteem as a result of viewing themselves as employed, contributing to their community and not being on 'welfare'. They noted that this benefit will be lost if payments are administered by Centrelink in a program analogous to 'work-for-the-dole'. They requested that consideration be given as to whether 'recasting CDEP as a welfare program may adversely affect the government's goal of improving employment opportunities for Indigenous Australians'.⁴²

37 Professor Jon Altman and Dr Kirrily Jordan, *Submission 2*, p. 2.

38 Northern Australian Aboriginal Justice Agency, *Submission 4*, p. 7.

39 National Welfare Rights Network, *Submission 3*, p. 7.

40 Professor Jon Altman, *Proof Committee Hansard*, 28 April 2009, p. 5; Mr Gerard Thomas, National Welfare Rights Network, *Proof Committee Hansard*, 28 April 2009, p. 7; Ms Helen Wodak, Northern Australian Aboriginal Justice Agency, *Proof Committee Hansard*, 28 April 2009, p. 12.

41 Professor Jon Altman, *Proof Committee Hansard*, 28 April 2009, p. 5.

42 Commonwealth Ombudsman, *Submission 5*, p. 6.

1.45 Submitters and witnesses also raised the issue of winding up CDEP in non-remote areas in the context of a global economic downturn, when the employment situation of Indigenous Australians may be difficult.⁴³ Professor Altman stated:

There is a growing body of research that suggests that during economic downturns the most disadvantaged groups, including Indigenous Australians, are worst affected in terms of job losses and falling incomes.⁴⁴

Compliance and penalty issues

1.46 One of the major concerns identified by the NWRN with the proposed changes to CDEP was that larger numbers of Indigenous job seekers will be, for the first time, subject to the Employment Services and Compliance Framework which will result in them being caught by the 'extraordinarily complex' Social Security penalty system. They stated:

Mainstream employment services can often be ill equipped to deal appropriately with the specific and special needs of Indigenous job seekers which through historical data over the last decade has shown repeatedly higher incidences of Social Security penalties incurred by Indigenous people.⁴⁵

1.47 The NRWN stated that it had obtained information requested under freedom of information in 2002 which indicated Indigenous people were two to three times more likely to incur a penalty than non-Indigenous people. It was concerned that the new compliance regime's 'use of a complex system of no work, no pay' risked Indigenous people losing income without the capacity for this to be recovered.⁴⁶ They noted:

This is of particular concern given that the impact of penalties on Indigenous communities is particularly severe. Indigenous kinship responsibilities may obligate community members to support one another and share resources. Multiple penalties incurred by a number of individuals in an Indigenous community may therefore lead to a considerable loss of resources.⁴⁷

1.48 Professor Altman also noted that historically Indigenous people do run the risk of greater breach rates with the income support system. He stated:

There is a risk that, as people shift from working from the community based organisations under CDEP and become accountable to Centrelink offices,

43 Professor Jon Altman, *Proof Committee Hansard*, 28 April 2009, p. 1; Northern Australian Aboriginal Justice Agency, *Submission 4*, p. 7.

44 Professor Jon Altman and Dr Kirrily Jordan, *Submission 2*, p. 3.

45 National Welfare Rights Network, *Submission 3*, p. 6.

46 Ms Kate Beaumont, National Welfare Rights Network, *Proof Committee Hansard*, 28 April 2009, p. 7.

47 National Welfare Rights Network, *Submission 3*, p. 6.

the breach rate might increase. There is a risk that people will leave income support and basically exit either the labour market or the social security system.⁴⁸

Transitional arrangements

1.49 Witnesses and submissions also focused on the transitional arrangements for remaining CDEP participants and programs. NAAJA noted there had been a number of 'profound changes' to the way welfare is received in remote communities over a short period of time. They suggested 'a lot of people are struggling to catch up' and anticipated 'two separate schemes involving CDEP participants are going to further add to that confusion'.⁴⁹

1.50 Professor Altman described the different situations of existing and new CDEP participants after 1 July 2009, designed by the government to grandfather existing arrangements for two years, as 'inequity writ large'. The Professor noted:

The former will be categorized as employed, can earn 'top up' extra income without being subject to the standard social security taper, can work extra hours, and will be accountable to CDEP organisations for the next two years. The latter will receive income support, will be categorized (one assumes) as unemployed, will not be able to earn extra income, and will be accountable to Centrelink, not community-controlled organisations.⁵⁰

1.51 He also suggested the transitional arrangements (which will end in 2011) will '...undermine incentives for individuals to perform and for organisations to invest in new businesses, knowing that CDEP wage subsidies will cease in two years'.⁵¹

