



## **SUBMISSION**

**Senate Community Affairs Committee**

**Family Assistance and Other Legislation Amendment**

**(2008 Budget and Other Measures) Bill 2009**

**April 2009**

### **BACKGROUND**

The North Australian Aboriginal Justice Agency (“NAAJA”) is the Aboriginal and Torres Strait Islander Legal Service (“ATSILS”) providing legal advice and assistance in the North Zone of the Northern Territory. NAAJA has offices in Katherine, Darwin and Nhulunbuy. The focus of NAAJA’s services is on rural and remote communities.

In addition to a substantial criminal law practice, NAAJA has a civil law practice which now includes two Welfare Rights solicitors, seconded through the National Welfare Rights Network, to provide individual client assistance and capacity building in relation to income management and Centrelink.

It is from this perspective that we make comment on the proposed changes to the *Social Security (Administration) Act 1999* (“the Act”), as provided for in the Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2009 (“the Bill”).

## **Schedule 1 – Streamlining administration of family tax benefit**

NAAJA is not in a position to offer comment on this aspect of the Bill.

## **Schedule 2 – Review of income management regime decisions**

### 1) Support for amendment in principle

NAAJA supports in principle the proposed amendments in the Bill that will provide 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).

We believe that the proposed amendment will correct the appalling deficit in 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.

### 2) In practice, amendment will have little impact

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 review can be sought. In practice, we estimate that there will be a limited number of Centrelink recipients who are able to seek effective review of decisions under the income management regime (leaving aside the issue that in our experience, the overwhelming majority of Aboriginal people in the Northern Territory are unaware that Centrelink decisions can be challenged.)

This can be illustrated by reference to two examples:

- a) *challenging a declaration that an area is a declared relevant Northern Territory area;*

Section 123TE of the Act provides the Minister with a power to determine that an area is a declared relevant area. It also provides that in making such a determination the Minister must have regard to a range of factors, including what opportunities people have had to discuss the consequences of imposing the regime and also how feasible it will be for the Secretary to take action in relation to ensuring people's priority needs are met.

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.

This is problematic because for some communities, the Minister's decision under s123TE has caused significant difficulties for affected residents. We understand that declarations have been made under 123TE for areas 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 own community. Where such a community is remote, the only option is to charter light aircraft in order to purchase groceries and other essentials using income managed funds.

Thus for these Centrelink recipients, the amendment will have little practical relevance.

*b) challenging a person's eligibility for income management*

The intended effect of the income management legislation is that all persons who meet the criteria set out in section 123UB of the Act will be subject to income management, unless an exemption applies. Exemptions currently only apply to those in a relevant declared area on NTER business or those studying full-time in non-declared area (these latter will be subject to income management when they return home for semester breaks). In a recent change in policy, some exemptions are now being offered to those who can

demonstrate that they have moved permanently from a relevant declared area.

People who are resident in declared relevant areas but who wish to be exempt from income management on the grounds that:

- a) income management is cumbersome and impractical for them (for example where they live in a community or outstation without a FAHCSIA licensed store); and/or
- b) they are capable of managing their own money, their children are adequately provided for or for they don't care for any children;

have no effective avenue for relief under the Bill because prima facie the current income management regime provides no basis on which a resident in declared relevant areas could seek exemption on these grounds.

### 3) Need for implementation of NTER Review Board recommendations

NAAJA notes that the proposed amendment is in part a response to the recommendations of the NTER Review Board made 13 October 2008. We further note that the Board recommended far broader changes to the income management regime, particularly that income management should not be applied to all Centrelink beneficiaries resident in declared relevant areas, without regard to their behaviour. The Board specifically recommended 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.
- Compulsory income management should only apply on the basis of child protection, school enrolment and attendance and other relevant behavioural triggers. These provisions should apply across the Northern Territory.<sup>1</sup>

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<sup>1</sup> Peter Yu, Marcia Ella Duncan and Bill Gray, "Northern Territory Emergency Response: Report of the NTER Review Board", October 2008, p 10.