1.52 In contrast, NAAJA sought to expand the security and conditions of the remaining CDEP participants after 1 July 2009. They stated:

We understand that Government policy is that people who have a 'break from CDEP for more than two consecutive weeks other than approved leave', will lose their grandfathered status.⁵²

1.53 They recommended that a 'person should continue to be grandfathered on CDEP payments provided a person does not have a break of more than 13 consecutive weeks. This aligns with Centrelink rules for the retention of eligibility for payments

48 Professor Jon Altman, *Proof Committee Hansard*, 28 April 2009, p. 3.

49 Ms Helen Wodak, Northern Australian Aboriginal Justice Agency, *Proof Committee Hansard*, 28 April 2009, p. 13.

50 Professor Jon Altman and Dr Kirrily Jordan, *Submission 2*, p. 3.

51 Professor Jon Altman and Dr Kirrily Jordan, *Submission 2*, p. 3.

52 Northern Australian Aboriginal Justice Agency, *Submission 4*, p. 6.

where a person temporarily ceases to be payable because they do not meet the income test, but remains qualified.⁵³

1.54 However FaHCSIA advised the Committee that the rules around this issue reflect what is currently in place for CDEP participants. Mr Bernie Doman, a Senior Manager in the CDEP Program Management Branch stated:

If they are absent for a period exceeding two weeks and they have not taken approved leave, they are exited from the CDEP, so they are no longer eligible for CDEP, and potentially they would need to go back on income support or reapply back to CDEP.

....

Basically what we are proposing under the new rule is that they will still continue under CDEP, but if they do not work for two weeks and they have not provided an explanation or it has been paid leave then they would be exited and they would not be able to come back on CDEP.⁵⁴

Communication

1.55 The Commonwealth Ombudsman indicated it had received a large number of complaints and feedback about various aspects of the CDEP. A key element of these complaints related to insufficient communication and access to Centrelink to get further information both about the changes generally and about individual circumstances. The Commonwealth Ombudsman highlighted the importance of communication to future changes to CDEP. They stated:

The NTER has brought a raft of changes to programs affecting Indigenous people in the Northern Territory; the level of confusion and uncertainty in communities affected by these changes should not be underestimated. Adequate attention must, if these proposed changes are to be successful, be paid to effective communication strategies including the use of interpreters when visiting communities to explain changes and information brochures produced in local languages. It is also critical to provide follow-up information and ongoing access to further information.⁵⁵

1.56 FaHCSIA told the Committee that it was undertaking information sessions to ensure that people are aware of the changes to CDEP and would be expecting CDEP providers and job services providers to give information to participants.⁵⁶

53 Northern Australian Aboriginal Justice Agency, Submission 4, p. 6.

54 Mr Bernie Doman, Department of Families, Housing, Community Services and Indigenous Affairs, *Proof Committee Hansard*, 28 April 2009, p. 21.

55 Commonwealth Ombudsman, *Submission 5*, pp. 5-6.

56 Ms Helen Board, Department of Families, Housing, Community Services and Indigenous Affairs, *Proof Committee Hansard*, 28 April 2009, p. 19.

CONCLUSION

1.57 The Committee received only limited comments in relation to the streamlining of payments of family tax benefit and does not intend to comment on this aspect of the Bill.

1.58 In relation to the expansion of appeal opportunities in relation to the NTER income management regime, the Committee noted that the measures in the Bill are an initial step. The Government has committed to further reforms of the income management regime to bring it into line with the *Racial Discrimination Act 1975*. This is a matter of urgency and the Committee looks forward to these amendments becoming available for consultation in the near future. The Committee is hopeful these reforms will further extend the appeal rights of people subject to the NTER income management regime.

1.59 The Committee acknowledges that issues in relation to the CDEP are difficult as this is a transitional period as a new policy approach to the area of Indigenous employment services is implemented. The Committee shares the concerns of witnesses regarding potential problems for those CDEP participants who transfer to income support and the associated compliance processes. This will be an area the Committee will continue to monitor.

Recommendation

1.60 The Committee recommends that the Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2009 be passed.

Senator Claire Moore
Chair

May 2009

Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2009

Dissenting Report by Australian Greens

NTER Income Management Appeals

The amendments proposed in Schedule 2 of the Bill will provide no real benefit for the people subject to blanket income quarantining in the Northern Territory and (as pointed out by the Commonwealth Ombudsman, the Law Council of Australia, the National Welfare Rights Network and the Northern Australian Aboriginal Justice Agency) implemented in isolation these changes are essentially meaningless. To be truly effective the amendments need to be introduced with the range of other amendments recommended by the NTER Review Board, including repealing compulsory income quarantining. We also note evidence from Senate Estimates indicating that Aboriginal people as a whole have very low rates of use of the Social Security Appeals Tribunal, despite having very high per capita rates of breaching under the ongoing Welfare to Work provisions.