With almost two years since the imposition of the income management regime, we respectfully suggest the Committee consider whether it is now time to adopt the Board's recommendation to remove the provisions providing for compulsory application of the income management regime in the Northern Territory.

In short, we urge the Committee to press for further amendments to Part 3B that will have the effect of removing the requirement on the Secretary to impose compulsory blanket income management in declared relevant areas in the Northern Territory.

We ask the Committee to consider this especially in light of the fact 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 as described in the examples above.

NAAJA is happy to provide the Committee with more detailed information on these issues if the Committee so requests.

### **Schedule 3 - Community Development Employment Projects Scheme**

#### **a) More people on welfare**

The proposed reforms to the CDEP 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. NAAJA has detailed these concerns in our submission to the Government's discussion paper, "Increasing Indigenous Employment Opportunity" (**Appendix 1**).

In the Northern Territory, of around 8000 people participating in CDEP, it is estimated that around 2000 will be transferred into "real" employment, leaving some 6000 people to transfer onto Centrelink benefits.<sup>2</sup>

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<sup>2</sup> JC Altman, "Submission to the Australian Government's 'Increasing Indigenous Employment Opportunity' Discussion Paper", CAEPR Topical Issue No. 16/2008, Centre for Aboriginal Economic Policy Research, Australian National University, November 2008, p 6.

### **b) Transition provisions – grandfathering of pre-July 09 recipients**

NAAJA has a particular concern with the effect of transition arrangements on pre-1 July 2009 CDEP participants after 1 July 2009. We understand that Government policy is that people who have a “break from CDEP for more than two consecutive weeks other than approved leave”,<sup>3</sup> will lose their grandfathered status. NAAJA welcomes the provision for breaks of more than two weeks as approved leave, but has a number of concerns.

Noting that these matters are not explicitly provided for in the Bill, we ask the Committee to investigate:

- 1) the source of the power to make this rule
- 2) the status of this rule (ie, can we rely on this rule applying throughout the transition period)
- 3) how “approved leave” will be defined
- 4) whether approved leave will include leave without pay
- 5) whether a decision that determines whether or not leave is “approved” will be open to review, and, if so, information on what the avenue for appeal will be.

In NAAJA’s submission in response to the Increasing Indigenous Employment Strategy discussion paper (Appendix 1), we 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 where a person temporarily ceases to be payable because they do not meet the income test, but remains qualified.

We urge the Committee to consider this alternative and that you seek further amendments that would effect this recommendation.

### **c) Effect on individuals, local economy and society**

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<sup>3</sup> “Community Development Employment Projects (CDEP)”, FAHSCIA information page, accessed at < [http://www.fahcsia.gov.au/internet/facsinternet.nsf/indigenous/programs-cdep\\_intro.htm](http://www.fahcsia.gov.au/internet/facsinternet.nsf/indigenous/programs-cdep_intro.htm)> on 21 April 2009.

The 6000 or so individuals no longer earning CDEP wages, but rather in receipt of Centrelink benefits, will find themselves subject to the Welfare to Work compliance requirements and become subject to the income management regime.

While this outcome is no doubt intentional, we are concerned that this is a retrograde step, which takes people out of paid employment and forces them into the less economically and socially viable alternative of dependence on Centrelink income support. Further, by reducing the total money available in remote communities and being spent on local enterprises (such as community stores), there is the potential for further contraction of remote community economies.

Furthermore, many CDEP projects which may struggle to be purely economically viable, are valuable in other terms, 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. Together, these activities contribute to community cohesion and pride, while still providing economic benefits to individuals and communities.

With the Global Economic Crises impacting on the Australian economy and Australian employment rates, NAAJA asks the Committee to regard these amendments with extreme caution, noting that implementation of the measure will see less disposable income in remote communities, less engagement in meaningful work and the potential for greater numbers of unemployed.

NAAJA urges the Committee to recommend rejection of this proposed amendment.

Absent this, NAAJA urges the Committee to recommend that new CDEP participants be made eligible for exemptions from income management, should they so request. This may provide some additional incentive for people to participate in CDEP.

We thank the Committee for the opportunity to provide comment.