While we note that the Minister for Indigenous Affairs, Jenny Macklin, promised last year to introduce a compulsory income management policy which does not require suspension of the RDA, we remain concerned that the Government has yet to indicate the form such legislation could take, and the necessary consultation with affected Aboriginal communities has yet to commence.

The Australian Greens remain unconvinced that legislation that supports blanket quarantining of selected Aboriginal communities that still complies with the RDA (as well as our international commitments to the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and more recently to the UN Declaration of the Rights of Indigenous Peoples) is possible.

We believe that the Government should therefore move immediately to revoke the suspension of the Racial Discrimination Act and the Northern Territory Anti-Discrimination Act.

Community Development Employment Projects (CDEP)

The Australian Greens are deeply concerned about the Government's proposed changes to CDEP. We believe they will have adverse impacts on Aboriginal people and Aboriginal communities, particularly during the Global Financial Crisis. These measures do not improve the implementation and effectiveness of CDEP in getting Aboriginal people work ready, building labour market skills or helping them transition into the workforce. They merely seek to enable the extension of income quarantining to CDEP workers.

In the absence of effective job creation in affected communities, placing new CDEP participants on income support does not provide a stronger 'incentive' to take up work that isn't there – it just makes it much harder for them to provide for their families. Recasting CDEP as a 'work for the dole' scheme will inevitably undermine the participation and self-esteem of the large number of existing CDEP workers who see themselves as employed in

real jobs and making a valuable contribution to their communities. We need to be raising the bar on work readiness and offering a more structured transition to the workforce rather than lowering it.

While we welcome the initiatives that have been introduced to date to replace some existing CDEP jobs with fully funded positions, we note that abolishing CDEP schemes will mean many more current CDEP participants will be moving from meaningful work to long-term unemployment than are being supported into 'real' jobs. At the same time the removal of subsidised CDEP labour will adversely effect many existing successful Indigenous enterprises in remote areas where these ventures make significant economic and social contributions to local communities, but do not yet have sufficient capacity to support non-subsidised award wages. By shifting participation and compliance issues from the domain of community based CDEP organisations to Centrelink, there is also a significant risk that this will both undermine the coherence and commitment of workers to these organisations and the strategies they currently employ to encourage active engagement as well as resulting in higher rates of breaching.

We therefore do not support the amendments proposed in Schedule 3.

Recommendations

- 1. That the Government introduce legislation immediately to revoke compulsory income quarantining and to restore the application of the Racial Discrimination Act to the NTER.**
- 2. That the Government not proceed with their current changes to CDEP and instead undertake a meaningful evidence-based reform process to improve employment and work-readiness outcomes.**



Senator Rachel Siewert
Australian Greens

APPENDIX 1

Submissions received by the Committee

- 1 Law Council of Australia (ACT)
- 2 Altman, Professor Jon and Jordan, Ms Kirrily (ACT)
- 3 National Welfare Rights Network (ACT)
- 4 North Australian Aboriginal Justice Agency (NAAJA) (NT)
- 5 Commonwealth Ombudsman (ACT)

Additional information

Department of Families, Housing, Community Services and Indigenous Affairs

Responses to questions on notice arising from the hearing 28.4.09, received 6.5.09

APPENDIX 2

Public Hearing

Tuesday, 28 April 2009

Parliament House, Canberra

Committee Members in attendance

Senator Claire Moore (Chair)

Senator Rachel Siewert (Deputy Chair)

Senator Catryna Bilyk

Senator Sarah Hanson-Young

Senator Gary Humphries

Witnesses

Professor Jon Altman

National Welfare Rights Network

Ms Kate Beaumont, President (via teleconference)

Ms Genevieve Bolton, Supervising Solicitor

Mr Gerard Thomas, Policy and Media Officer

North Australian Aboriginal Justice Agency (Sub 4) (via video conference)

Ms Priscilla Collins, Chief Executive Officer

Ms Helen Wodak, Advocacy Manager

Ms Annabel Pengilley, Welfare Rights Officer

Department of Families, Housing, Community Services and Indigenous Affairs

Mr Gavin Matthews, Branch Manager, Welfare Payment Reform Branch

Ms Liz Hefren-Webb, Section Manager, Welfare Payment Reform Branch

Ms Helen Board, Branch Manager, CDEP Program Management Branch

Mr Bernie Doman, Section Manager, CDEP Program Management Branch

Mr Peter Southwell, Branch Manager, Family Payments Branch

Mr Ian Wannan, Section Manager, Family Payments Branch